

DRAFT

ELECTION PROGRAMMES CODE OF BROADCASTING PRACTICE



INTRODUCTION

The Broadcasting Act 1989 requires every broadcaster to be responsible for maintaining in programmes and their presentation, standards which are consistent with matters such as good taste and decency, law and order, and privacy.

The Broadcasting Standards Authority (BSA) is responsible for administering the standards regime, determining formal complaints and encouraging broadcasters to develop and observe appropriate Codes of Broadcasting Practice.

The purpose of this Code of Broadcasting Practice is to emphasise important principles regulating the content of broadcast election programmes. Broadcasters are responsible for ensuring any broadcast election programmes comply with broadcasting standards.

Under section 14 of the New Zealand Bill of Rights Act 1990, there is a right to freedom of expression. This is an important right in a democratic society and is particularly important in the lead up to a general election, when political parties and candidates are seeking to influence voters, and audiences are seeking information to enable them to make informed voting decisions. When the Authority makes decisions on complaints, it will consider and apply the New Zealand Bill of Rights Act.

A complaint may be made directly to the

BSA where it is considered that an election programme does not comply with one or more of the broadcasting standards contained in this Code. The BSA will endeavour to address such complaints on an urgent basis.

ABOUT THIS CODE

Election programmes are subject to the same broadcasting standards as other programmes.

Therefore, this Code should be read alongside the other Codes of Broadcasting Practice: Free-to-Air Television, Radio, and Pay Television in the Broadcasting Standards in New Zealand Codebook. The Codebook is available free from the Broadcasting Standards Authority and can also be downloaded from www.bsa.govt.nz. There is one exception to this: the requirement to present a range of significant viewpoints on controversial issues of public importance (the 'balance' standard in those Codes) does not apply to election programmes (see section 73 of the Broadcasting Act).

In recognition of the special context of general elections, broadcasting standards such as fairness and accuracy will be applied to election programmes in a manner that respects the importance of free political expression and debate.

Complaints about election programmes are made directly to the BSA.

WHAT IS AN 'ELECTION PROGRAMME'?

'Election programme' means a programme that:

- encourages or persuades, or appears to encourage or persuade, voters to vote for a party or the election of a constituency candidate; or
- encourages or persuades, or appears to encourage or persuade, voters not to vote for a party or the election of a constituency candidate; or
- advocates support for a constituency candidate or for a party; or
- opposes a constituency candidate or a political party; or
- notifies meetings held or to be held in connection with an election.

(see section 69 of the Broadcasting Act)

Usually, election programmes will appear as short promotional/campaign clips or advertisements/advertorials broadcast on television or on radio, for political parties or constituency candidates. Complaints about these programmes may be made directly to the BSA.

The Court of Appeal has held that election programmes are only those that are broadcast *for political parties or candidates* – and not programmes initiated by broadcasters or other third parties (*The Electoral Commission v Watson & Jones*, CA239/2015 [2016] NZCA 512, 20 October 2016).

Other programmes about election matters (such as news, comment, current affairs, entertainment or documentaries) are not subject to the Election Programmes Code. However, they must still comply with other relevant broadcasting standards which are contained in the Broadcasting Standards in New Zealand Codebook. Complaints about such programmes must be made first to the broadcaster.

'Election' means a general election or by-election for members or a member of the House of Representatives. Local body elections are not covered by the Election Programmes Code.

Election programmes can only be broadcast during an 'election period' (the period beginning with writ day (the day an election is announced) and ending the day before polling day).

OTHER ELECTION ADVERTISING: ADVERTISING STANDARDS AUTHORITY

Election advertising in non-broadcast media (such as print, billboards, pamphlets, cinema) is not covered by this code, and complaints about such media may, where permitted, be made to the Advertising Standards Authority (see Contacts).

EDITORIAL ELECTION CONTENT: MEDIA COUNCIL

Complaints about election matters in editorial content in New Zealand Media Council member publications may be made through the New Zealand Media Council complaints process (see Contacts).

ELECTORAL COMMISSION

Complaints or questions regarding other requirements relating to election programmes (under the Broadcasting Act) or election advertisements (under the Electoral Act), such as promoter statements, funding, and authorisation, should be addressed to the Electoral Commission (see Contacts).

Further guidance about election related content and where complaints should be made is available on the Broadcasting Standards Authority website (www.bsa.govt.nz).

GROUNDS FOR A FORMAL COMPLAINT

Formal complaints allege that the broadcaster has failed in its responsibility to maintain one or more of the following broadcasting standards:

STANDARD E1 - Election Programmes
Subject to Other Codes

STANDARD E2 - Election Programme
Advocacy - Distinguishing Factual
Information from Opinion or Advocacy

STANDARD E3 - Denigration

STANDARD E4 - Misleading Programmes

HOW TO MAKE A FORMAL COMPLAINT

Formal complaints about an election programme must be:

- made in writing
- lodged directly with the BSA within 60 working days of the broadcast.

Formal complaints should specify:

- that the complaint is a formal complaint about an election programme
- the name of the programme
- the party or candidate featured in the broadcast
- where the broadcast was featured (eg station or channel)
- the date and time of broadcast
- the standard(s), from the relevant Broadcasting Code and/or this Code, alleged to have been breached and the reasons why.

All broadcasting codes are available from the BSA and from its website.

While complainants have 60 working days to lodge a complaint **the nature of election programmes means that complaints are most effectively brought as soon after the broadcast as possible.**

THE ELECTION PROGRAMMES CODE

The following standards apply to all election programmes broadcast in New Zealand.

THE STANDARDS

STANDARD E1 – ELECTION PROGRAMMES SUBJECT TO OTHER CODES

An election programme is subject to all relevant provisions of the other Codes of Broadcasting Practice except for the requirement to present a range of significant viewpoints on issues of public importance.

Robust debate, advocacy and expression of political opinion are a desirable and essential part of a democratic society and broadcasting standards will be applied in a manner which respects this context.

Guidelines:

E1a In addition to any specific guidelines in this code, guidelines in relevant provisions of the Broadcasting Standards in New Zealand Codebook apply when assessing programmes under this standard E1.

E1b Accuracy Standard Assessments:

- Promises as to future conduct (eg election promises), being neither statements of fact nor opinion, are not capable of being assessed against the

accuracy standard. These statements should be considered under standard E2. However, factual statements on which a future promise is based, may be subject to the accuracy standard.

- The assessment of whether any election programme statement amounts to a material point of fact or is misleading will be guided by how a reasonable viewer or listener would interpret it in the context of an election campaign (ie would a reasonable viewer or listener interpret the statement literally or as a transparent promotion of party/candidate policies or encouragement to vote a particular way).
- The assessment of whether the accuracy requirements have been met will be undertaken on a statement by statement basis (and then in the context of the programme as a whole).
- The following contextual factors may be relevant:
 - the use of short hand or hyperbole for advocacy effect
 - whether the relevant statement related to an election issue or party policy that viewers or listeners could reasonably be expected to be aware of (lessening the chance of being misled).

STANDARD E2 – ELECTION PROGRAMME ADVOCACY - DISTINGUISHING FACTUAL INFORMATION FROM OPINION OR ADVOCACY

An election programme may include debate, advocacy and opinion, but factual information should be clearly distinguishable from opinion or advocacy.

Factual information must be able to be substantiated.

Guidelines:

- E2a Evidence (eg academic studies, expert opinion) in support of factual information must be appropriate and robust and must be readily available and obtainable.
- E2b Election advertisements that promote a party's or candidate's policy promises are, by their very nature, highly political, often hyperbolic vehicles for advocacy, rather than factual information (and are generally readily distinguishable as such).
- E2c Compliance against this standard is to be assessed on a statement by statement basis (and then in the context of the programme as a whole).
- E2d The assessment of whether a statement is clearly distinguishable as factual information or opinion or advocacy may include consideration of:
- the context and presentation (including tone) of the programme
 - the precision (exact wording) of the statement
 - whether the statement can be proven right or wrong (a fact) or is contestable or someone's view (opinion or advocacy)
 - how a reasonable viewer or listener would perceive it

- the political identity, reputation and policies of the party/candidate promoted in the programme
- whether the statement can reasonably be interpreted as an expression of political opinion or advocacy, designed to persuade voters to vote for a party/candidate
- whether the particular point was the subject of substantial other coverage (eg on television, radio or other platforms) through which viewers or listeners could reasonably be expected to be aware of alternative views and opinions to consider in making their voting decision.

STANDARD E3 – DENIGRATION

While an election programme may oppose a political party, or candidate, it may not include material which denigrates a political party or candidate.

Guidelines:

- E3a "Denigrate" is defined as devaluing the reputation of a political party or candidate.
- E3b The importance of freedom of expression in the lead up to a general election, means a high level of condemnation, often with an element of malice or nastiness, will be necessary to conclude that a broadcast denigrated a political party or candidate in contravention of the standard.
- E3c This standard is not intended to prevent the broadcast of material that is:
- factual
 - a genuine expression of serious comment, analysis, opinion or advocacy for a political party or candidate
 - legitimate humour or satire.

STANDARD E4 – MISLEADING PROGRAMMES

An election programme may not imitate an existing programme, format or identifiable personality in a manner which is likely to mislead.

Guidelines:

- E4a The assessment of whether an election programme has imitated an existing programme, format or identifiable personality in a manner which is likely to mislead will be guided by how a reasonable viewer or listener would interpret it (ie would a reasonable viewer or listener realise they were watching election advertising which promotes a particular party or candidate).
- E4b The assessment of programmes under this standard will include consideration of the following, where relevant:
- the nature and extent of any imitation
 - whether party/candidate banners, slogans, advertising or similar identifying materials featured in the programme.

GUIDELINES APPLICABLE TO ALL STANDARDS:

- G1a The assessment of complaints made under this Election Programmes Code of Broadcasting Practice will take into account the particular importance of freedom of speech in the lead up to a general election. Given the high value placed on political speech in the lead up to an election, a correspondingly high threshold must be reached to conclude that an election programme has breached any standard under this code (ie the harm caused or potentially caused by the programme must be great).

CONTACTS

ELECTION PROGRAMME COMPLAINTS

Broadcasting Standards Authority

PO Box 9213
Wellington 6141
Phone: (04) 382 9508
Freephone: 0800 366 996
Fax: (04) 382 9543
Email: info@bsa.govt.nz
Web: www.bsa.govt.nz

ELECTION ADVERTISING COMPLAINTS

Advertising Standards Complaints Board

PO Box 10 675
Wellington 6143
Phone: (04) 472 7852
Freephone: 0800 234 357
Fax: (04) 471 1785
Email: asa@asa.co.nz
Web: www.asa.co.nz

EDITORIAL CONTENT COMPLAINTS

New Zealand Media Council

PO Box 10 879
Wellington 6011
Phone: (04) 473 5220
Freephone: 0800 969 357
Email: info@mediacouncil.org.nz
Web: www.mediacouncil.org.nz

OTHER ELECTION INFORMATION

Electoral Commission

PO Box 3220
Wellington 6140
Phone: (04) 495 0030
Email: enquiries@elections.govt.nz
Web: www.elections.org.nz