

# BROADCASTING STANDARDS CODEBOOK REVIEW CONSULTATION 2022

## SUBMISSION FORM

Public consultation opens on **25 January 2022** and will close at **5pm on 8 March 2022**. Submissions can be made via our online form at [www.bsa.govt.nz/code-review-consultation](http://www.bsa.govt.nz/code-review-consultation), or by completing the document below and sending it to us by email at [info@bsa.govt.nz](mailto:info@bsa.govt.nz) or by post to: BSA, PO BOX 9213, Wellington 6141

Full name of submitter: [NZME Radio Limited](#)

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**We're inviting public submissions on the new draft Codebook. In particular, we seek your views on the following:**

### General

1. Is it clearly written? If not, how would you improve it?

[Yes, the addition of headline categories in the guidelines and the inclusion of the Commentary for each standard within that standard should help to make the Code more user-friendly.](#)

2. Is there anything else we could do to ensure it reflects the interests of Aotearoa/New Zealand's diverse community? If so, what?

3. Is the guidance under 'What is needed for my complaint to be 'a formal complaint'?' helpful (Under 'THE BSA COMPLAINTS PROCESS' in the draft revised Codebook)? If not, how would you improve it?

[NZME considers that a "a window of no greater than 3 hours' should be revised to refer to "a window of no greater than 1 hour.'](#)

4. The review seeks to 'future proof' broadcasting standards in the face of an evolving media and regulatory environment. However, there are limits to what can be done within current law. Do you have any suggestions for 'future proofing' the Codebook?

### Simplification/Streamlining

5. The Radio, Free-to-Air-TV and Pay TV codes have been combined (but with a view to preserving key differences between these codes):

a. Do you support this? [Yes](#).

b. Do you have any suggestions to improve the Codebook on this topic? [No](#).

6. The 'good taste and decency' and 'programme information' standards and aspects of the 'violence' standard have been combined into one 'offensive and disturbing content' standard:

a. Do you support this? [Yes](#)

b. Do you have any suggestions to improve the Codebook on this topic? [No](#)

7. The 'alcohol' and 'law and order' standards and aspects of the 'violence' standard have been combined into one 'promotion of illegal, dangerous or antisocial behaviour' standard:

a. Do you support this? [Yes](#)

b. Do you have any suggestions to improve the Codebook on this topic? [We suggest that the reference to 'provocative criticism' contained in the current Commentary to Standard 5 – Law and Order be included in the Commentary to the new Standard 3.](#)

### **Discrimination and Denigration Standard**

8. Recognising the importance of freedom of expression, a 'high level of condemnation, often with an element of malice or nastiness' is generally required to breach this standard.

Proposed amendments (guideline 4.2) recognise that 'reinforcing or embedding negative stereotypes' can be enough in some cases. Do you support this and, if not, why?

[Yes. NZME believes it would be useful to include some examples of what may constitute 'reinforcing or embedding negative stereotypes'. NZME also believes that the wording contained in the Commentary of the current Code, clarifying that this standard applies only to "recognised 'sections of the community', which is consistent with the grounds for discrimination listed in the Human Rights Act 1993", be retained.](#)

### **Balance Standard**

9. Amendments to the balance standard and commentary recognise that, given the current proliferation of media/information sources, balancing viewpoints will normally be available across time, different programmes or different media (such that complaints under this standard will rarely be upheld). Do you support this and, if not, why? [Yes.](#)

### **Accuracy Standard**

10. The obligation to correct material errors of fact has been elevated from a 'guideline' to form part of the standard itself. Do you support this and, if not, why?

[NZME believes that it is appropriate that this wording remain as a guideline. Broadcasters are best placed to assess whether an on-air correction is the most effective and appropriate way of remediating a material error of fact, taking into account matters such as:](#)

- [whether the matter is the subject of ongoing updates and developments \(which are broadcast as and when corrected information becomes available\);](#)
- [when the error is identified. If the passage of time since the initial broadcast is such that the correction essentially occurs when the item is no longer newsworthy, the efficacy of an on-air correction needs to be considered, particularly if this correction appears out of context;](#)
- [if an on-air correction is the most appropriate mechanism for a correction. Where, for example, an opinion piece is broadcast and then later published on a broadcaster's website,](#)

the more appropriate mechanism for a correction of a fact to which the opinion pertains would be to publish, rather than broadcast, the corrected information.

11. Amendments to the guidelines (guideline 6.1) clarify this standard's potential application with respect to analysis, comment or opinion (ie where facts referred to, or on which such content is based, are misleading). Do you support this and, if not, why?

Yes.

NZME notes the new Commentary on this standard refers to talkback, however Guideline 9d ("Talkback programmes will not usually be subject to the accuracy standard") is not included in the new guidelines and NZME believes that it is important that it is retained for clarity when applying the standard.

### **Privacy Standard**

12. Recognising privacy law developments, guidelines to the privacy standard have been amended to remove the requirement that private information be disclosed in a way that is 'highly offensive to an objective reasonable person'. Factors that might previously have been considered in assessing offensiveness, are considered when assessing the 'reasonable expectation of privacy'. Do you support this and, if not, why?

NZME agrees that the question of offensiveness can be considered as a factor when assessing the 'reasonable expectation of privacy' requirement. However, we note that, as it stands, our courts have not yet reformulated the law in this area, and therefore it may be premature to reformulate the standard at this stage. There is also the risk that these revised guidelines diverge from the established law as currently applied by our courts and therefore it may be prudent to wait until changes are made by the courts or by statute before revising the guidelines. However, we recognise that the current guidelines under the Privacy standard predated the recognition by our courts of privacy as a legal cause of action.

### **Other**

13. The BSA is reviewing its policy on third-party privacy and fairness complaints. A draft is set out in Appendix A of the consultation document. Do you have any issues with or suggestions for this policy?

This policy does not clarify whether and in what circumstances a broadcaster will not be required to respond to an overseas complaint on privacy.

We also note that the guidelines to the code state that this standard applies to "identifiable living individuals". Given we are increasingly seeing courts consider the applicability of tikanga principles within New Zealand law, we consider that it may be useful to retain the current wording of "identifiable individuals" (given, for example, that the mana of a person is recognised in tikanga to survive their death).

14. The BSA is reviewing its policy on complainant name suppression (as set out in Appendix B of the consultation document). Do you have any issues with or suggestions for this policy?

No.

15. Do you have any other feedback on the Draft Codebook?

NZME recognises that it can be helpful when considering complaints to take into account feedback received from the public in relation to specific broadcast content, including from those who may not have heard the particular broadcast, as this helps a broadcaster understand the depth and breadth of the concerns a broadcast has created. However, NZME believes that formal responses should only be required for those who have heard the particular broadcast.

NZME believes that the 'Freedom of Expression' section in the new Code should refer to the importance of the level of public interest in a broadcast, as is the case in the current Code.

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## Appendix A

### Draft Policy – Third Party Privacy and Fairness Complaints

1. Broadcasters and the Broadcasting Standards Authority (**BSA**) are required to receive and consider formal complaints under the Broadcasting Act 1989 (**Act**) so long as those complaints comply with the Act's prescribed format for complaints. The Act places no restrictions on who might make a complaint. This reflects the BSA's role as a body to oversee and ensure the establishment and maintenance of prescribed broadcasting standards rather than as a tribunal to determine disputes between parties.

2. However, the Authority recognises that complaints made by third parties, alleging breach of another's privacy or unfairness to another individual/organisation, can create unique challenges and workload, eg:

2.1 Privacy and fairness complaints by third parties can involve challenges where the party affected by the breach is unavailable to provide evidence regarding consent or the impact of the broadcast.

2.2 Complaints from overseas have increased with the increase of material available online (given BSA's practice of accepting complaints about content originally accessed online if the complaint is based on the original TV or radio broadcast). Complaints from overseas present issues where the broadcast may have been experienced in a different context, and where the complaint may relate to matters of limited concern to the average New Zealander. There are also questions as to whether New Zealanders and New Zealand broadcasters should have to meet the costs of such complaints.

3. In some cases, it will be appropriate for the Authority to exercise its discretion, under s11(b) of the Act, to decline to determine such complaints. The Authority will consider the following factors when assessing whether or not any such complaint should be determined by the Authority:

- (a) the seriousness of the alleged breach
- (b) the likely consequences of the alleged breach
- (c) the nature of the party affected by the breach (eg private individual, public figure or organisation/entity, local or overseas party)
- (d) any vulnerability of the affected party (eg which might exacerbate the breach and/or prevent the affected party from complaining themselves)
- (e) the complainant's connection to the affected party (eg unconnected concerned citizen, family/friend/business associate of affected party, or organisation with focus or expertise in relevant subject matter)
- (f) whether the complaint is from an overseas person
- (g) the number and nature of any other complaints received about the same matter
- (h) any challenges likely to be presented in determining the complaint without the affected party's participation/evidence
- (i) the level of public interest in the broadcast and the subject matter of the complaint.

## Appendix B

### Complainant Name Suppression

1. The BSA operates in a framework based on principles of transparency, freedom of expression and open justice. In accordance with section 15 of the Broadcasting Act 1989, it is also required to give public notice of its decisions. It does this by publishing all of its decisions on the BSA website.
2. The broadcasting entity against which a complaint is made is always named in the BSA decision on the complaint. Generally, complainants will also be named in decisions.
3. In some circumstances, where publication may result in specific adverse consequences for the complainant, the Authority may determine that suppressing the complainant's details in its decision is justified. Applying the principles of open justice and freedom of expression, disclosure is the default position, and factors in favour of suppressing the complainant's details need to outweigh freedom of expression and open justice.
4. This is assessed on a case-by-case basis. The factors to consider when determining whether name suppression ought to be granted to a complainant include:
  - the centrality of the complainant's identity to the complaint (eg did they participate in the programme, are they an unrelated member of the public)
  - the nature of the complainant (eg private individual, public figure, or organisation/entity)
  - whether the complainant has requested name suppression (they are invited to do so in the complaint acceptance letter from BSA), or indicated they are comfortable being named
  - the nature and circumstances of the complaint (eg does it raise issues of privacy or fairness, are there sensitive circumstances)
  - the level of public interest in the complaint
  - whether publishing the decision, including the complainant's identity, is likely to cause specific adverse consequences for them, or likely to compound any harm already caused to them by the broadcast
  - conversely, whether publishing the decision, including the complainant's identity, is appropriate or necessary in order to effectively remedy harm caused to them.