

**BROADCASTING STANDARDS AUTHORITY**  
**TE MANA WHANONGA KAIPĀHO**

# Privacy and the Media

**Stacey Wood – Chief Executive**  
**PRIVACY WEEK – MAY 2025**

# What is the BSA?

## Te Mana Whanonga Kaipāho | The Broadcasting Standards Authority (BSA)

- Crown entity created by the Broadcasting Act 1989
- Jurisdiction over 'broadcasts' (generally tv and radio)
- Our vision: ***Freedom in broadcasting without harm***
- 4 Authority members (lawyer Chair, broadcaster rep, community rep, one other) + 8 staff
- **Main functions:**
  - Complaints determination
  - Oversight and development of broadcasting standards system (developing codes + research)
  - Education and engagement – broadcasters, public, stakeholders

# Broadcasting standards

1. Offensive and disturbing content
2. Children's interests
3. Promotion of illegal or antisocial behaviour
4. Discrimination and denigration
5. Balance
6. Accuracy
- 7. Privacy**
8. Fairness

***“Freedom of expression without harm”***

# The privacy standard

## Key considerations:

1. Identifiable person?
2. Reasonable expectation of privacy?
3. Disclosure highly offensive?

*Defences: informed consent, or public interest*



# Identification

- 'Beyond family and close friends' who would reasonably be expected to know about the matter in the broadcast
- Goes beyond name and face – can include references to where they live, what they do, what car they drive
- 'Jigsaw identification' – combination of information from the broadcast and other readily available information, ie easily searchable online

# Reasonable expectation of privacy?

- Usually not when related to matters of public record, like court or things that have been in the news
- Usually not in public places, ie generally accessible to, or in view of, the public
- Always exceptions though – may still have a reasonable expectation of privacy in exceptional circumstances where a person is obviously vulnerable, for example:
  - Victims of accidents or those caught up in emergencies
  - People who are bereaved or dealing with personal tragedy
  - People with learning difficulties, mental health issues, or brain damage

## Highly offensive?

- Not just the content but the means by which it was collected – can be highly offensive to broadcast material collected by deceptive or dishonest means
- Factors that may indicate offensiveness:
  - Is it disclosed for the purpose of harassment?
  - Is it embarrassing, sensitive or traumatic?
  - Negative impact on reputation?
  - Broadcast is exploitative or gratuitous
  - A person who has made efforts to protect their privacy

# RECENT PRIVACY DECISIONS



# Seven complainants & RNZ – 2010-090

- High-profile complaint relating to broadcast about a child under care of Oranga Tamariki, which included material stolen from Waikato DHB and released by hackers on the dark web.
- Significant and legitimate public interest in the story.
- ‘Jigsaw’ identification – no names used, and no age, gender or ethnicity – still enough information to enable people who weren’t aware of all the circumstances to be able to identify them – including people who knew some, but not all, of the details disclosed.

# HW & Sky – 2022-120

- When can information, previously broadcast, become private again?
- Case concerning the story of an attack on a woman when she was 17 years old – her attacker went on to murder another woman.
- Broadcast included her story, a re-enactment of the attack, and photos of her in hospital. The photos appeared on TV in 2009, and the complainant had been interviewed about her experience as recently as 2020.
- Complainant was not notified the story or photos were going to be used in the broadcast and was shocked to be contacted by people who recognised her, who hadn't been aware of her past experience.

# Wicks & TVNZ – 2020-126 (and High Court appeal)

- A woman featured in a story about boy racers causing trouble in an 'almost abandoned' area of Christchurch. 'Too scared to be identified'.
- Complainant was not the woman featured, but said the unblurred, side-view of part of her face, and the wider shot, revealed enough to identify her.
- Broadcaster argued informed consent, but did not provide enough information to support their position.
- On appeal, was able to provide an affidavit confirming the woman did not have a problem with the footage.
- Illustrates the potential difficulties of a complaint made by a person who is not the 'victim' of the privacy breach.

# NH & Virsa – 2020-164 (and High Court appeal)

- ‘Jigsaw’ identification (again)
- Majority held the person could not be identified, as the details in the broadcast could be applicable to others in the community. Minority disagreed
- Does the privacy standard apply to **false** information?
- The quality of the information, rather than its truthfulness, determines whether privacy standard applies

# CHALLENGES FOR BROADCASTERS

**He pātai?**

**Any questions?**