

31 October 2017

Hon Clare Curran
Office of the Minister for Broadcasting, Communications and Digital Media
Parliamentary Buildings
Private Bag 18041
Wellington 6160

By Hand

Dear Minister

Broadcasting Standards Authority (BSA): Briefing for Incoming Minister

The BSA Board, Chief Executive and staff send you our warm congratulations on your appointment to your portfolios and, specifically on your role as Minister responsible for the administration of the Broadcasting Act 1989 (the **Act**). We look forward to meeting and working with you.

In the meantime may we give you an overview and identify some issues which we face.

Overview

The Broadcasting Standards Authority, was established in 1989 under the Broadcasting Act 1989. We are primarily a quasi-judicial tribunal that deals with complaints under broadcasting standards that relate to free-to-air and pay television, and radio. We also have the role of working with broadcasters to set the standards and oversee the standards regime. We do this by supporting broadcasters to meet their obligations and by educating the sector and the public about the important principles of freedom of expression, role of standards regulation in protecting against harm and how the standards and complaints system operates.

We are a board of four members. We have responsibility for determining complaints, and for the governance of the Authority as a Crown Entity. We are supported by a small staff of six, led by our Chief Executive, Belinda Moffat.

Governance

Our small board has a quorum requirement of three.

[Withheld under s9(2)(g) of the Official Information Act]

We have had the happy situation of always having worked well as a Board and always having had very capable Chief Executives and staff.

Accountability Documents

Our Statement of Intent 2017-2021 and Annual Report for the year ending 30 June 2017 are complete and are required to be tabled along with our SPE for the year ending 30 June

2018. We will send the Annual Report to your office and the bills office for tabling by 9 November 2017, in accordance with Crown Entities Act 2004.

Content Standards Reform

As we have said in our recent accountability documents (recent Annual Reports and SOI 2017-21), the current regulation of broadcasting legislation is dated though we have worked within the existing regime as best we can. The narrow focus of the Act also does not cater for the application of standards to the increasing volume of on-demand content provided by broadcasters and also video on demand providers. Therefore, we felt that the reforms which were proposed by the previous Cabinet in August 2016 to extend our remit to cover certain online/on-demand content and to make appropriate ancillary changes to modernise the Act would provide some consistency to content standards regulation in New Zealand across these different platforms. We recognise that there are some complex issues of interpretation to be addressed in order to bring the proposed reforms to life in a fair and consistent way – to determine what content is and is not caught. Since August 2016 we have provided assistance to the policy officials who are working through these issues.

We continue to engage with the Broadcasting sector, with which we have a good relationship. We are engaging with potential new entrants (the on-demand providers) to respond to questions and consider commercial and practical issues arising from the presently proposed reforms. We have organised ourselves to be ready to deal with additional duties should they devolve to us. We expect to be able to absorb these additional duties without any need for significant additional resources.

We appreciate that your Government and you will be reviewing the proposed reforms and we are ready to have any discussions with you that you may wish to have.

Co-regulatory environment

We work in an environment in which there are a number of entities and agencies with a role to play in content regulation. This includes the broadcasters and content providers who themselves have a frontline responsibility for ensuring standards and ethical conduct is maintained and for engaging with audiences when concerns are raised. Working effectively and collaboratively with our co-regulators, such as Press Council, Advertising Standards Authority (ASA), Office of Film and Literature Classification, and the Electoral Commission is a key focus.

We see it as particularly important that entities with common interests have good lines of communication and the ability to resolve jurisdiction issues pragmatically, to ensure that our stakeholders, particularly the public and regulated sector, receive the benefit of a joined up regulatory system. Specifically, we have engaged with the Press Council on the jurisdiction implications of the proposed reforms and converging media platforms, and we worked well with the Electoral Commission, Press Council and ASA to ensure that clear and practical information and guidance was provided about election programme requirements and standards prior to the 2017 Election.

Currently, we are working with the Chief Censor to explore ways in which we can provide clear consumer information about the content classification and labelling systems that we each operate. Our priority is to ensure consumers understand what the classification labels mean so that they can make appropriate viewing decisions for themselves and children in their care.

Size and scale

As a small agency we are able to operate in a tight and efficient way. We are funded in part by levies from Broadcasters and in part by Government funding. We always work within our means and for several years we have been able to return to Government part of our unspent grant. We have external monitoring of our performance and we believe that these show acceptable results recognising that any adjudicative body, such as ours, will never get universal approval.

Our 2017 Audit has just been completed and, consistent with previous years, we have received the 'very good' grade across all of the Audit measures.

Broadcasting Standards Oversight

In the context of our mandate to develop and encourage observance of appropriate codes of broadcasting practice, we are currently involved in working with broadcasters on two key standards projects:

[Withheld under s9(2)(g) of the Official Information Act]

Use of Social Media Content in broadcasting

In July 2017, we released a research report which explored public and broadcaster perspectives about the use of social media content in broadcasting. The research explored whether those who post social media content, expect and/or agree that such content can be taken by broadcasters for use in programmes, and what legal and ethical issues arise. The research was undertaken to assist the Authority in its decision-making when dealing with complaints that relate to social media content and also to our consideration of suitable guidelines. The research received strong coverage at the time of its release and on 7 November 2017 we are hosting a workshop with broadcasters in Auckland to discuss the research findings and how this may impact on the code standards with particular focus on the standards relating to fairness and privacy.

Following the 7 November workshop we will have an informal function with broadcasters and our key stakeholders.

Operational priorities and areas of focus

Our operating environment is summarised in the Chair's Report and passage on our Strategic Context in our (final but not yet tabled) 2017 Annual Report (see pages 4-6). Our operational priorities are set out in our 2018 Statement of Performance Expectations. Both documents are **attached**.

In the current context, our key areas of focus are:

- (a) Delivering robust, timely and contemporary decisions on broadcasting content complaints. Over the past year we have had a particular focus on improving the time taken to issue our decisions, with improvements against our internal service level targets achieved;
- (b) Monitoring feedback on our decisions in the media and engaging an independent external critical review of our decisions;
- (c) Providing advice, as required, to MCH on the proposed convergence reforms, liaising with stakeholders in the broadcasting and online / on demand sectors in preparation for the reforms, and preparing our own operations for the expanded remit;

- (d) Maintaining a strong and effective working relationship with other content complaint bodies, including the Press Council and ASA; other media and content agencies, including NZ on Air, Film Commission and the Office of Film and Literature Classification;
- (e) Maintaining a positive and constructive relationship with the broadcasting sector, and the providers who may be subject to an expanded standards regime, through regular meetings and provision of education and information on content standards.
- (f) Completing the suite of election related complaints referred to us post 2017 Election and preparing to review the Election Programmes Code and our performance during the 2017 Election;
- (g) Pursuing continuous improvement of our complaints processes, specifically with respect to timeliness of decisions, effective use of our resources and ensuring that complainants are provided with appropriate information and support to access the complaints system. We are conscious of the need to interact well with complainants – to make the complaints process accessible and to keep complainants informed about the status of their complaint. We will continue to endeavour to ensure that the complaints process meets public expectations. We have recently refreshed our complaints process, introducing a case manager approach and revised shorter service level expectations for resolving complaints;
- (h) Engaging research activity that is carefully focused on issues of importance to content standards in the converged environment. Our key research projects this year include engaging with broadcasters on research released in July 2017 on *Use of Social Media Content in Broadcasting* (discussed above); [withheld under s9(2)(g) of the Official Information Act]; completing satisfaction surveys of broadcasters and complainants; undertaking our three-yearly *Acceptable Words* research; and litmus testing and externally reviewing some of our recent decisions;
- (i) Ensuring that our external communications are appropriate and targeted to sustain confidence in the content standards regime, to inform broadcasters and the public about our work, and to promote compliance with, and awareness of, the standards; and
- (j) Working with other government agencies such as MBIE and Audit NZ to leverage public sector operational management resources so that we receive good value for money from suppliers. This has included reviewing and renewing AOG contracts where this delivers demonstrable business benefits to the BSA.

Key dates

The following table sets out a summary of the key dates and activities on which your involvement may be sought over the next few months:

Activity	Action needed	Date
Social Media workshop with Broadcasters and BSA stakeholder function	An update will be provided through the quarterly report	7 November 2017
2017 Annual Report, 2018 SPE and 2017-2021 SOI to be presented to the Minister and tabled	We will provide the requisite copies to the Parliamentary Bills Clerk so that these can be tabled by the Minister	9 November 2017
<i>Withheld under s9(2)(g)</i>		
<i>Withheld under s9(2)(g)</i>		

Withheld under s9(2)(g)		
Withheld under s9(2)(g)		

We think that we can responsibly say to you that the BSA is functioning well and as it should be but there are looming issues with Board vacancies and a need to maintain continuity and corporate knowledge.

Yours sincerely



Peter Radich
Chair
Broadcasting Standards Authority

Attachments:

- (a) Annual Report for the year ending 30 June 2016:
https://bsa.govt.nz/images/BSA_Annual_Report_2016.pdf
- (b) Statement of Intent (2017-2021):
https://bsa.govt.nz/images/assets/SOIs/170614_SOI_FINAL.PDF
- (c) Statement of performance expectations for the year ending 30 June 2018:
https://bsa.govt.nz/images/Publication/170614_SPE_FINAL.PDF
- (d) Draft Annual Report for the year ending 30 June 2017

RELEASED UNDER THE OFFICIAL INFORMATION ACT