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# COMMENTARY ON THE STANDARDS

# PART 1

STANDARDS WHICH  
RELATE TO SOCIAL  
RESPONSIBILITIES

## STANDARD 1 – GOOD TASTE AND DECENCY

The purpose of this standard is to protect audience members from viewing or listening to broadcasts that are likely to cause widespread undue offence or distress or undermine widely shared community standards.

Attitudes towards taste and decency differ widely and continue to evolve in a diverse society such as ours. Caution must therefore be exercised when considering matters of taste. The feelings of the particularly sensitive cannot be allowed to dictate what can be broadcast. However, there are limits, and the broad limit is that a broadcast must not seriously violate community norms of taste and decency.

Context is crucial, and the different codes reflect this. A broadcast's context may justify the inclusion of distasteful material or minimise its harmfulness. For example, the timing of a broadcast is relevant on free-to-air television which has timebands, but not for pay television which does not. Challenging material broadcast late at night, on a news programme or as a central part of a dramatic narrative, is more likely to be acceptable. Similarly, offensive material that is integral to a programme of political, cultural, scientific or social significance or that otherwise advances our understanding of important issues is unlikely to contravene this standard. Each case will depend on its particular facts and relevant contextual factors. Some extreme material, regardless of the context in which it is offered, may go too far.

In television this standard is usually considered in relation to offensive language, sexual material, nudity and violence, but may also apply to other material presented in a way that is likely to cause offence or distress.

In a radio context this is usually in relation to offensive language, sexual material or, sometimes, violence.

Pay television operates in a less restrictive environment than free-to-air television because of the choice customers make in paying to receive broadcasts. The freedom and capacity of an audience to choose what it views and to be able to prevent children and

young people from viewing inappropriate material are significant factors in determining what is, and what is not, acceptable. Violent and other potentially offensive material is readily accessible in our society and it follows that some material of this kind will be able to be accessed on television. However, there must be strong protections in place to prevent this material being viewed by children and young people, and strong protections to ensure that it is not inadvertently viewed by those who do not wish to do so. Pay television broadcasters provide these protections through appropriate classifications and audience advisories (including warnings), filtering technology, PIN codes and an electronic programme guide.

Free-to-air television broadcasters provide these protections through appropriate classifications, advisories (including warnings) and electronic programme guides. Viewers watching through Pay TV platforms (SKY) and Freeview enabled televisions now have access to filtering technology. Where free-to-air broadcasters have taken steps to promote the availability of filtering technology, this will be taken into account in the assessment of whether sufficient care has been taken by the broadcaster to provide protection from harm.

In all broadcasting, audience expectations are crucial. Audiences who know what they are getting can usually avoid this material or supervise their children's exposure to it. If broadcasters successfully manage their audiences' expectations by providing information sufficient for them to make informed choices about content, breaches are less likely. That may include informative audience advisories before or during a programme. It may also include disseminating information (for example, through programme guides) about the content of particular TV programmes or channels. Radio stations usually have established target audiences and these allow stations to legitimately select and schedule content. Talkback radio has become a separate category of broadcasting due to its robust and sometimes challenging nature, and different standards often apply to programmes of this kind.

## STANDARD 2 – PROGRAMME INFORMATION

The purpose of this standard is to ensure that audiences are properly informed about the content of the programmes on offer. The audience should be able to rely on programme classifications, audience advisory symbols and written advisories (warnings), and other information to give them an indication of a programme's likely content, which in turn allows them to regulate their own, and children's, viewing or listening behaviour.

Certain aspects of the application of this standard differ across the codes, reflecting the different platforms from which content is delivered. Primarily, the difference is in the application, or not, of classifications and timebands to programme content. In general, all broadcasters should provide audience advisories where broadcasts contain violence, sexual material, offensive language or other content likely to disturb or offend a significant number of viewers, to assist the audience in choosing programmes. For content on screens, where material is particularly strong or outside audience expectations, on screen warnings (written audience advisories) should also be given that clearly alert the audience to the content to be aired. Classifications and audience advisory symbols or written audience advisories (if applicable) must be visible and able to be considered by the audience, and played at the start of classified programmes. Classifications and audience advisory symbols (if applicable) must also be given after each ad break for programmes classified M, 16 or 18.

In the free-to-air television context, there are clearly defined classifications and corresponding timebands (G, PG, M, 16 and 18). In 2020, changes were made to timebands on free-to-air television, bringing with it the obligation on free-to-air broadcasters to promote the availability of filtering technology (parental locks) which allow parents and guardians to control their children's viewing. There are no such timebands on radio, though it is recognised that children are more likely to be listening at certain times of the day, which are broadly consistent with children's viewing times on free-to-air television (for example, before and after school, up until 8.30pm on weekdays, and on weekends).

Pay television uses the same system of classifications and audience advisories as free-to-air television but is not restricted by timebands. Broadcasters (for all platforms) fulfil their obligations by providing regular and consistent advice about programmes, including classifications and

advisories (such as warnings), to enable their customers to make informed viewing decisions. They also promote the availability of filtering technology allowing parents and guardians to control their children's viewing. Where filtering technology is not available broadcasters must ensure programmes are appropriately scheduled taking into account children's normally accepted viewing times.

In light of the change in timebands, and in recognition of the harm that some content may cause, broadcasters will give careful consideration to the impact the programme may have on the likely audience, particularly children and young people, when classifying and scheduling programmes. Broadcasters will ensure that content is appropriately classified and, in the case of free-to-air television, scheduled in correct timebands and that appropriate audience advisory symbols, and if necessary, on-screen warnings are used to enable audiences, and particularly parents and caregivers, to make an informed decision about what they, and children and young people in their care, choose to watch. Where there is strong content that may present significant risk of harm to vulnerable viewers, helpline information should be considered.

## STANDARD 3 – CHILDREN'S INTERESTS

The purpose of this standard is to enable audiences to protect children from material that unduly disturbs them, is harmful, or is likely to impair their physical, mental or social development.

The standard is designed to protect children when viewing and listening to broadcasts. If a complaint relates to a child having been featured or referred to in a programme, this may raise matters of fairness or privacy and should be dealt with under those standards.

Context is important in a consideration of this standard, including:

- the programme classification
- the time of broadcast (on free-to-air television and radio)
- any pre-broadcast advisories (including warnings)
- the nature of the programme
- the availability of filtering technology and whether availability has been promoted by the broadcaster

- the target audience of the channel/station and of the particular programme or segment
- audience expectations of the channel/station, of the programme or of a particular host or presenter
- other information available to the audience about the programme, including publicity and promos.

In general, for free-to-air television, the standard will only apply during times that children are likely to be watching television. Usually, this will be before and after school up until 8.30pm. Broadcasters should also carefully consider children's interests when determining the level of M content to be screened during the transition from G or PG programming into M, 16 or 18 time.

On free to air television, children's interests are served in a number of ways including through timebands, the availability of filtering technology which allows parents and caregivers to block certain content, which then requires a PIN number to be entered in order to unblock that content; and appropriate classification, the use of advisories (including warnings) and the appropriate scheduling of programmes.

There are no prescribed timebands on radio or on pay television as there are on free-to-air television. On radio, the standard will generally only apply during times that children are likely to be listening to the radio (for example, before and after school, and usually up until 8.30pm on weekdays, and on weekends).

On pay television, children's interests are served through channels specifically targeted at niche audiences, and the availability of filtering technology which allows parents and caregivers to block certain content, which then requires a PIN number to be entered in order to unblock that content.

We recognise that it is not possible or practicable for broadcasters to shield children from all potentially unsuitable content. The objective is to allow broadcasters to broadcast to a wide audience – or in the context of pay television, to offer a wide range of content to niche audiences who choose to subscribe to special channels – while taking reasonable steps to protect children through adequate information for viewers and listeners, and through the availability of filtering technology. We expect all broadcasters who utilise filtering technology, or other means of controlling access to broadcast content, to provide information to viewers about the availability of this technology and how to use it.

The children's interests standard is related to the good taste and decency standard and the programme information standard, which take into account the same contextual factors. However, there are differences in focus. The focus of this standard is on harm that may be unique to children; content that could be considered harmful to children may not be harmful or unexpected when considering the audience in general. Thus, the children's interests standard may be more rigorous than the general good taste and decency standard.

## STANDARD 4 – VIOLENCE

The purpose of this standard is to protect audiences from unduly disturbing violent content.

Context is crucial, and the different codes reflect this. A broadcast's context may justify the inclusion of violent material or minimise its harmfulness. Broadcasters should protect audiences by ensuring violent content is justified by context, and by ensuring viewers are adequately informed of likely content and warned if content is likely to disturb a significant number of viewers.

Relevant contextual factors that will be considered may include:

- the programme classification
- the time of broadcast (on free-to-air television and radio)
- any pre-broadcast advisories (including warnings)
- the nature of the programme
- the availability of filtering technology and whether its availability has been promoted by the broadcaster
- whether the viewer has paid to watch the broadcast
- the target audience of the channel/station and of the particular programme or segment
- audience expectations – for example, violent material broadcast late at night, on a news programme or as a central part of a dramatic narrative, is more likely to be acceptable
- other information available to the audience about the programme, including publicity and promos.

The freedom and capacity of an audience to choose what it views and to prevent children and young people from viewing inappropriate material are important in determining what is, and what is not, acceptable. In the

context of pay television, where the viewer selects certain channels for subscription, this is significant.

In most cases, a pay television depiction of violence will be justified by context, provided it is appropriately classified and an audience advisory is broadcast. Even with appropriate classifications, warnings and the availability of filtering technology, some material may nevertheless be socially unacceptable in any context, for example, graphic depictions of actual murders or rapes.

Violent material is readily accessible in our society and it follows that some material of this kind will be able to be accessed on television. However, there must be strong protections in place to prevent this material being viewed by children and young people, and strong protections to ensure that it is not inadvertently viewed by those who do not wish to do so. Most pay television providers make available filtering technology which allows viewers to block certain content, which then requires a PIN number to be entered in order to unblock it for viewing. Free-to-air television broadcasters also now deliver content through televisions and platforms that have filtering technology. Free-to-air television broadcasters should ensure that strong adult content and content classified 18 screens after 9.30pm and that appropriate advisories are given.

We recognise that violent material has more impact on television, where it is depicted visually as well as aurally. Nevertheless, radio broadcasts may also describe or discuss violence, for example, in news and current affairs, sports events, talkback or fictional programmes, which is why the standard is included in that code.

Broadcasters are expected to exercise discretion with content which focusses on or depicts in detail issues such as rape, sexual violence, or suicide, and should provide appropriate audience advisories. The inclusion of helpline information should be considered.

## STANDARD 5 – LAW AND ORDER

The purpose of this standard is to prevent broadcasts that encourage audiences to break the law, or otherwise promote criminal or serious antisocial activity.

Context is crucial in assessing the programme's likely practical effect. A distinction will usually be drawn between factual, and fictional or dramatic depictions, and the level of public interest in a programme will be a significant factor for consideration.

Other important factors include:

- the programme classification
- the time of broadcast (on free-to-air television and radio)
- any pre-broadcast advisories (including warnings)
- the nature of the programme
- the availability of filtering technology and whether its availability has been promoted by the broadcaster
- whether the viewer has paid to watch the broadcast
- the target audience of the channel/station and of the particular programme or segment
- audience expectations – for example, material broadcast late at night, on a news programme or as a central part of a dramatic narrative, is more likely to be acceptable
- other information available to the audience about the programme, including publicity and promos.

This standard does not stop broadcasters from discussing or depicting criminal behaviour or other law-breaking, even if they do not explicitly condemn that behaviour. It does not require broadcasters to promote law and order. It does not prevent genuine criticism – even provocative criticism – of laws or their enforcement by the courts and police.

The standard is concerned with broadcasts that actively undermine, or promote disrespect for, the law or legal processes. Direct incitement to break the law is likely to breach this standard, if there is a real likelihood that the audience will act on it. Broadcasts which condone criminal activity or present it as positive or humorous may have this effect. Explicit instructions on how to perform a criminal technique may also undermine law and order.

Serious antisocial activity is activity that is contrary to the laws and customs of society to such a degree that a significant number of people would find it unacceptable. It is broader than illegal activity and can include behaviour that is not necessarily illegal but may nonetheless be antisocial, for example, bullying.

In most cases, context will permit a pay television depiction of illegal activity, provided it is appropriately classified and an audience advisory is broadcast, because of the choice made by, and the range of material available to subscribers.

Broadcasters must exercise particular care and discretion when reporting on a crisis including terrorism, extremism, violent extremist content, and extreme violent events.

Guidance has been provided by the BSA in decision *UJ and SKY Network Television Ltd*, 2019-030. Additional guidance on these matters may be issued by the BSA in consultation with broadcasters.

## STANDARD 6 – DISCRIMINATION AND DENIGRATION

The purpose of this standard is to protect sections of the community from verbal and other attacks, and to foster a community commitment to equality. The standard does not apply to individuals or organisations, which are dealt with under the fairness standard.

The standard applies only to recognised 'sections of the community', which is consistent with the grounds for discrimination listed in the Human Rights Act 1993.

'Discrimination' has consistently been defined as encouraging the different treatment of the members of a particular section of the community, to their detriment (for example, see BSA decision *Teoh and Television New Zealand Ltd*, 2008-091). 'Denigration' is defined as devaluing the reputation of a class of people (for example, see BSA decision *Mental Health Commission and CanWest RadioWorks Ltd*, 2006-030).

The importance of freedom of expression means that a high level of condemnation, often with an element of malice or nastiness, will be necessary to conclude that a broadcast encouraged discrimination or denigration in breach of the standard. Comments will not breach the standard simply because they are critical of a particular group, because they offend people, or because they are rude; the Codebook recognises that allowing the free and frank expression of a wide range of views is a necessary part of living in a democracy. Serious commentary, factual programmes, legitimate drama, humour and satire, are valuable forms of speech, and are unlikely to breach the standard unless the content of the broadcast amounts to hate speech or a sustained attack on a particular group.<sup>1</sup>

In assessing whether a broadcast has gone too far, the following factors will be considered:

- the language used
- the tone of the person making the comments

- the forum in which the comments were made, for example, a serious political discussion, or a satirical piece
- whether the comments appeared intended to be taken seriously, or whether they were clearly exaggerated
- whether the comments were repeated or sustained
- whether the comments made a legitimate contribution to a wider debate, or were gratuitous and calculated to hurt or offend.

## STANDARD 7 – ALCOHOL

The purpose of this standard is to prevent broadcasts which promote alcohol in a socially irresponsible way in the context of their genre. We apply a two-stage test when assessing whether the standard has been breached:

1. Did the broadcast amount to alcohol promotion, in the form of 'promotion', 'sponsorship' or 'advocacy'? (see Definitions, page 9)
2. If the broadcast did amount to alcohol promotion, was that alcohol promotion socially responsible?

Broadcasts which contain 'promotion' or 'sponsorship' are usually readily identified by references to alcohol brands or products. A broadcast will amount to 'advocacy' if it presents alcohol consumption in a positive light – particularly, excessive alcohol consumption – or if it portrays alcohol consumption as a necessary part of an event or activity.

Alcohol promotion in a broadcast will usually be found to be 'socially irresponsible' if:

- it portrays excessive alcohol consumption as positive and desirable
- it is dominated by alcohol promotion
- it fails to acknowledge the negative effects of alcohol consumption
- it involves excessive alcohol consumption by young people
- it combines alcohol and another activity in a way that endangers health and safety.

The application of the standard will also be qualified by any law or regulation relating to the promotion of alcohol.

<sup>1</sup> This standard will be reviewed in the next Codebook review scheduled for 2020/21

# PART 2

STANDARDS  
WHICH RELATE  
TO INFORMATION  
BROADCAST

## STANDARD 8 – BALANCE

The purpose of this standard is to ensure that competing viewpoints about significant issues are presented to enable the audience to arrive at an informed and reasoned opinion. The objective of this standard – a well-informed public – is important to the operation of an open and democratic society and is consistent with the principles of freedom of expression.

A common sense approach should be taken in applying the standard. We acknowledge the practical reality that programmes cannot be perfectly balanced and this is not required. Consideration of this standard will reflect the present broadcasting environment in New Zealand and the increased flows of information which now pass over us on topics of all kinds, the proliferation of broadcast media, media which is consciously delivered from a political perspective, and a more discriminating viewing public. Decisions made under the balance standard will always be fact- and context-dependent to reflect this modern and diverse broadcasting world.

The standard also allows for balance to be achieved over time, 'within the period of current interest' in relation to a particular issue.

A number of criteria must be satisfied before the requirement to present significant alternative viewpoints is triggered. The standard applies only to news, current affairs and factual programmes (see the definition under Standard 9 – Accuracy below), which discuss a controversial issue of public importance. The subject matter must be an issue 'of public importance', it must be 'controversial' and it must be 'discussed'.

An issue of public importance is something that would have a significant potential impact on, or be of concern to, members of the New Zealand public. A controversial issue will be one which has topical currency and excites conflicting opinion or about which there has been ongoing public debate. In most cases, human interest or personal stories will not be considered controversial issues of public importance.

In determining whether programmes breach this standard, the following factors will be considered:

- the programme's introduction and the way in which the programme is presented
- the type of programme
- the nature of the issue and of the discussion
- whether the programme approaches a topic from a particular perspective
- whether the programme acknowledges the existence of other views
- whether the audience could reasonably be expected to be aware of other views, including in other media sources
- the platform on which the programme is broadcast.

A key consideration is what an audience expects from a programme, and whether they were likely to have been misinformed by the omission or treatment of a significant perspective (for example, where a significant perspective is presented with limited coverage or in a manner which undermines its validity).

## STANDARD 9 – ACCURACY

The purpose of this standard is to protect the public from being significantly misinformed.

The standard applies only to news, current affairs and factual programming. News and current affairs programmes or items will usually be readily identified, taking into account what audiences would reasonably expect to be news and current affairs.

Factual programmes are non-fiction programmes which contain information that audiences might reasonably expect to be authoritative or truthful, such as documentaries (see, for example, BSA decision *Accident Compensation Corporation and Television New Zealand Ltd*, 2006-126). These can be distinguished from programmes which are wholly based on opinions or ideas (see, for example, BSA decision *Smith and Television New Zealand Ltd*, 2012-130).

The audience may be misinformed in two ways: by incorrect statements of fact within the programme; and/or by being misled by the programme.

Where statements of fact are at issue, the standard is concerned only with material inaccuracy. Technical or unimportant points unlikely to significantly affect the audience's understanding of the programme as a whole are not material.

Being 'misled' is defined as being given 'a wrong idea or impression of the facts' (see High Court judgment *Attorney General of Samoa v TVWorks Ltd*, CIV-2011-485-1110). Programmes may be misleading by omission, or as a result of the way dialogue and images have been edited together.

Expressions of comment, analysis or opinion are exempt from the requirement to be accurate. To read more about this, see the guidance section on accuracy at the back of this Codebook.

Determination of a complaint under the accuracy standard occurs in two stages. The first step is to consider whether the programme was inaccurate or misleading. The second step is to consider whether reasonable efforts were made by the broadcaster to ensure that the programme was accurate and did not mislead. This means that a programme may be inaccurate or misleading, but nevertheless may not breach the standard, if the broadcaster took reasonable steps, for example, by relying on a reputable source (see guideline 9e).

# PART 3

STANDARDS WHICH  
RELATE TO PEOPLE  
OR ORGANISATIONS  
TAKING PART OR  
REFERRED TO IN  
BROADCASTS

## STANDARD 10 – PRIVACY

In our society we value and respect the privacy of the individual. Parliament has identified privacy as particularly important: it is the only broadcasting standard for which compensation may be awarded, and the only one where complaints can be sent directly to the Authority. The standard is concerned with identifiable individuals who feature in programmes or are directly affected by programmes – not with the general audience.

As a society, we recognise that certain information about us is so sensitive that we can reasonably expect to be able to decide who we share it with. We also recognise that there are times and places where we as individuals are entitled to be left alone, or are entitled to be able to choose those who are with us or who observe us. These are concepts of *solitude* and *seclusion*.

On the other hand, there are other times and places where we have to expect that what we are doing may be seen, heard or recorded by others. We have, for example, a right to expect privacy in our bedrooms but very limited rights to expect privacy on a public street. Likewise, some information about us is simply not private, or we may voluntarily surrender some privacy. Sometimes, privacy can be used to shield wrongdoing and wider exposure is in the public interest. Public interest is defined as being more than something that merely interests the public. It is a matter of concern to, or having the potential to affect, a significant section of the New Zealand population.

The privacy standard aims to respect, where reasonable, people's wishes not to have themselves or their affairs broadcast to the public. It seeks to protect their dignity, autonomy, mental wellbeing and reputation, and their ability to develop relationships, opinions and creativity away from the glare of publicity. But it also allows broadcasters to gather, record and broadcast material where this is in the public interest.

Our expectations of privacy vary with time, culture and technology, which creates some difficult boundaries. The guidelines given under Standard 10 – Privacy are designed to assist broadcasters to strike the balance.

More guidance is given at the back of this Codebook, entitled *Guidance: Privacy*.

## STANDARD 11 – FAIRNESS

The purpose of this standard is to protect the dignity and reputation of those featured in programmes.

The objective in assessing fairness is to weigh broadcasters' right to freedom of expression against the right of individuals and organisations to be treated fairly. It is challenging for broadcasters to navigate the line between disseminating information to their audiences which is in the public interest, and the risk of overstepping and causing 'unfair' harm to individuals and organisations. Individuals and organisations have the right to expect they will be dealt with justly and fairly and protected from unwarranted damage.

Generally, a consideration of what is fair will take into account the following:

- whether the audience would have been left with an unduly negative impression of an individual or organisation
- whether an individual or organisation taking part or referred to in a programme was adequately informed of the nature of their participation
- whether informed consent was required and/or obtained (guidance on what constitutes 'informed consent' is found in *Guidance: Privacy* at the back of this Codebook)
- whether the individual or organisation was given a reasonable opportunity to comment, and whether their comments were adequately presented in the programme
- the nature of the individual, for example, a public figure or organisation familiar with dealing with the media, as opposed to an ordinary person with little or no media experience
- whether any critical comments were aimed at the participant in their business or professional life, or their personal life
- the public significance of the broadcast and its value in terms of free speech.