

14 September 2018

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

By Email and Courier

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 the Broadcasting portfolio 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.

As our Chair is currently away overseas, I am writing to you on his behalf, to provide you with an overview of our activities and the key issues which we currently 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 have a board of four members. Our board has responsibility for determining complaints, and for the governance of the Authority as a Crown Entity. The board is supported by a small staff of six, led by me as Chief Executive.

In the past year we have seen a substantial growth in the number of complaints and enquiries brought to us (up by 54% and 65% respectively). We have also seen an increase in the complexity of the issues raised by complainants. Freedom of expression is valued highly in New Zealand, and counterbalancing this is a strong expectation that the exercise of this right not cause harm. Balancing the right to freedom of expression against the obligation to avoid harm is at the heart of the BSA's role.

Through our recent research activities we have also grappled with topical social issues such as the use of social media in broadcasting; and the use of gendered or culturally oriented language in broadcasting that may offend. Both projects generated discussion and debate in the community, which has assisted our Authority members to reflect community attitudes and values in the decisions that are made.

Governance

Our small board has a quorum requirement of three. Currently two members, our Chair, Peter Radich, and member, Te Rau Kupenga, are at the end of their 7-8 year terms. We understand that arrangements are in place for replacement members to be confirmed. The organisation is ready for this change with two experienced Board members remaining (Paula Rose and Wendy Palmer), supported by a capable Chief Executive and staff team. We would be grateful if the appointments can be confirmed in the near term, so that we can ensure a smooth transition.

We have seen it important over the years to maintain a base of continuity at board level and at staff level. The work we do is specialised and doing it is helped by developing background knowledge. We have been fortunate to have always had a board that worked well together and always having had accomplished Chief Executives and staff.

Accountability Documents

Our Annual Report for the year ending 30 June 2018 is well underway and a draft has been provided to the Ministry for Culture and Heritage for comment. Audit NZ will commence their audit of the BSA on 17 September 2018. The Annual Report and our SPE for the year ending 30 June 2018 will be ready to be tabled by you in November 2018.

Our current SOI, for the period 2017-2021, will be refreshed in 2019.

Content Standards Reform

As we have said in our recent accountability documents (2017 Annual Report and SOI 2017-21), the Broadcasting Act 1989 which governs the regulation of radio and television broadcasting content is dated, though we work within the existing regime as best we can. The narrow focus of the Act does not cater for the application of standards and classification requirements to the increasing volume of on-demand content provided by broadcasters and also other video on demand providers. Equally the powers conferred on the BSA are strict and limited, with no ability to triage unmeritorious complaints, and sanctions set within the 1989 context.

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 could provide some consistency to content standards regulation in New Zealand across the different content platforms. However, our primary view is that there is an opportunity to provide a more comprehensive review of content regulation in New Zealand to reflect the converged environment that exists, and to find a way to consolidate the various standards and entities that currently regulate content in New Zealand. Our advice to the previous Minister on these issues is set out in our letter dated 31 January 2018, which we **attach**. We supported the Minister's decision to review the previously proposed reforms and to consult with the sector on these issues.

Throughout the reform process, we have provided assistance to the policy officials who are working through these issues and we contributed to the consultation meeting held in May this year. We did not feel that that meeting achieved its purpose, and that further consideration needs to be given to the review of the regulatory framework. We consider that progress may be best achieved with contributions from a small group of those who are experienced in broadcasting across platforms and regulation. We are ready and willing to participate and have any discussions with you that you may wish to have on these reform issues.

In the meantime, we have consulted with the Chief Censor on how we might rationalise the range of classifications across different content. We have consulted with broadcasters and the public about whether free-to-air television should adopt the pay television classification labels, so that there is one set of classification labels applying to both free-to-air and pay television. We are evaluating the responses we received and a final decision on whether changes should be implemented will soon be made.

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. A key 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. Our recent public consultation exercise, discussed further below, served to raise awareness of the classification labels, and the protection that they can provide.

We continue to engage with the Broadcasting sector, with which we have a good relationship. We have also developed relationships with on-demand providers and engaged with them about how the broadcasting standards system applies.

Co-regulatory environment

As noted above, 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 NZ Media 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 Chief Censor and NZ Media Council on the jurisdiction implications of converging media platforms, and we worked well with the Electoral Commission, NZ Media 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.

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 good results recognising that any adjudicative body, such as ours, will never get universal approval.

For the last three 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 the review of timebands, parental locks and classifications on television.

Free-to-air Television Timebands, Parental Locks and Classification Review

In consultation with television broadcasters through a working group we have examined whether timeband restrictions for airing PGR and AO content on free-to-air (FTA) television continue to have a role to play, in light of changes in technology, the availability of parental locks on FTA television (via Freeview) and the way in which audiences now consume a wide range of content anytime anywhere. We considered the policy drivers for timebands and whether timebands continue to provide an appropriate community safeguard on FTA television, notwithstanding the changes in technology and viewing behaviour of audiences.

The FTA television broadcasters consider that given the wider availability of parental locks on television (which are built into Freeview and SKY set top boxes and smart televisions), the need for timebands on FTA television may be obviated or reduced. However, while parental locks are available to all television viewers, the working group undertook research to test the level of awareness of parental locks and the extent to which households would use the technology to protect children from unsuitable content if the timebands were to be removed or diluted. The results indicated that use and awareness of parental locks is low, and that timebands comprise one of the tools that parents and caregivers use to make viewing decisions for children in their care.

We also commissioned research to assess the level of awareness and use of parental locks in vulnerable communities, to assist us to understand the potential impact on viewers if timebands were to be removed or diluted. This research indicated that some timebands may still have some role to play, in protecting children from unsuitable content.

In August 2018, we consulted with the public on whether any changes should be made to the timebands and classifications. We provided four timeband options ranging from no change, some adjustments to the PGR timeband, to a full removal of timebands. We invited written submissions and provided an online survey for the public to complete. The consultation period closed on 31 August and we are currently evaluating the wide range of responses. We will provide a further update once we have completed the evaluation phase. In the interim, we **attach** the consultation document which outlines the issues and options under consideration.

We see the issue of timebands as being a significant issue in the evolution of broadcasting standards in a rapidly changing broadcasting environment. We recognise that timebands have traditionally been a key tool used to protect children from unsuitable content and that any changes must be carefully considered.

Operational priorities and areas of focus

Our operating environment is summarised in the Chair's Report and passage on our Strategic Context in our 2017 Annual Report (see pages 6-7). Our strategic priorities are set out on page 7 and our current operational focus is reflected in our Statement of Performance Expectations for the year ending 30 June 2019. 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. Despite the 54% increase in complaint numbers, we have delivered this function well and within our existing resources;
- (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 potential convergence reforms, liaising with stakeholders and other regulators in the broadcasting and content sectors to inform the ongoing discussion;
- (d) Maintaining a strong and effective working relationship with other content complaint bodies, including the NZ Media 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) 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. Our relatively new case management approach is working well which is reflected in the survey responses received from broadcasters and complainants this year;
- (g) Engaging research activity that is carefully focused on issues of importance to content standards in the converged environment. Our key research projects in 2017/18 included understanding the use of timebands and parental locks in vulnerable communities (discussed above); testing words that may offend in broadcasting; engaging with broadcasters on research released in July 2017 on *Use of Social Media Content in Broadcasting*; completing satisfaction surveys of broadcasters and complainants; undertaking our two-yearly publicity notice audit; and litmus testing and externally reviewing some of our recent decisions on election programmes and the fairness standard. We are currently finalising the scope of our key research projects for 2018/19.
- (h) 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. As part of this we are undertaking a detailed refresh of our website; and
- (i) 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 and continuing to co-tenant and share services with NZ On Air.

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
Appointment of new Chair and Member of the Authority	Finalising appointment process with MCH	September 2018
2018 Annual Report, 2019 SPE to be tabled following completion of audit	Our draft annual report is with MCH for comment	November 2018
Timebands and Classification Review	Once a decision has been made on whether changes should be made to the Code, an update will be provided	October 2018
Content Reform	Confirmation by MCH of direction of reform activity and what assistance may be required	Ongoing 2018

We think that we can responsibly say to you that the BSA is functioning well and as it should be and this can be sustained once new Board members are appointed.

Yours sincerely



Belinda Moffat
Chief Executive
Broadcasting Standards Authority

CC Peter Radich, Chair

Attachments:

- (a) Annual Report for the year ending 30 June 2017: [here](#)
- (b) Statement of Intent (2017-2021): [here](#)
- (c) Statement of performance expectations for the year ending 30 June 2019: [here](#)
- (d) Letter to Minister of Broadcasting dated 31 January 2018: **attached**
- (e) Television programme classifications and timeband review: [here](#)

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