

Broadcasting Standards Authority: Election Programmes Code of Broadcasting Practice

2020 Public Consultation Report

Part 1: Introduction

Code review: background

The Broadcasting Standards Authority (BSA) works with broadcasters to develop codes of broadcasting practice that apply to all broadcasters in New Zealand.

The Election Programmes Code of Broadcasting Practice (the Election Programmes Code) sets out standards that apply to Election Programmes which may be broadcast for political parties and candidates in the lead up to the General Election.

In anticipation of the 2020 General Election, the BSA wished to review the Election Programmes Code to ensure that it was up to date and relevant to the current media environment.

The consultation document for this review was developed in consultation with broadcasters and other industry and government stakeholders. The BSA consulted with the public on the draft code and invited submissions over the period from 24 October 2019 to 22 November 2019.

What we consulted on and how

Our key objectives in reviewing the Election Programmes Code were to:

- Include guidelines to assist broadcasters to meet the standards in the Election Programmes Code
- Ensure the Election Programmes Code reflects the 2017 amendments to Part 6 of the Broadcasting Act 1989 (regarding Electoral Broadcasting)
- Seek alignment (as appropriate) with equivalent standards with which media (and political parties/candidates) may be required to comply (eg Advertising Standards Authority and NZ Media Council codes).

The purpose of public consultation during this code review was to enable all interested parties to have a say in the development of the Election Programmes Code, and to ensure that it reflects the general values and expectations of our diverse New Zealand society.

We sought feedback from the public regarding the Election Programmes Code (in general) and specifically about:

- whether the proposed guidelines for each standard were, clear, appropriate and helpful
- whether any additional guidelines should be included
- how the standards should apply to political party promises (ie promises as to future conduct)

- how the denigration standard should be worded
- whether there were any other issues we needed to consider in light of our objective of ensuring alignment with equivalent standards
- which languages the codebook should be translated into.

Part 2: Submissions

The BSA received 5 submissions. Submissions were made by industry bodies, members of the public and academics. All submissions were thoughtful and considered and we greatly appreciate the time and effort taken by submitters to participate in our code review.

Key points arising from submissions included:

- Additional guidance or clarity should be included (eg regarding the distinction between Election Advertising and Election Programmes and the jurisdiction of the Advertising Standards Authority as opposed to the BSA).
- The Denigration Standard (E3) would be challenging to apply and should be amended (eg should be subject to a 'reasonableness' standard).
- The Code should acknowledge that parties/candidates (rather than broadcasters) are in the first instance responsible for ensuring compliance with the standards.
- The Election Programmes Code should be translated into Mandarin.
- The Code should extend to local government elections.
- The standard relating to opening and closing addresses should be reinstated.

Part 3: Response to submissions

We have carefully considered all submissions and endeavoured to respond to submissions in one or more of the following ways:

- responding to each submission individually, addressing the points raised
- amending the draft Election Programmes Code
- taking action outside of our code review.

In general terms, our consideration of submissions included determining whether the issues raised: were within the scope of our code review; were already sufficiently addressed in the Election Programmes Code as drafted; and/or were consistent with our general approach to our code review. Where appropriate, we have amended the Election Programmes Code. Our consideration of submissions is set out in further detail below.

Additional Guidance or Clarity Required

We have updated and expanded the section dealing with the Advertising Standards Authority's responsibilities for Election Advertising. We also note that additional guidance material regarding the distinction between Election Programmes (covered by the Election Programmes Code) and other Election Advertising and Election related programming is available on our website (and will be updated before the 2020 General Election).

With respect to the submission requesting inclusion of the Codebook guidance on the Accuracy Standard, this is already effectively included (by virtue of Guideline E1a).

Denigration Standard

We acknowledge the feedback. However, the denigration standard (E3) mirrors the approach adopted in the Codebook's discrimination & denigration standard. We think it is important to maintain consistency between the Election Code and the Codebook. As the Chair must always be a lawyer, and the members are supported by a legal team, guidance on the appropriate test to apply is available to the members. The guidelines to Standard E3 are also likely to prevent unreasonable findings of denigration.

Parties/Candidate Responsibility vs Broadcaster Responsibility

With respect to the request that the Election Programmes Code acknowledge that parties/candidates (rather than broadcasters) are in the first instance responsible for ensuring compliance with the standards, we note that the Election Programmes Code applies to broadcasters not parties/candidates. Accordingly we do not propose to make this change. However, we acknowledge that steps taken by broadcasters to check compliance with parties/candidates may be taken into account at an orders stage and would likely be treated as a mitigating factor in any breach situation.

Translations of Code

Following feedback from public consultation (and the prior broadcaster and stakeholder consultation) we will be providing Te Reo Māori, Samoan, Hindi, Punjabi and Mandarin translations of the Election Programmes Code.

Outside of scope

The submission that the Election Programmes Code cover local as well as general elections would require substantial amendment to our governing legislation (as we have no current authority in respect of local body elections). This submission will be referred to the Ministry for Culture and Heritage and to the Department of Internal Affairs.

Similarly the submission that we reinstate standard E5 relating to opening and closing addresses would not reflect current legislation (as 2017 amendments to the Broadcasting Act 1989 removed broadcaster obligations to provide free time for party opening and closing addresses).

Agreed changes specified above have been incorporated into the Election Programmes Code and the final version is available [here](#). The new code comes into effect on 1 March 2020.

Broadcasting Standards Authority

3 February 2020