

29 June 2022

Hon Willie Jackson
Office of the Minister for Broadcasting and Media
Parliamentary Buildings
Private Bag 18041
Wellington 6160

By Email

Tēnā koe Minister,

Congratulations on your appointment to the Broadcasting portfolio.

Below, we have set out for you the key challenges and opportunities affecting the BSA, New Zealand audiences and the broader regulatory and media sectors. The Appendix also outlines relevant background/facts regarding the BSA and includes links to key reports/governance documentation.

We want the best outcomes for New Zealanders in a world where there is so much choice and upheaval; our mission, free speech without harm, has never been more important.

We would welcome an opportunity to discuss this report with you in more detail.

Regulatory reform remains a priority

The ‘broadcasting’ market continues to grow, with a large number of outlets and platforms catering to incredibly diverse and large audiences.

According to NZ On Air research, Young New Zealanders are continuing to lead a march away from traditional media (although TV remains the media New Zealanders spend the most time with overall in a day – particularly amongst those over 40).

Social media platforms are a huge source of video and livestreams. Services like Netflix, Disney+ and Lightbox have become a central part of people’s media consumption.

Large technological change, and the emergence of such new platforms, has had a dramatic effect – changing audiences’ behaviour, growing reach and choice, allowing the spread of information (and misinformation/disinformation) far more quickly, but at the same time undermining the advertising-based model many outlets have relied on.

In this environment, the BSA strongly supports current efforts towards content regulatory reform in New Zealand:

- Current content regulation is fragmented (with members of the public having to work out whether their complaints should be directed to the BSA, Media Council, NetSafe, ASA, or the Office of Film and Literature Classification).
- There is a body of providers subject to multiple regulatory regimes and others subject to none.
- The BSA’s key governing legislation, the Broadcasting Act 1989, is inadequate to capture and address the proliferation of new content providers.
- There is a real need for a fair and consistent system. It should address offshore providers, without placing undue restrictions on local ones.

The risks of the current regime extend beyond confusion for the public, cost and duplication. Gaps in the regulatory framework leave it ineffective to address the increasing risks of misinformation/disinformation. Material communicated by some concerning COVID-19 and its impacts (including the significant protests experienced in New Zealand this year) has demonstrated the damage the spread of misinformation/disinformation and harmful content can cause. Unchecked, it has sowed division and hate.

We see a role for the BSA in processes being developed to advance change. Our regulatory expertise and sector knowledge allow us to work collaboratively to achieve an environment which truly meets audiences’ needs and helps protect the national well-being. We have demonstrated that co-regulatory systems like ours work. Our purpose, free speech without harm, supports social cohesion and a vibrant democracy and we are well placed to help build New Zealanders’ trust in the information they receive – a cornerstone of how they interact with others.

The current environment

We, other regulators and broadcasters, continue to field significant numbers of enquiries and complaints. In the 2020/21 financial year, we experienced a 52% increase in complaints as against the previous year. With the current financial year drawing to a close, complaints numbers are expected to land approximately 15% below last year’s but they remain higher than longer term averages.

These complaints levels continue to reflect the uncertain social, health, political, environmental and economic environment. Many of the complaints involve a level of vehemency not seen before (sometimes directed towards staff and members). This reflects increasing polarisation of views (particularly surrounding COVID-19). Approximately a third of complaints this year concerned COVID-19 related matters, originating from both ends of the polarised spectrum. This has contributed to the balance and accuracy standards continuing to be the most complained about standards to date this

financial year, consistent with last year. This also reflects the importance New Zealanders place on perceived misinformation in the current environment.

In this environment, we have adapted processes and increased resource, allowing us to get what had been a significant backlog under control this year. We have kept a tight control on costs and at this stage still retain positive cash reserves. We forecast a deficit in the current financial year. Our forecast still reflects declining levy revenue in light of the ongoing challenges facing broadcasters as well as COVID-19 conditions and increased costs to address our heavy workload (including recruitment costs and higher remuneration expectations). However, actual results are tracking better than anticipated. We continue to monitor our revenue line, through regular reforecasting.

We are conscious that the level of complaints will also be challenging broadcasters and other regulators. Broadcasters are also dealing with a range of frontline COVID-19 related issues and funding models have been in the spotlight with broadcasters under pressure.

In addition to the increasing diversity of 'broadcasters' and available content, we are also a far more diverse society (more than 160 languages are spoken in Aotearoa) with a resulting range of perspectives and approaches to dealing with disagreements. This has been reflected in our research and decisions, which show quite different attitudes to issues like discrimination and denigration and good taste and decency. Overall, we are facing a very different environment in which to interpret our 1989 Act.

Preparing for regulatory reform

Improving the regulatory system for all is very much front of mind and we acknowledge this will take time. However, with a formal process in place to drive regulatory reform, we are focused on the activity we can undertake to support it and the reforms which may follow. Our focus includes:

- **Code review** – We expect to release a new Code of Broadcasting Standards in July. This document, developed by broadcasters and the BSA in consultation with other stakeholders is designed to better reflect today's industry and community expectations. It also aligns, where appropriate, with frameworks overseen by other content standards entities, which will help ensure a more joined up regulatory system. It has been substantially simplified (including by combining the three previous codes for pay TV, free-to-air TV and radio into one Code) and is expected to be a much clearer and practical document for audiences and broadcasters to work with.
- **Audiences** – We want New Zealanders to have the information they need to make good decisions about the content they consume. Confident engagement with content is relevant to the safety, security, connectedness, wellness and development of communities. The release and use of our new Code is key to this and something we will promote and monitor over the next two years.
- **Complaints** - We need to be excellent at our core job - maintaining an effective, responsive and quality complaints service. We will deliver robust, well-reasoned, timely and relatable decisions with the appropriate level of resource. We continue to review and adjust how we work to ensure this.

- **Working collaboratively** – At the heart of what we are trying to achieve is our work with a wide group of people – complainants, broadcasters, similar bodies, officials and community groups. While we are an independent regulator, change and impact comes through working with others. The relationships we maintain and develop are key. They are a feature of our support for the review of content regulation. We want a refreshed, modern system which reflects the contemporary environment, supports public media and a healthy democracy, and promotes the wellbeing of all New Zealanders.
- **Education and engagement** – We need to ensure our external communications are appropriate, help educate people and show the value of free speech without harm. Awareness and informed engagement in the broadcasting standards system are particularly important for tamariki and rangatahi, and their parents and caregivers, who are faced with navigating a wide range of content. Our role includes educating the public on how to use the standards system to make good decisions about what they choose to watch and listen to. This includes ongoing work to build our cultural capability and reflect our commitment to the principles of Te Tiriti o Waitangi and Maihi Karauna. To enable greater focus on communications and engagement, we are making changes to our research spend, which will result in most being conducted on an alternating, biennial basis. This makes sense as much of it is internally focused and the results very consistent over many years. Doing this will provide more funding for work which is externally important, like engaging with a diverse range of audiences and broadcasters.
- **Value for money** - The trend for levy returns is downward while workload is up due to more complaints, their complexity and our role in advising and supporting reform activities. We are accordingly again forecasting a deficit in the coming financial year. We acknowledge the Government's Budget 22 commitment of \$1.2m to BSA over the next four years which we appreciate. The systemic industry change and the COVID-19 pandemic are likely to have an ongoing impact on broadcasters and their revenue. This means we will continue to keep a watchful eye on the levy trend over the next year and manage our costs to maintain healthy reserves in line with our policy. In the meantime, we will work with other government agencies and identify efficiencies to ensure taxpayers and broadcasters receive value for money.
- **Climate change** - While a small agency we have made and will continue to make changes to reduce waste and our climate footprint. This includes measures like moving to digital filing systems, reducing and offsetting our flights, sharing transport when needed, virtual meetings, flexible working arrangements and recycling.
- **Our people** – The well-being of those we interact with, our staff and board are of utmost importance. Internally we have built an open, supportive and trusting environment which encourages the exchange of ideas. Put simply, our people care. We value our reputation for acting professionally at all times, which we benchmark regularly. And we seek external advice to help us make the best decisions.

We appreciate that any sector changes, and the process to make those changes, are for the Government to determine.

We are keen to contribute to that process, and hope that it continues to be given a high priority in the Government's legislative programme. We look forward to working with you.

Yours sincerely

A handwritten signature in blue ink that reads "Susie Staley". The signature is written in a cursive style with a small dot at the end.

Susie Staley

Chair

Appendix

BSA key facts

- The BSA is an independent Crown entity, established under the Broadcasting Act 1989. The Authority is a quasi-judicial tribunal that deals with complaints about broadcasting standards. These are set out in the Broadcasting Act and are subject to Codes of Broadcasting Practice developed by the BSA in consultation with broadcasters. The BSA operates in a co-regulatory environment in which complaints are first addressed by the broadcaster (excluding complaints about election programmes and privacy). Complainants may refer their complaints to the BSA if they are dissatisfied with the broadcaster's response.
- Our vision is freedom in broadcasting without harm, and our purpose is to prevent harm to New Zealanders while fairly balancing the broadcasters' right to freedom of expression and reflecting the values of New Zealand's liberal democratic society. Balancing the right to freedom of expression against the obligation to avoid harm is at the heart of the BSA's role.
- The BSA oversees the development of the broadcasting standards system. We also engage with broadcasters and the public about the standards, freedom of expression and the complaints system.
- Traditionally, we have dealt with complaints relating to free-to-air and pay television, and radio, and where that content is also made available online. The Act expressly excludes on-demand content from our remit.
- We have a board of four members. It has responsibility for determining complaints, and for the governance of the Authority. Board members are: Susie Staley (Chair), Tupe Solomon-Tanoa'i, John Gillespie and Aroha Beck. All Board members except the Chair have been appointed within the current financial year. Susie Staley is in her second term (and appointed Chair on 1 December 2021). The board is supported by a small team, led by our Chief Executive. We are currently recruiting for a new Chief Executive after the recent departure of Glen Scanlon.
- As outlined above, we are jointly funded by government and through broadcaster levies. We have forecast a deficit for this financial year reflecting forecast declining levy revenue in light of the challenges facing broadcasters, and increased costs to address our heavy workload. However, actual results are tracking better than anticipated. We are continuing to monitor our revenue line, through regular reforecasting.
- We have external monitoring of our performance, through the Ministry for Culture and Heritage and surveys of broadcasters and complainants. These show good results recognising that any adjudicative body, such as ours, will never get universal approval.
- Our Annual Report for the year ending 30 June 2022 is in the course of preparation and our Audit has yet to be completed. Our 2023 SPE was provided to your office on 23 June 2022 (and a link is included below).

Links to Key Documentation:

- Annual Report for the year ending 30 June 2021 is available: [here](#)
- Statement of Intent 2020-2024 is available: [here](#)
- Statement of performance expectations for the year ending 30 June 2023 is available: [here](#)