

Subject: FW: Draft code - Discovery Submission

From: Dianne Martin <[REDACTED]>

Sent: Tuesday, 8 March 2022 2:21 pm

To: Glen Scanlon <[REDACTED]>

Subject: Re: Draft code - Discovery Submission

Kia Ora Glen,

Thank you for the opportunity to provide feedback on the draft revised Code.

As a general statement, we have appreciated the Authority's engagement with this process and think the draft Code already reflects well many of the concerns we and other broadcasters have raised. We are grateful for the efforts to streamline the Code and to minimise some of the repetition between Standards. We are very pleased to have the existing three Codes merged into one, which we think will make applying the Code easier for broadcasters who broadcast content via multiple distribution channels, and also makes the Code more intuitive for audiences and complainants.

We have seen the proposed submissions from other broadcasters and broadly agree with their suggestions. We too were curious about the use of the word 'content'. In our view, the Code should refer to 'programmes' as that is what the Broadcasting Act regulates.

Specific Feedback for revised Standards / Sections of the draft Code:

Standard 1 - Offensive and Disturbing Content

Under '**Context is crucial**'

The Commentary states: "However, some material may be unacceptable in any context, such as graphic **depictions** of actual murders or rapes."

In our view, 'depictions' relate to artistic content and we suggest this should be changed to 'footage' which links the material to an actual event. In any event, it is highly unlikely that any free-to-air broadcasters would screen such material.

Standard 3 - Promotion of Illegal, Dangerous or Antisocial Behaviour

Guideline 3.4 - 'must not combine alcohol and another activity which endangers health and safety.' We request this point be removed. To restrict portrayals including alcohol in this manner is completely untenable for fictional material. Alcohol and its consequences is a common dramatic device that is used extensively in entertainment content e.g to name two of too many movies to cite, *Leaving Las Vegas* (1995) and *Flight* (2012).

Standard 4 - Discrimination and Denigration

Guideline 4.2 - we understand other broadcasters are concerned that the addition of "without any malicious intent or a high level of condemnation" potentially lowers the bar for finding a breach of this Standard. We are more relaxed about this change and in fact, we do not see this change as a new obligation. As responsible broadcasters, we have no wish to be reinforcing negative stereotypes and already routinely ask our editorial teams to be mindful to avoid this happening.

Standard 7 - Privacy

As you know, Discovery and other broadcasters have been concerned for a long time about third-party complaints under this Standard - i.e. complaints that an individual's privacy has been breached, by someone with no connection to that individual.

Guideline 7.3 states clearly that a reasonable expectation of privacy is required. The individual affected by a particular broadcast (or someone *connected* to them such as their guardian or caregiver) is best placed to determine whether or not they expected privacy in the relevant circumstance. If that individual/guardian/caregiver has not seen fit to complain about a broadcast, then broadcasters should be entitled to assume that they have complied with this Standard. We cannot identify any justification for allowing third-parties to complain about the treatment of an unconnected individual. We note that the Authority does not propose to place Standard 7 in Part One of the Code which includes the Standards that impose broader social responsibilities on Broadcasters.

While we appreciate that the revised Third Party Privacy and Fairness policy allows the Authority to decline to determine complaints from unconnected third-parties, broadcasters do not have that same luxury. We must receive and consider all complaints under this Standard. As currently drafted, this Standard imposes an unfair burden on broadcasters. Our strong view is that a Guideline to Standard 7 should specifically state that only individuals affected or those connected to them can complain.

The BSA Complaints Process

We appreciate that the Broadcasting Act has a broad obligation for complainants to nominate broadcasting standards when lodging a formal complaint. We do what we can to identify what they are complaining about, however, we believe the Authority should not be giving complainants the opportunity to nominate further standards.

Given the volume of complaints broadcasters deal with, we encourage the Authority to maintain robust triaging of complaints rather than suggesting complainants have impliedly raised standards.

Please do not hesitate to come back to us if you have any questions about our submission.

Kind regards,
Di and the Discovery Standards Committee