

29 November 2023

Hon Brooke van Velden
Minister of Internal Affairs
Parliamentary Buildings
Wellington 6160

By email

Tēnā koe Minister

Congratulations on your appointment to Cabinet and the Internal Affairs portfolio.

We have been working with the Department of Internal Affairs through the development of the Safer Online Services and Media Platforms consultation. I am writing to you, on behalf of the Authority, to express our support for the review and to offer any assistance we can as you work through the relevant issues.

I would also like to emphasise the urgency behind this work. We would value the opportunity to meet and discuss this with you, if you would consider that helpful. We are in tumultuous times and the word 'unprecedented' is well and truly overdone, but it is our hope that the reform of the media regulatory framework remains a priority for the Government.

Change is long overdue

We have been calling for regulatory reform for more than a decade. Without it, our current operating model will become unsustainable, and we will be unable to fulfil our vision of protecting freedom in broadcasting without harm.

Sweeping technological change, and the emergence of 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 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 Classification Office).

- 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.

Risks are more than economic

The risks of the current regime extend beyond confusion, cost and duplication. Gaps in the regulatory framework leave it ineffective to address the increasing risks of misinformation and disinformation. Some of the material we have seen concerning COVID-19 and its impacts (including the significant protests experienced in New Zealand last year) has demonstrated the damage the spread of mis/disinformation and harmful content can cause. Unchecked, it has sowed division and hate.

We have heard similar warnings from our regulatory counterparts in other countries. There is reliable research showing overseas interference through online channels is a real risk to democracy around the world, and that we need to act with urgency to mitigate online harm.

We are ready and willing

The BSA is eager to be part of the solution. 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 the one we operate with broadcasters) 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.

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 it continues to be given a high priority in the Government's legislative programme. We look forward to working with you and would appreciate the opportunity to meet with you and discuss how we might assist.

Yours sincerely



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. The board is supported by a small team, led by our Chief Executive Stacey Wood.
- 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.

29 November 2023

Hon Melissa Lee
Office of the Minister for Media and Communications
Parliamentary Buildings
Wellington 6160

By email

Tēnā koe Minister

Congratulations on your appointment to the Media and Communications 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 and facts about the BSA and includes links to key reports and governance documentation.

Our mission, free speech without harm, has never been more important, but our legislation is woefully out of date – to fulfil our mission we need regulatory reform, urgently.

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

Regulatory reform remains our key priority

We welcomed this year's consultation on Safer Online Services and Media Platforms and *enclose* a copy of our submission.

Regulatory reform is urgent and necessary to ensure we can fulfil our vision of keeping New Zealanders safe from harm in broadcasting. Our current legislation is increasingly obsolete and it is costing us more each year to achieve less, as audiences continue to move away from traditional broadcasting forms to online platforms where our jurisdiction does not extend.

According to NZ On Air research, young New Zealanders are continuing to lead a march away from traditional media. Social media platforms are a huge source of video and livestreams. Services like Netflix, TikTok and YouTube 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 mis- and disinformation) far more quickly, but at the same time undermining the advertising-based model many outlets have relied on.

In this environment, regulatory reform of New Zealand’s broadcasting and online safety laws is imperative:

- 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, Advertising Standards Authority, 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 mis- and disinformation.

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 – we hope momentum will not be lost on this important work.

Support for Fair Digital News Bargaining Bill

The Fair Digital News Bargaining Bill addresses the inherent power imbalance between our local news media and multi-national digital platforms. The introduction of this bill has been welcomed with relief by news media who view it as a potentially powerful tool in ensuring an independently sustainable media sector in New Zealand for the future. The BSA has been named as the regulator of the new regime, a role we welcome and look forward to.

We worked with Ministry officials to prepare for the introduction of the bill, including an indicative budget bid. We have been engaging with industry to understand their needs and concerns, and how the bill may best serve the needs of a struggling media industry.

Our industry stakeholders have expressed strong support for the bargaining framework, and concern about media sustainability if the bill is not passed. While it is not seen as a cure-all for the sector’s challenges, the consensus across the media we have engaged with – big and small – is that it will contribute meaningfully to a sustainable future for our local media producers, mitigating the need for ongoing central government support. Without the bill, our media face an uncertain future and reduced diversity as smaller local players struggle to hold their own against international platforms.

We have been watching with interest as Australia and Canada have introduced similar legislation, and offered advice to the Ministry on how we see New Zealand can best approach this important

issue. We have invested significant time in this work and will continue to assist in whatever way we can. The BSA is ready and willing to take on this new regulatory role, and we hope to see the bill progress through to its second reading in due course. We would be very happy to meet with you to discuss the bill, and the problems it seeks to address, if that would be helpful.

The current environment

We, other regulators and broadcasters, continue to field significant numbers of enquiries and complaints. In the 2022/23 financial year, we saw a slight decrease in complaints numbers after near-record high numbers during the first two years of the Covid-19 pandemic. Our workload is stable and manageable with our current headcount, and we have avoided the backlogs we experienced when attempting to get by with a smaller team.

In the environment of continued uncertainty and with a strong focus on fiscal restraint, 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 a competitive job market, ongoing inflation, and associated higher remuneration expectations.

We acknowledge the Government's Budget 22 commitment of \$1.2m to BSA over the following four years, which we appreciate and which is allowing us to continue fulfilling our statutory role with public trust and confidence. We continue to monitor our revenue line, through regular reforecasting, but our current levies-based revenue model is not sustainable long-term.

To enable greater focus on communications and engagement, we have made changes to our research spend, with most of our recurring research and surveys now 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.

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 released a new, streamlined Code of Broadcasting Standards in July last year. 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 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 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 are monitoring for the two years following the release of the new Codebook.
- **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.
- **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 are certain to see levies continuing to decline, and will continue to keep a watchful eye on levy trends over the coming years, managing our costs to maintain reserves in line with our policy. 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. 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 flourish at the end.

Susie Staley
Chair

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Links to Key Documentation:

- [Annual Report for the year ending 30 June 2023](#)
- [Statement of Intent 2023-2027](#)
- [Statement of Performance Expectations for the year ending 30 June 2024](#)