

REVIEW OF THE BROADCASTING STANDARDS CODEBOOK 2022 PUBLIC CONSULTATION

KEY DATES

25 January 2022
Public consultation opens

8 March 2022
Public consultation closes

BACKGROUND

Te Mana Whanonga Kaipāho | The Broadcasting Standards Authority oversees broadcasting standards on behalf of New Zealanders. We are proposing changes to the Broadcasting Standards Codebook, which contains the basic rules broadcasters must follow, and commentary and guidelines, which help explain how they work. The proposed changes form part of the first full review of the Codebook since 2016.

Key objectives for this review are to:

- Ensure the standards and guidelines reflect today's diverse society and contemporary broadcasting environment – in terms of industry and community expectations, attitudes, values and audience behaviour.
- Ensure the Codebook is consistent with legal principles which may have evolved since it was published in 2016.
- Simplify, streamline and clarify Codebook content so it's clearer, practical and more user-friendly for broadcasters and audiences.
- Align, where appropriate, with frameworks overseen by other content standards entities, with a view to a more joined-up regulatory system.
- Future-proof the Codebook to the extent possible within the current regulatory environment.

Proposed updates have been developed in consultation with broadcasters and other industry and government stakeholders. The purpose of the public consultation is to enable all interested parties and the public to have a say in the development of the revised Codebook, and to ensure it reflects the general values and expectations of our diverse society.

On completion, the new Codebook will be available in a number of languages.

WHAT HAS CHANGED?

Proposed changes to the Broadcasting Standards Codebook include:

- Updating the introduction, including to reflect the current environment.
- Combining the three existing codes for pay TV, free-to-air TV and radio into one simplified code.
- Streamlining and combining some standards which cover related issues.
- Updating the discrimination and denigration standard guidelines to clarify its application to content which reinforces negative stereotypes.
- Incorporating an obligation to correct material errors of fact within the accuracy standard.
- Updating the guidelines/commentary on how the standards apply, shaped by past BSA decisions and, in the case of privacy standard guidelines, legal developments.
- Refreshing the language to make the Codebook easier to understand.
- Updating guidance on the complaints process to clarify the requirements for a formal complaint (and consequently the types of complaints broadcasters may treat as feedback only).

SPECIFIC QUESTIONS

We are now 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?
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? If not, how would you improve it?
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?
 - b. Do you have any suggestions to improve the Codebook on this topic?
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?
 - b. Do you have any suggestions to improve the Codebook on this topic?
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?
 - b. Do you have any suggestions to improve the Codebook on this topic?

Discrimination and Denigration

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?

Balance

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?

Accuracy

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?
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?

Privacy

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?

Other

13. The BSA is reviewing its policy on third-party and fairness complaints. A draft is set out, below, in Appendix A. Do you have any issues with or suggestions for this policy?
14. The BSA is reviewing its policy on complainant name suppression (as set out, below, in Appendix B). Do you have any issues with or suggestions for this policy?
15. Do you have any other feedback on the Draft Codebook?

SUBMISSION PROCESS

Public consultation opens on **25 January 2022** and will close at **5pm on 8 March 2022**. Submissions can be made online at www.bsa.govt.nz, or sent by email to info@bsa.govt.nz or by post to:

BSA
PO BOX 9213
Wellington 6141

Any submission should include your full name, a contact phone number and email address, your physical address and advice regarding your preferred form of contact. Contact details of submitters will not be made public but may be used for questions and future consultation unless otherwise requested. You may wish to use the submission form available (but this is optional).

Any questions on the consultation process or about the BSA in general can be directed by email to us at info@bsa.govt.nz or call us on 0800 366 996.

PUBLICATION OF SUBMISSIONS

Your submission may be published on our website. Submissions may also be subject to disclosure under the Official Information Act 1982. If your submission contains sensitive material that you wish the BSA to withhold from publication on our website or under the Official Information Act, you should clearly identify the relevant information and the applicable grounds under which the BSA could seek to withhold the information.

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.