

Stacey Wood
Chief Executive
Broadcasting Standards Authority
Level 2
119 Ghuznee Street
Wellington 6011

16.10.25

Dear Stacey

We are writing to you regarding the BSA's recent attempt to establish jurisdiction over the Platform, and by extension any online content distributor the BSA considers to meet the definition of "Broadcaster."

We believe this foray into the public arena of free speech is a regrettable decision on the part of the BSA, and one as Chief Executive we strongly believe you should reconsider.

Here's why.

1: Jurisdiction

You contend that the Broadcasting Act 1989 empowers you to regulate online content providers such as the Platform, and are quoted in a New Zealand Herald article on October 15 as saying: "The definition of 'broadcaster' and 'broadcasting' in Section 2 of the act isn't limited to TV or radio – it talks about programmes transmitted to the public by any means of telecommunication."

If we've learned anything over the last 24 hours, it's that the BSA's view of its jurisdiction extending to online is at a minimum highly contestable. Given the Act is very specific about regulating public broadcast television and radio, several legal commentators consider the Authority to be acting *ultra vires*, or well beyond your legal remit. This is a view that we share.

We believe it is not for the BSA to expand what it considers to be its area of operations without clear, legislative guidance from Parliament. We note you have been calling for updated legislation for some time, and that would no doubt be helpful, but in the absence of a new legal framework and mandate the Authority has not suddenly gained the right to unilaterally increase its regulatory influence into independent content creators publishing exclusively on the Internet.

2: Threat to Free Speech

We perceive the the Authority's action to be informed more by a philosophical position of needing to challenge Sean Plunkett and the Platform on the content of the original complaint, rather than guided by a strong legal position as defined by the Act.

We believe that is of deep concern, and particularly as your action directly encroaches on New Zealander's rights to free speech.

You are quoted in the same Herald article as saying that free speech is at the heart of your mission, and that you do not seek to censor anyone. "Our interest is in ensuring the public have access to accurate, reliable media content, and a regulator they can turn to if they think standards are breached. Far from shutting down free speech, freedom of expression is at the heart of every BSA decision."

However, you are also quoted in a Radio New Zealand article from this morning as saying the following:

"Our vision is freedom of expression and broadcasting without harm, and freedom of expression is where we start. Always. We just disagree that freedom of expression means an absolute right to freedom of speech to say whatever you want."

Regrettably for your argument, freedom of expression and freedom of speech actually DO mean an absolute right to say to whatever you want. That is PRECISELY what they mean. In the cases where speech crosses the line into criminality, such as blackmail, extortion, threats of violence, or defamation, that speech is covered by other acts of Parliament, with enforcement action brought by an appropriate authority such as the Police. It is not for the Authority or you as its CEO to determine what constitutes "harm."

Critically, you cannot claim to uphold freedom of expression, and then simultaneously seek to curtail what people can say on the Internet or sanction them for it without defying both logic and the bedrock principle free speech is built upon.

Seen through that prism, your action against the Platform appears as either a wholesale land grab over New Zealanders' free speech rights, or a quixotic quest for relevance (or both). Neither is in fact acceptable.

You yourself have admitted this is the first case of its kind, and is therefore untested. Presumably you are seeking to create a precedent for the Authority, and perhaps that way ensure it's longevity, or you genuinely believe in the substance of the complaint.

While you may perceive the Authority's actions as seeking to achieve some kind of social good, we would counsel both you and your Board that this is an excellent time to remember the maxim: "The road to hell is paved with good intentions."

3: Likely Costs to the Taxpayer

As Chief Executive, you must be keenly aware that unless the Authority revises its position, legal action against it is inevitable, and that any action through the courts will come with a strong probability of the Authority losing.

We are far from alone in believing you are on very thin legal ice, and more likely than not to lose in court. Your costs in defending your position are likely to run well north of six figures, and if you lose, the Authority is also highly likely to be found liable for the legal costs of the Platform. The Platform may well choose to bring other claims, which if successful could also result in punitive damages.

Given these expenses will be considerable, and will be borne by the taxpayers of New Zealand, the Authority's position is at best ill-advised, and at worst morally untenable. You will be using precious taxpayer funding to do little more than seeking to impose your authority where it neither currently extends, nor indeed belongs.

4: More Flies with Honey

We would politely ask that you and your Board change your position on this matter and depart from your current course of action.

You must see that the Broadcasting Standards Authority is strongly opposed by a large part of New Zealand, including political opposition from the Free Speech Union, the former Deputy Prime Minister and the current one, by many MPs, by parts of the private sector that have offered to fund Plunkett's legal costs, and by a large section of the public who are no doubt contacting you today (we hope their correspondence has been civil).

Pursuing this course can only alienate you further from the public you hope to serve and the Parliament you ultimately answer to, as you are not in reality standing for a moral position which will better society, but a

more personal one about what the Authority considers acceptable public speech in online forums beyond its legal sphere of influence.

A better way forward would be to redouble your efforts at lobbying Parliament for updated legislation, where the public could at least have a say on the relevance and contours of the Authority's role and responsibilities.

The alternative is to have the whole exercise backfire on you completely, resulting instead with your legislative abolishment.

Thanks for your time.

Yours Sincerely,

[Redacted signature]

Section 9(2)(a) OIA

Matt [Redacted]

Section 9(2)(a) OIA

Also on behalf of:

John [Redacted]

Richard [Redacted]

Mark [Redacted]

Section 9(2)(a) OIA

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982