

March 8, 2022



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Tēnā koe Glen

Public consultation on the Broadcasting Standards Codebook review

Thank you for the opportunity to participate in the review of the above Codebook. At the outset, RNZ acknowledges the difficult role the Authority has to play in New Zealand in evaluating and balancing a number of competing demands from different sectors of the community. That said, RNZ makes some general observations below pertinent to the review, and then attaches a copy of the draft revised Codebook with our detailed comments.

Introduction

The Broadcasting Act 1989 (BA) was enacted before the New Zealand Bill of Rights Act 1990 (NZBORA). There has undoubtedly been significant change in the way content is delivered and consumed over the past 30 years, but the right to freedom of expression – the media’s right to impart information and the public’s right to receive information – has not changed. The right to freedom of expression (s 14, NZBORA), like all other rights set out in NZBORA, may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society (s5). Further s6 of the NZBORA determines that wherever the meaning of the BA can be given a meaning that is consistent with the rights and freedoms contained in the NZBORA, that meaning shall be preferred to any other meaning.

Freedom of expression

The Authority suggests freedom of expression and “harm” caused as a result of a breach of standard must be balanced. The concern is that it is likely to be relatively easy for a complainant to point to specific harm caused to them or a third party by a particular breach – e.g. reputational harm, privacy breach, financial loss – but it is much more difficult for a broadcaster to prove that such “harm” is not disproportionate to its and the public’s right to freedom of expression. The word harm only appears once in the BA (s 13A(1)(a)(i)) – in relation to programmes that depict the infliction of serious physical harm.

In a liberal democracy the law places a very high value (not just “value”) on freedom of expression. Information that is typically regarded as harmful is child abuse material, material that incites racial hatred etc. Information that simply offends has been recognised by law as falling within the right to freedom of expression and is not something that creates (without more) liability for the publisher of the offensive content.

The concern is that the Authority appears to be of the view that because a complainant feels offended, or worse feels offended on behalf of someone else, or because a standard has been breached, harm has been or must have been created or suffered. In RNZ’s view, because of the importance of freedom of expression, that should never be the ‘default’ position as any harm caused to one individual may be justified by the wider public interest in the broadcast.

Discrimination and denigration

The High Court decision in *Wall v Fairfax* and the underlying decision of the Human Rights Review Tribunal is a helpful authority in relation to this issue. Those cases made it clear that offensive content (including content that reinforces negative stereotypes) is not enough. Context is highly relevant. The content has to excite a level of hostility - criticism or disapproval is generally not sufficient. A breach of s 61 of the Human Rights Act (HA) may occur even if there was no malicious intent (s 131 of the HA makes it an offence where there is an intent to cause racial disharmony). Any move away from this position would be to enact a code which is ultra vires of existing legislation in New Zealand.

Thank you again for the opportunity to participate in this process and RNZ is available for further consultation with your team.

We trust the above is of assistance to you.

Nāku, nā



Complaints Coordinator



Code of Broadcasting Standards in New Zealand

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Developed by broadcasters and the BSA and issued to take effect from **<DATE>**.

In the case of any inconsistency between this Code and any predating BSA material such as codes, practice notes and advisory opinions, this Code will prevail.

Introduction

As we look to the future by amending these broadcasting codes, we are constrained by the past.

The codes derive from the Broadcasting Act 1989, which has remained mostly unchanged for 33 years. But society has not stood still, with major changes in the environment in which the codes operate.

The internet, and the technologies it has enabled, has led to dramatic shifts in modes of communication, and to the sheer amount and variety of information and content accessible.

While there have been great benefits to society, there is also much discussion and concern about the role these changes play in the spread of misinformation and disinformation, harmful material, polarisation, impact on 'traditional' elements of the media sector, like broadcasting, and on democracy itself.

The technological change has helped supercharge the debates around numerous issues in recent years – how to deal with the pandemic being a perfect example.

We are also a far more diverse society (more than 160 languages are spoken in Aotearoa) with a resulting range of opinions and perspectives. This has been reflected in our research, which shows quite different attitudes to issues like discrimination and denigration.

It is a startlingly changed environment in which to interpret 33-year-old legislation focused on ensuring broadcasters appropriately fulfil their key role in society. While there has been much discussion about new approaches to content regulation, it has yet to eventuate.

Commented [REDACTED]: This comment will date on any review of the Broadcasting Act and should be removed.

It means we need to ensure, as much as our legislation allows, that the codes reflect the modern context and are easy for audiences to understand.

We must also do so in a way which does not unduly restrict freedom of expression – a cornerstone of robust democracies.

Commented [REDACTED]: RNZ notes that "freedom of expression" is the second to last thing to be mentioned in this introduction.

The following code and guidelines, while shortened and adapted in places, are true to what we have learned since 1989 but also reflect that society has moved and will continue to do so.

Background

The Broadcasting Act 1989 (the Act) creates a system of broadcasting standards. This Code provides guidance to all broadcasters (including those on radio, free-to-air television and pay television) and their audiences on the standards. There is a separate code for election programmes.

The Act enables people to complain to a broadcaster if they think standards have been breached. People who are dissatisfied with the broadcaster's response can refer their complaint to the Broadcasting Standards Authority (BSA) for independent determination.

The Broadcasting Standards Authority

The BSA must deal with complaints fairly and without undue formality, and observe the rules of natural justice. We acknowledge the richness of New Zealand's diverse community and try to respond to complaints appropriately in different cultural contexts, including by seeking external cultural advice

and independent translations or interpretations where appropriate. We also acknowledge the principles of partnership, protection and participation inherent in Te Tiriti o Waitangi and consider the needs, aspirations and cultural values of tangata whenua.

The BSA is also conscious of its role in observing and promoting New Zealand’s international commitments under, for example, the UN Declaration on the Rights of Indigenous Peoples and the UN Convention on the Rights of the Child.

Freedom of expression

New Zealand is a liberal democracy where we value the vital role of broadcasters’ content, both as an exercise of the right to freedom of expression and for the vibrant exchange of information and ideas it creates. Broadcasters can hold the powerful to account, express our identity, reflect and stimulate culture. They can teach us about the world and entertain us.

However, when standards are not followed harm can result which may justify limiting the right to freedom of expression. Our co-regulatory complaints system recognises this. The law and common sense require us to be cautious before restricting freedom of expression. It can be difficult to strike a balance but it’s the Authority’s responsibility to do so in the public interest.

Broadcasters

Broadcasting standards apply to New Zealand TV and radio broadcasters of all sizes. Each broadcasting platform airs a variety of programmes to cater for the diverse languages, cultures and expectations of its audience. Te reo and Māori culture have a special significance in New Zealand’s multicultural society and this is reflected in our broadcasting environment.

Choice and control

The ability for people to choose and control what they and the children and young people in their care encounter on TV or radio means the responsibility for safe viewing or listening is shared by audiences too. Broadcasters provide audiences with a number of tools for this, such as parental locks, classifications, audience advisories and timebands on TV and appropriate scheduling and audience advisories on radio.

The level of choice and control available to an audience is a significant factor in determining what’s acceptable and whether broadcasters have met their responsibilities. In particular, Pay TV operates in a less restrictive environment due to the choice customers make in paying to receive broadcasts.

Standards, guidelines and commentary

In the following pages we set out the 8 standards that apply to TV and radio broadcasts, along with guidelines for each, and we elaborate on these in the commentary. The wording of each standard and its objectives are to the fore when we determine if a standard has been breached.

The guidelines and commentary will inform how each standard is interpreted. They are designed to allow flexibility in how standards are applied and interpreted as required by particular circumstances or context, including the platform on which the content was broadcast.

Commented [REDACTED]: RNZ would like to see the words “and robust” included after the word “vibrant”. The exchanging of information and ideas allowed for under s14 of the NZBORA can, and at times should be, be tough and upsetting.

Commented [REDACTED]: RNZ’s view is that use of the concept of “harm” is problematic. In the end a programme is either in breach of a standard or it isn’t.

Harm is a victim centric subjective notion or paradigm, whereas the broadcasting standards are and must remain an objective set of parameters against which a programme is assessed.

The consequence of a breach can be assessed subsequently and at that point the concept of harm in a particular circumstance might be able to be identified or quantified and considered but it must also be weighed against any benefit that accrued from the programme.

RNZ further observes that most of the best journalism does harm to someone. It exposes the crooked or makes like difficult for the politician or questions the actions of the individual. It could well be said that harm is sometimes a journalistic imperative.

PART 1

SOCIAL RESPONSIBILITIES

STANDARD 1 – OFFENSIVE AND DISTURBING CONTENT

Broadcast content should not seriously violate community standards of taste and decency or unduly offend or disturb the audience, taking into account:

- the context of the programme and the wider context of the broadcast, and
- the information given by the broadcaster to enable the audience to exercise choice and control over their own, and children's, viewing or listening.

Guidelines

General

- 1.1 The context in which content occurs and the wider context of the broadcast are important when assessing whether a broadcast has breached standards. This may include:
- the nature of the broadcast and the channel/station
 - the broadcast's classification (for on-screen content)
 - the time of broadcast (scheduling)
 - any audience advisories/ warnings
 - the target and likely audience
 - audience expectations of the channel/station and the content
 - other information available to the audience about the content, including publicity and promos
 - the public interest¹ in the content
 - the level of the broadcaster's editorial control over the content (including whether the broadcast was live or pre-recorded, or received via a pass-through channel)
 - any steps taken by the broadcaster to mitigate the impact of potentially offensive material broadcast unexpectedly or inadvertently (for example by a third party)
 - any other protections available, for example filtering technology².

Audience choice and control

- 1.2 Where broadcasters provide consistent, reliable information to audiences about the nature of their programmes, and enable them to exercise choice and control over their own and their children's viewing or listening, they are less likely to breach standards.

Classification of on-screen content

- 1.3 On-screen content must be classified correctly, with the following classifications broadcast on all content except news, current affairs, sports and live content:

¹ *Public interest* refers to a matter of concern to, or having the potential to affect, a significant section of the New Zealand population. It is more than something that merely interests the public.

² *Filtering technology* refers to technology provided through a television, set-top box or other way that enables certain content to be restricted by the audience. Also known as parental lock, parental control, PIN code, rating lock or content filter.

Commented [REDACTED]: There is no right in any media code worldwide to "not be offended" and this is setting up exactly that.

The word "unduly" is also problematic. The dictionary meaning of "unduly" is "to an unwarranted degree". That sets the bar much lower than "seriously", which is the threshold used in relation to the violation of community standards. RNZ is concerned that the Authority is putting in place a much lower threshold than currently, or should, exist.

Whether or not someone is "unduly offended" is a subjective test and the media can't be held to that standard.

Commented [REDACTED]: This should be placed prominently at the top of this list of criteria.

Commented [REDACTED]: What does "on-screen" mean? Our concern is that the BSA has no jurisdiction over broadcasters' website/online activity, but this tries to achieve exactly that.

G – General: Approved for general viewing: Programmes which exclude material likely to be unsuitable for children. Programmes may not necessarily be designed for child viewers but should not contain material likely to alarm or distress them.

PG – Parental Guidance: Parental Guidance recommended for younger viewers: Programmes containing material more suited for mature audiences but not necessarily unsuitable for child viewers when subject to the guidance of a parent or an adult.

M – Mature Audiences: Suitable for mature audiences 16 years and over: Programmes might contain violence, sexual material, offensive language, adult themes, nudity, or other content that some children and parents find challenging. May contain material with a moderate impact and themes that require a mature outlook.

16 – People under 16 years should not view: Programmes containing stronger material or special elements which are outside the M classification. May contain a greater degree of sexual material, offensive language, realistic violence, and stronger adult themes.

18 – People under 18 years should not view: Programmes containing themes which may be challenging or offensive even to some adult viewers.

- 1.4 News, current affairs, sports and live content is not, because of its distinct nature, subject to classification. This content is generally targeted at adults and it is expected any children watching or listening will be supervised. However, broadcasters must be mindful of children's interests and other broadcasting standards and include audience advisories where appropriate, to enable the audience to exercise discretion.
- 1.5 Promos for television programmes should comply with the classification of the programme during which they screen.

Audience advisories (including warnings)

- 1.6 An appropriate advisory should be broadcast before content that is likely to be outside audience expectations, disturb children, or offend or disturb a significant section of the audience.
- 1.7 What is appropriate in each case will depend on the broadcast platform, the level of content, and the level of the broadcaster's editorial control. An audience advisory may be:
- verbal only (on radio)
 - one or more of the following advisory symbols (for on-screen content):
 - **C** – content may offend
 - **L** – language may offend
 - **V** – contains violence
 - **S** – sexual content may offend
 - an additional written, or written and verbal, on-screen audience advisory (for a stronger level of on-screen content, or content likely to disturb children)
 - the inclusion of helpline information, where content focuses on or depicts in detail issues such as rape, sexual violence, or suicide.

- 1.8 Advisories should be specific enough in nature to allow audiences to make an informed choice about their, and their children's, exposure to content, while avoiding detail which itself may unduly disturb or offend.

Displaying classifications and audience advisories for on-screen content

- 1.9 Classifications and any audience advisory symbols (C, L, V, S), must be visible and able to be considered by the audience. These must be displayed:
- at the beginning of programmes classified G or PG
 - at the beginning of programmes, and after each break, for content classified M, 16 or 18.
- 1.10 For on-screen content, classifications, audience advisories (if any) and a description of the programme should also be included in electronic programming guides, and printed guides where possible.

Responsible scheduling

- 1.11 Broadcasters must schedule programmes responsibly, giving careful consideration to the likely and target audience, children's interests, the audience's ability to exercise choice and control, and all applicable standards.
- 1.12 Where effective filtering technology is available to the audience and regularly promoted by the broadcaster, complaints about scheduling of on-screen content are less likely to be upheld.
- 1.13 For free-to-air on-screen content:
- G and PG programmes may be screened at any time.
 - M programmes may be screened between 9am and 3pm on weekdays (except during school and public holidays, as designated by the Ministry of Education) and after 7.30pm until 5am.
 - 16 programmes may be screened after 8.30pm until 5am.
 - 18 programmes may be screened after 9.30pm until 5am.
 - Broadcasters should exercise discernment when scheduling content classified M, 16 and 18, including during any transition from G or PG programming to M, 16 or 18 programming.
 - Broadcasters should consider children's interests in scheduling promos for adult programmes (M, 16 or 18) during children's normally accepted viewing times (see Guideline 2.1) and during programmes specifically aimed at child viewers so that the promo's themes and content are not inappropriate for child viewers.
- 1.14 For pay/subscription on-screen content:
- Content classified G, PG, M or 16 may screen at any time, so long as other applicable broadcasting standards are adhered to.
 - Content classified 18 may screen at any time on premium channels,³ so long as other applicable broadcasting standards are adhered to.

³ *Premium channel* means a pay television channel that subscribers choose to subscribe to and pay a subscription fee for, in addition to the entry level fee already paid for the basic provision of the pay or subscription service.

- Content classified 18 may screen at any time on other channels, so long as filtering technology is available free of charge and regularly promoted to the audience, and other applicable broadcasting standards are adhered to.
- If filtering technology is not available, content classified 18 may screen only between 8pm and 6am, or 9am and 3pm (other than weekend days, school holidays and public holidays when it may screen only between 8.30pm and 5am).
- Explicit adult sex programmes classified 18 may screen only on premium channels.

Commentary

General

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

Attitudes differ widely and continue to evolve in New Zealand's diverse society. Caution must therefore be exercised when considering matters of taste and decency. The feelings of the particularly sensitive cannot dictate what can be broadcast. However, broadcasts must not seriously violate community norms or unduly disturb the audience.

Context is crucial.

The context may justify the inclusion of challenging material or minimise its harmfulness. For example, the timing of a broadcast is relevant on free-to-air TV which has timebands, but not for pay TV which does not. Pay TV operates in a less restrictive environment due to the choice customers make in paying to receive broadcasts. 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. So is challenging material that advances our understanding of important issues. We also recognise that violence has more impact when depicted visually on TV. Each case will depend on its particular facts and context. However, some material may be unacceptable in any context, such as graphic depictions of actual murders or rapes.

Choice and Control

The ability of an audience to choose what it views or listens to and to prevent children and young people from viewing/hearing inappropriate material are significant factors in determining what is acceptable. Violent and other potentially offensive or disturbing material is readily accessible in our society and it follows that some material of this kind will be able to be broadcast. However, strong protections are needed to prevent its exposure to those who should not, or do not wish to, see or hear it.

Depending on the platform, broadcasters provide protection through advisories/warnings, appropriate scheduling, timebands, classification, electronic programme guides and/or filtering technology allowing parents and caregivers to block certain content.

Where broadcasters have promoted filtering technology, this will be taken into account in assessing whether enough care has been taken to provide protection from harm.

Audience expectations are crucial. In addition to the expectations that can be established via the above tools, some programmes or broadcasters (eg radio stations) have established target audiences, for whom they legitimately select and schedule content. Talkback radio has become a separate category due to its robust and sometimes challenging nature, and different standards may apply to programmes of this kind.

Programme Information – variation across platforms

Certain aspects of this standard differ across platforms. Primarily, the difference is in the application, or not, of classifications and timebands.

In the free-to-air TV context, there are clearly defined classifications and corresponding timebands (G, PG, M, 16 and 18). There are no timebands on radio, though it is recognised that children are more likely to be listening at certain times of the day (for example, before and after school, up until 8.30pm on weekdays, and on weekends). Pay TV uses the same classifications and audience advisories as free-to-air TV but is not restricted by timebands.

STANDARD 2 – CHILDREN’S INTERESTS

Broadcasters should ensure children can be protected from content that might adversely affect them.

Guidelines

General

- 2.1 Broadcasters should ensure children⁴ can be protected from content that might adversely affect them, during children’s normally accepted viewing or listening times – usually up until 8.30pm (especially before school and after school), and on weekends and public holidays. School time is not considered to be children’s viewing or listening time.
- 2.2 Material likely to be considered under this standard includes:
- sexual material or themes
 - violent content or themes
 - offensive language
 - social or domestic friction
 - dangerous, antisocial or illegal behaviour
 - material in which children or animals are humiliated or badly treated
 - graphic descriptions of people in extreme pain or distress, which are outside audience expectations.
- 2.3 Context is an important consideration when assessing complaints under this standard, including, where relevant, the programme’s classification and audience advisory, the time of broadcast, the target and likely audience, audience expectations, the availability of filtering technology, and whether it has been promoted by the broadcaster, the public interest in the broadcast and any factors that mitigate the likely harm to children, such as humour or educational benefit.

Free-to-Air and Pay Television

- 2.4 Children may be protected through security systems, eg, filtering technology. Where these are available, they should be clearly and regularly promoted to customers.
- 2.5 Content classified M or above, especially that containing sexual or violent material, should not screen adjacent to content aimed at children.
- 2.6 Themes and scenes in fictional content dealing with matters known to disturb children, such as domestic friction or the humiliation or ill-treatment of children, should be appropriately classified and scheduled.
- 2.7 Any portrayal of realistic violence in content likely to be viewed by children should be scheduled and classified with care.
- 2.8 When programmes broadcast on free-to-air television during children’s normally accepted viewing times (see Guideline 2.1) contain material which is outside audience expectations and likely to disturb children, a written or written and verbal audience advisory should be broadcast. The advisory should be specific in nature to allow parents or guardians to make an

⁴ A ‘child’ is under the age of 14 years.

informed choice about their children's exposure to the content, while avoiding detail which itself may disturb or alarm children.

- 2.9 In news, current affairs and factual programmes broadcast on Free-to-Air Television, disturbing or alarming material should be justified in the public interest. Broadcasters must use judgement and discretion when deciding the degree of graphic material to be included in news programmes, and should broadcast an audience advisory when appropriate, particularly when children are likely to be viewing.
- 2.10 Content on pay television not intended for children's viewing should not be specifically promoted to children and should be screened in accordance with Standard 1.
- 2.11 Pay Television channels targeted at children should only contain content appropriate for children.

Radio

- 2.12 This standard will only apply to radio during times when children are likely to be listening (usually during children's normally accepted listening times (see Guideline 2.1)).

Commentary

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.

It covers children viewing or listening to broadcasts. If a complaint raises fairness or privacy concerns about a child featured or referred to in a broadcast, it should be dealt with under those standards.

Depending on the platform, children's interests can be served in a number of ways including through advisories/warnings, appropriate scheduling, timebands, classification and/or filtering technology allowing parents and caregivers to block certain content.

It is not possible or practicable for broadcasters to shield children from all potentially unsuitable content. The objective is to allow them to broadcast to a wide audience – or in the context of pay TV, to offer a range of content to niche audiences who choose to subscribe to special channels – while taking reasonable steps to protect children by providing viewers and listeners with information and filtering technology. Parents/caregivers share responsibility for protecting children and should use the information and tools available for this purpose. We expect all broadcasters who use filtering technology, or other means of controlling access to broadcast content, to inform viewers that it is available and how to use it.

The children's interests standard is related to the offensive and disturbing content standard which takes 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 offensive and disturbing content standard.

STANDARD 3 – PROMOTION OF ILLEGAL, DANGEROUS OR ANTISOCIAL BEHAVIOUR

Commented [100]: Shouldn't this be caregivers, parents, in loco parentis or similar rather than audience?

Broadcast content should not actively promote serious illegal, dangerous or antisocial behaviour – including violence, sexual violence, suicide, serious crime or substance abuse – taking into account the context, and the audience’s ability to exercise choice and control.

Guidelines

- 3.1 Broadcasters should exercise care and discretion to ensure any depiction of, or reference to, these types of behaviour, especially if it is likely to incite or encourage that behaviour:
- is justified by the context (see **guideline 1.1**)
 - is justified in the public interest, in news, current affairs and factual content, and does not include an unreasonable or unnecessary degree of graphic detail, particularly when children are likely to be watching or listening
 - carries an audience advisory where appropriate, which may include helpline information (see **guidelines 1.6-1.8**)
 - is classified carefully, in the case of on-screen content (see **guideline 1.3**)
 - is scheduled responsibly (see **guidelines 1.11-1.14**).
- 3.2 Context is crucial in assessing the programme’s likely practical effect, including the nature of the content and the level of public interest.

Commented [REDACTED]: It appears grammatically that there are words such as “ and ensure that it” is missing after the word “behaviour”.

RNZ would like to see the word “promote” inserted after “incite”

Alcohol promotion

- 3.3 In addition to compliance with laws or regulations relating to the promotion of alcohol (including the relevant Advertising Standards Authority Code), broadcasters should observe restrictions on the promotion of alcohol appropriate to the programme genre being broadcast.
- 3.4 Any alcohol promotion in a broadcast should be socially responsible including that it:
- must not encourage consumption by people who are under the legal age to purchase alcohol
 - must not occur in programmes specifically directed at children
 - must not dominate a broadcast
 - must avoid advocacy of excessive alcohol consumption and portraying it as positive or desirable
 - must not combine alcohol and another activity in a way that endangers health and safety
 - in the case of sponsorship, must be confined to the brand, name or logo, and exclude sales messages
 - in the case of alcohol-sponsored programmes, must primarily promote the programme, with the sponsorship subordinate
 - is not required to be excluded from coverage of an event or situation being broadcast where such promotion is a normal feature of that event or situation – so long as the above guidance is adequately considered.

Commentary

General

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

Illegal Activity

This standard does not stop broadcasters from discussing or depicting criminal behaviour or other law-breaking, even if they do not explicitly condemn it. It also does not prevent genuine criticism of laws or their enforcement by the courts or police. The standard is concerned with broadcasts that actively undermine, or promote disrespect for, the law or legal processes.

Commented [REDACTED]: This is problematic. This is something that some political leaders do on a regular basis, yet the BSA is now going to have the ability to rule against such broadcasts.

Direct incitement to break the law is likely to breach this standard, if there is a real likelihood 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 commit crimes may also undermine law and order.

Antisocial activity

Serious antisocial activity is contrary to the laws or 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 other antisocial behaviour (eg bullying).

Commented [REDACTED]: This too is problematic and requires a very careful and narrow definition of what the BSA is proscribing.

Alcohol

Alcohol promotion may be in one or more of the following forms:

- promotion of an alcohol product, brand or outlet ('promotion')
- alcohol sponsorship of a programme ('sponsorship')
- advocacy of alcohol consumption ('advocacy').

STANDARD 4 – DISCRIMINATION AND DENIGRATION

Broadcast content should not encourage discrimination against, or denigration of, any section of the community on account of:

Commented [REDACTED]: This can be problematic when the denigratory behaviour of members of society is being reported, e.g. what happens when this category (eg political opinion or religion) is the reason for antisocial behaviour or discrimination? Under this rule it would be wrong to denigrate Nazis, or, potentially, cannibals.

- sex (including pregnancy and childbirth), or sex or gender identity
- marital status
- religious belief
- ethical belief (not having a religious belief)
- colour, race, or ethnic or national origins
- disability
- age
- political opinion (or lack of)
- employment status
- family status
- sexual orientation
- any other prohibited grounds of discrimination recognised in the Human Rights Act 1993.

Guidelines

4.1 'Discrimination' is defined as encouraging the different treatment of the members of a particular section of the community, to their detriment. 'Denigration' is defined as devaluing the reputation of a particular section of the community.

Commented [REDACTED]: Surely this must be accompanied by an element of malice or nastiness for it to be in breach

4.2 The importance of freedom of expression means:

- A high level of condemnation (eg attack, criticism or disapproval) will usually be necessary to find a broadcast encouraged discrimination or denigration in breach of the standard. However, in some cases, broadcast content which has the effect of reinforcing

Commented [REDACTED]: These are very low thresholds to establish and the BSA has given absolutely no explanation or justification as to why these new criteria can be justified. The BSA could well uphold a complaint that a broadcaster reported the Prime Minister's "disapproval" and call to the Police to act against "anti vaxxers" and "anti Mandate" protesters occupying the lawns of Parliament as this new wording will allow for such a decision. And yet all a broadcaster did was report the Prime Minister's statement?

or embedding negative stereotypes may be enough to meet the threshold for finding a breach, without any malicious intent or a high level of condemnation.

- This standard is not intended to prevent the broadcast of material that is:
 - factual
 - a genuine expression of serious comment, analysis or opinion
 - legitimate humour, drama or satire.

4.3 Context is an important consideration in assessing whether a broadcast has gone too far (see **guideline 1.1**). The following factors may also 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 were repeated or sustained
- whether the comments made a legitimate contribution to a wider debate, or carried public interest.

Commentary

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.

Comments will not breach the standard simply because they are critical of a particular group, because they offend people, or because they are rude. 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 they had the potential to cause harm at a level that justifies restricting freedom of expression.

Commented [REDACTED]: This new criteria simply goes too far and creates the new right "to be offended" due to criticism or disapproval which has never existed. While negative stereotypes may not be desirable, it is difficult to quantify or even identify what injury or damage they may cause in their use in particular contexts.

Commented [REDACTED]: What about other contextual factors such as

- the nature of the programme and the station
- the time of broadcast
- whether the broadcast was live or pre-recorded
- the use of audience advisories, if any
- the target and likely audience
- audience expectations of the station and the programme

the public interest in the broadcast.

PART 2

BALANCED AND ACCURATE REPORTING IN NEWS, CURRENT AFFAIRS AND FACTUAL CONTENT

STANDARD 5 – BALANCE

When controversial issues of public importance are discussed in news, current affairs or factual programmes, broadcasters should make reasonable efforts, or give reasonable opportunities, to present significant viewpoints either in the same broadcast or in other broadcasts within the period of current interest unless the audience can reasonably be expected to be aware of significant viewpoints from other media coverage.

Guidelines

- 5.1 Determination of a complaint under the standard involves two steps:
- The first step is to consider whether the standard applies. It will only apply where the subject matter is:
 - an issue ‘of public importance’ (something that would have a significant potential impact on, or be of concern to, New Zealanders)
 - ‘controversial’ (an issue of topical currency; which has generated or is likely to generate conflicting opinion; or about which there has been ongoing public debate. Eg issues related to New Zealand political policy, public health and safety, public expenditure)
 - ‘discussed’ in a news, current affairs or factual programme (eg brief news reports, programmes clearly focused on a particular perspective, or personal or human interest stories, may not amount to a discussion).
 - The second step is to assess compliance against the obligation to present significant viewpoints.
- 5.2 The standard allows for balance to be achieved over time, within the period of current interest. It does not require every significant viewpoint to be presented in every programme that discusses a particular controversial issue of public importance.
- 5.3 The standard does not require equal time to be given to each significant viewpoint on a controversial issue of public importance. Broadcasters should give a fair voice to alternative viewpoints taking into account the nature of the issue and coverage of that issue.
- 5.4 The requirement to present significant points of view is likely to be reduced, or in some cases negated, where:
- It is clear from the programme’s introduction and the way in which the programme is presented, that:
 - the programme is not claiming, or intended, to be a balanced examination of an issue
 - the programme is signalled as approaching the issue from a particular perspective
 - the programme is narrowly focused only on one aspect of a larger, complex debate.
 - The issue is raised only in a brief, humorous or peripheral way. This includes programmes such as straight news items, which simply report on events or developments rather than discussing a related issue. Conversely, the requirement to present significant points of view is likely to be increased where an issue is the focus of a serious, investigative or in-depth report.

Commented [REDACTED]: RNZ’s only concern with this provision is when giving balance (e.g. instances of false equivalence such as climate change deniers) would misinform or mislead the audience, accuracy must always come first.

- The audience could reasonably be expected to be aware of views expressed in other coverage, including coverage by other broadcasters or media outlets.
- In the context, the audience would not have expected alternative viewpoints to be presented.
- The broadcaster retained no (or little) editorial control over the programme content (eg, on foreign pass-through channels).

Commentary

The purpose of this standard is to ensure competing viewpoints about significant issues are available, to enable the audience to arrive at an informed and reasoned opinion. It does not require news, current affairs and factual programming to be presented impartially or without bias. Within the limits established by this standard, broadcasters are free to promote or challenge particular ideas, philosophies or people (eg politicians).

A common sense approach should be taken – the practical reality is that programmes cannot be perfectly balanced, and this is not required.

The standard and guidelines reflect the present broadcasting environment in New Zealand and the increased flows of information available from sources and on topics of all kinds. Given the proliferation of information available to today’s audiences, complaints under this standard will rarely be upheld. However, it provides protection in cases where balancing viewpoints have not been available across time, different programmes or different media.

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 6 – ACCURACY

Broadcasters should make reasonable efforts to ensure news, current affairs and factual content:

- is accurate in relation to all material points of fact.
- does not materially mislead the audience (give a wrong idea or impression of the facts).

In the event a material error of fact has occurred, broadcasters should correct it at the earliest appropriate opportunity.

Guidelines

- 6.1 The requirement for factual accuracy does not apply to statements which are clearly distinguishable as analysis, comment or opinion, rather than statements of fact. However, broadcasters should still make reasonable efforts to ensure analysis, comment or opinion is not materially misleading with respect to any facts:
- referred to; or
 - upon which the analysis, comment or opinion is based.
- 6.2 The standard is not concerned with technical or other points unlikely to significantly affect the audience’s understanding of the content as a whole.

Commented [REDACTED]: This is problematic. The first opportunity to correct after a midday news bulletin is 12.10pm. Until a broadcaster is put on notice though, they would not necessarily know that there is something to correct. The criteria must be "a reasonable period after the broadcaster has been put on notice"

Commented [REDACTED]: Who’s comment, analysis or opinion does this refer to? If the Prime Minister says the grass is purple, a broadcaster has a duty to inform the public of what has been said. The broadcaster can only be responsible for broadcaster generated content, not that of its guests.

6.3 The assessment of whether the broadcaster has made reasonable efforts to ensure accuracy includes consideration of the following, where relevant:

- the source of material broadcast (eg, a reputable organisation or an authoritative expert; or social media or third-party content, which may require additional care or steps to be taken by the broadcaster)
- whether the broadcast was live or pre-recorded
- whether there was some obvious reason to question the accuracy of the programme content before it was broadcast
- whether the broadcaster sought and/or presented comment, clarification or input from any relevant person or organisation
- the extent to which the issue of accuracy was reasonably capable of being determined by the broadcaster
- the effect of any subsequent or follow-up coverage (eg, where information has been updated or corrected as part of a developing story; or there is a delay between the time of broadcast and when the content has been accessed)
- the level of the broadcaster's editorial control over the content.

Commentary

The purpose of this standard is to protect the public from being significantly misinformed. Broadcasters occupy a privileged position in terms of access to and influence over the public. The standard recognises the important role they play in protecting New Zealanders from misinformation and disinformation. The selection of programmes, opinions and interviewees to feature is a matter of editorial choice. However, reasonable efforts must always be taken to avoid misleading the public with respect to matters of fact. This applies whether facts are stated directly or form the basis of an opinion.

Similarly, an audience member's decision to watch or listen to news or current affairs presented from a particular perspective or from a less reputable source, commentator or interviewee, does not reduce the broadcaster's obligations with respect to the content's accuracy. For this reason, the ability of audience members to exercise choice and control, an important factor under other standards (eg when assessing offensive and disturbing content), is less relevant under the accuracy standard.

The standard applies only to news, current affairs and factual programming:

- News and current affairs can usually be readily identified as such, taking into account the topic(s) being discussed, and what audiences would reasonably expect to be news and current affairs. News and current affairs programmes may still contain – and can reasonably be expected to contain – opinion and analysis (for example, from political editors).
- Factual programmes are non-fiction programmes which contain information audiences might reasonably expect to be authoritative or truthful, such as documentaries.

In assessing whether a statement was a statement of fact, or was analysis, comment or opinion (**guideline 6.1**), the following factors may be relevant:

- the language used
- the type of programme (eg, talkback can involve discussion of factual matters but is generally recognised as a robust environment focused on the exchange of opinions)
- the role or reputation of the person speaking
- the subject matter
- whether the statement is attributed to someone
- whether evidence or proof is provided.

Commented [REDACTED]: Says who? Even if it is true, it is a condemnatory statement that has no place in a neutral statement of broadcasting standards.

Commented [REDACTED]: Does this even make sense? What is trying to be said here? That if the audience knows someone is less reputable the broadcaster still has to educate the audience in some way?

Commented [REDACTED]: This takes no account of the fact that NZ broadcasters operate from the other end of the world. All NZ broadcasters rely heavily on trusted sources of N&CA programmes from the likes of the BBC and Reuters and we simply do not have the opportunity or means to fact check every item sourced from overseas operators. This wording makes no account for these circumstances.

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 (**guideline 6.3**).

PART 3

RIGHTS TO PRIVACY AND FAIR TREATMENT

STANDARD 7 – PRIVACY

Broadcasters should maintain standards consistent with the privacy of the individual.

Guidelines

General

7.1 The privacy standard applies only when private information or material is disclosed about identifiable living individuals.

7.2 In assessing whether an individual is identifiable, the following considerations apply:

- Individuals must be identifiable beyond family and close friends who would reasonably be expected to know about the matter dealt with in the broadcast.
- A combination of information in the broadcast and other readily available material may enable identification for the purposes of this standard ('jigsaw identification').
- An individual may be identifiable even if they are not named or shown or their identity is partially masked.

Reasonable Expectation of Privacy

7.3 There must be a reasonable expectation of privacy in relation to the content disclosed. Factors relevant to this include, but are not limited to:

- whether the content is in the public domain
- whether the content is intimate, sensitive or traumatic in nature
- whether the content is particularly embarrassing or has the potential to impact negatively on reputation
- whether the individual is particularly vulnerable
- the seriousness of the circumstances (eg the means by which the information was gathered, whether the broadcast was exploitative or gratuitous)
- whether the individual has made efforts to protect their privacy, or has not consented to the broadcast
- the nature of the individual, ie:
 - Public figures, particularly those exercising public power, and others who seek publicity, generally have lower reasonable expectations of privacy in relation to matters pertaining to their public roles).
 - Children under the age of 16 can reasonably expect high levels of privacy.

7.4 A person will not usually have a reasonable expectation of privacy in relation to matters in the public domain but the public nature of such matters is not determinative.

7.5 While a person will not usually have a reasonable expectation of privacy in a public place (ie one generally accessible to, and/or in view of, the public) such an expectation may exist where it is obvious from the circumstances that the individual is particularly vulnerable, for example:

- people caught up in emergencies

Commented [REDACTED]: This is a dangerous development to make broadcasters responsible for what might be published in other outlets. We simply do not know what we do not know and cannot be held responsible for that.

Commented [REDACTED]: Sensitive to whom?

Commented [REDACTED]: While we understand that this was in earlier published guidelines it has no place in the Privacy Standard. The fact that some information might be "highly embarrassing" to someone if it was released is no reason of itself to prevent publication. It is the same argument that there is no right not to be offended. If every politician who had been highly embarrassed about something that had been published about them had a cause for action such as this, then we would be the poorer for it. It should go the same way as the blasphemy provisions in the Crimes Act, i.e. just because it was there on the books it should not stay, it should be deleted.

Commented [REDACTED]: If the BSA wants to address gathering by deception it should simply say so.

Commented [REDACTED]: This goes to fairness rather than privacy and is already covered in that standard

Commented [REDACTED]: What does this mean? The BSA can rule that public facts should have been private and the broadcaster should have known that?

Commented [REDACTED]: This is incredibly onerous and unfair on the broadcaster. People often do not present in a manner that discloses that they have a condition, mental illness for example.

- accident victims
- those suffering a personal tragedy or bereavement
- those with learning difficulties
- those with mental health issues
- people with brain damage or forms of dementia
- people who have been traumatised or who are sick or terminally ill.

7.6 Broadcasters should not intentionally intrude upon a person’s solitude or seclusion in a way that is inconsistent with a reasonable expectation of privacy.

Defences

7.7 It is a defence to a privacy complaint to publicly disclose matters of legitimate public interest. A matter of legitimate public interest is a matter of concern to, or having the potential to affect, a significant section of the New Zealand population (ie it is more than something that merely interests the public). For the defence to apply:

- the level of public interest must be proportionate to the seriousness of the breach of privacy
- the public interest must relate to the disclosure of the particular information or recording that is alleged to breach privacy.

7.8 It is not a breach of privacy where the person concerned has given informed consent to the disclosure or intrusion. Informed consent is provided where the person:

- is aware he or she is contributing to the broadcast
- understands the true context and purpose of the contribution
- understands the nature of the consent and its duration
- freely agrees to contribute.

7.9 A parent or guardian, or other person aged 18 or over in loco parentis (standing in the shoes of the parent or guardian), can consent on behalf of a child under the age of 16 years, but the broadcaster must be satisfied that the broadcast is not contrary to the best interests of the child.

Commentary

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. However, 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. For this reason, this guidance is not exhaustive and may require elaboration or refinement when applied to a complaint. The Authority may also consider privacy law developments in New Zealand and overseas in applying this standard.

STANDARD 8 – FAIRNESS

Broadcasters should deal fairly with any individual or organisation taking part or referred to in a broadcast.

Guidelines

- 8.1 A consideration of what is fair, and the threshold for finding unfairness to an individual or organisation, may take into account the following factors:
- the nature of the content (eg, news and current affairs, political content, factual, dramatic, comedic or satirical)
 - the source of the content (eg, whether the content was locally produced by or on behalf of the broadcaster, or sourced overseas)
 - the nature of the individual or organisation (eg, the threshold for finding unfairness will be higher for a public figure, politician, or organisation familiar with dealing with the media, as opposed to an ordinary person with little or no media experience; whether the individual or organisation is based in New Zealand or overseas)
 - whether the programme would have left the audience with an unfairly negative impression of the individual or organisation
 - 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
 - the target and likely audience, and audience expectations
 - whether the programme was live or pre-recorded.
- 8.2 Participants and contributors should be informed, before a broadcast, of the nature of the programme and their proposed contribution, except where justified in the public interest, or where their participation is minor in the context of the programme.
- 8.3 Whether informed consent was required or has been obtained from a participant or a contributor may be a relevant consideration in determining whether that participant or contributor was treated fairly (see Guideline 7.8 for what constitutes 'informed consent').
- 8.4 If a person or organisation referred to or portrayed in a broadcast might be adversely affected, that person or organisation should usually be given a fair and reasonable opportunity to comment for the programme, before the broadcast. What is 'fair and reasonable' will depend on the circumstances.
- 8.5 Doorstepping⁵ an individual or organisation as a means of obtaining comment will normally be unfair, unless all legitimate and reasonable methods of obtaining comment have been exhausted.
- 8.6 Edited excerpts should fairly reflect the tenor of the overall events or views expressed.
- 8.7 Broadcasters must not broadcast information obtained by misrepresentation or deception (including by hidden camera or covert recording device), except where justified by the public interest.
- 8.8 Individuals, and particularly children and young people, featured in a programme should not be exploited, humiliated or unfairly identified.

Commented [REDACTED]: Can this criteria be better clarified or re worded. At times the facts of a case will leave the audience with an "unfairly negative impression" of the subject , but the broadcaster cannot change the facts?

Commented [REDACTED]: RNZ agrees that other steps should be tried first, however, it goes too far to say it will 'normally be unfair'. RNZ has doorstepped people who have been happy to talk. Or at least willing, if a little uncomfortable. To serve a listening rather than a visual audience, it can enhance a story to have audio of walking up the drive, knocking on the door etc. RNZ notes that it is not the technique of doorstepping that is a problem but the broadcast of it that is the issue. Broadcasters should not be punished for using such methods to obtain information after more conventional ones have been exhausted.

Whether or not the broadcast of a doorstepping incident will depend very much on the context and individual circumstances of such an event but the doorstepping of itself is not the issue.

⁵ 'Doorstepping' refers to the filming or recording of an interview or attempted interview with someone, without any prior warning.

7.10 Where programmes deal with distressing circumstances (eg, grief and bereavement) broadcasters should show discretion and sensitivity.

Commentary

The purpose of this standard is to protect the dignity and reputation of those featured in programmes. It does not address 'fairness' to the audience or whether issues/facts are 'fairly' or misleadingly conveyed (which are matters for the accuracy standard).

Individuals and organisations have the right to expect they will be dealt with justly and fairly and protected from **unwarranted damage**. In assessing fairness, this right is weighed against broadcasters' right to freedom of expression and their role in disseminating information in the public interest.

Commented [REDACTED]: Can this be distinguished from an "unfairly negative impression" or is it the same thing?

THE BSA COMPLAINTS PROCESS

What type of programme can I complain about?

You can complain about any programme broadcast in New Zealand on TV or radio.

How to complain?

Formal complaints must be sent to the broadcaster first (unless it's about privacy only or election programmes, in which case you can send it straight to the BSA).

You need to make your complaint within **20 working days of the broadcast**.

What will the BSA accept complaints about?

- | | |
|---|---|
| ✓ Free-to-air TV programmes | ✗ Advertising (contact the Advertising Standards Authority) |
| ✓ Pay TV programmes | ✗ Programme scheduling (contact the broadcaster) |
| ✓ Radio programmes | ✗ Broadcaster website written content (contact the broadcaster) |
| ✓ Programmes viewed or listened to on demand (ONLY if you can supply details of original TV or radio broadcast and lodge your complaint within 20 working days of that broadcast) | ✗ Programmes viewed or listened to on demand – if you cannot supply details of original TV or radio broadcast (contact the broadcaster) |
| ✓ Election advertisements on TV or radio (during election periods) | ✗ News and current affairs on broadcasters' websites, which has not been on TV or radio (contact the New Zealand Media Council) |

What issues can I complain about?

You can complain about the following issues:

- offensive and disturbing content
- promotion of illegal, dangerous or antisocial behaviour
- children's interests
- discrimination and denigration
- balance
- accuracy
- privacy
- fairness

What is needed for my complaint to be a 'formal complaint'?

To make a formal complaint certain requirements must be met. A formal complaint must:

- be in writing
- relate to a specific broadcast

- be received by the broadcaster within 20 working days of the broadcast
- include sufficient details to reasonably enable identification of the broadcast, eg:
 - date of the broadcast
 - time of the broadcast (if known, or if not known, a reasonable estimate of the period within which it was broadcast)⁶
 - title of the programme
 - channel or station which broadcast the programme
- be an allegation that particular broadcasting standards have been breached

Complaints not meeting these requirements do not fall within the BSA complaints process and broadcasters may treat them as feedback only.

These issues are explained in detail in the following pages and on our website.

More detailed information about the [complaints process](#) is available on our website.

FOR MORE INFORMATION GO TO www.bsa.govt.nz

⁶ Recognising broadcasters' limited resources, and the time which can be involved in locating specific content, a reasonable estimate will generally involve identifying the period within a window of no greater than 3 hours. However a reasonable estimate of the period may be significantly less where the content is more challenging to locate (ie a single comment or word).