

18 April 2018

Rachel Maria Stedman

By email: fyi-request-7495-74271b96@requests.fyi.org.nz

Dear Ms Stedman

Official Information Act request

We refer to your request under the Official Information Act 1982 (**OIA**), received by us on 21 March 2018, in which you requested:

- all information pertaining to any complaint made about the inhumane killing of crayfish on any television show between the years 2008 and 2018
- including all discussions, actions and considerations in response to any complaint, including, but not limited to, any expert or scientific opinion relied upon.

Response to your request

We have reviewed the complaints considered by the Broadcasting Standards Authority (**BSA**) within the time period you have specified. We consider that the complaint considered in the BSA's decision, *Irwin and Television New Zealand Ltd*, Decision No. 2010-087, is within the scope of your request. There are no other complaints considered by the Authority, within the time period you have specified, that deal with the inhumane killing of crayfish. We therefore **enclose** a bundle of documents relating to this complaint which responds to your request.

Please note that parts of some documents have been withheld where we are satisfied that there are grounds to withhold the information and where those grounds are not outweighed by the public interest. The reasons for withholding such information include:

- where information includes private information about individuals, including names, phone numbers and email addresses of third parties, where the information is not already publicly available (section 9(2)(a));
- where the information is outside the scope of your request, for example, details in BSA Board Minutes recording decisions made on matters other than the complaint identified.

Where information has been redacted, we have noted the withholding ground that applies on the relevant document, for your information.

In addition, we have not provided information that relates to the Authority's deliberation on the complaint in the exercise of its judicial functions. Nor have we provided legal advice to Authority members on this complaint, which is subject to legal privilege.

This is because the OIA applies to information held by 'organisations', 'departments' and 'agencies' as defined in the OIA, and under section 2(6)(b) of the OIA 'organisation', 'department' and 'agency' does not include tribunals in relation to their judicial functions. Accordingly,

information we hold in relation to the Authority's determination of this complaint is not 'official information' that is subject to the OIA and is not disclosed.

Consultation with third parties

In preparing this response to your request we have endeavoured to consult with the parties who are named in the information sought and considered their response when making a decision as to whether any information should be withheld.

Right of review

We trust that this responds to your request.

You have the right to seek an investigation and review of this response by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

If you would like to discuss this response with us, please feel free to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Patricia Windle', with a long horizontal flourish extending to the right.

Patricia Windle
Legal Manager
Broadcasting Standards Authority

From: BSA Complaints
Sent: Friday, 10 September 2010 2:54 p.m.
To:
Subject: FW: [BSA] Formal complaint, from BSA website

59(2)(a)

-----Original Message-----

From: BSA Complaints [mailto:complaints@bsa.govt.nz]
Sent: Wednesday, 21 April 2010 12:23 p.m.
To: complaints.committee@tvnz.co.nz
Cc: BSA Complaints; Sylvia Irwin;
Subject: [BSA] Formal complaint, from BSA website

The following complaint was submitted through the BSA website
Sylvia Irwin,
Apr at 12:23

on 21st

subject: Formal complaint, from BSA website
To: The Chief Executive
Programme-Title: Masterchief and Tonight
Programme-Date: Wed/Friday in March
Programme-Time: 7.30, 7pm
Programme-ChannelStation: TV1
recipient: complaints.committee@tvnz.co.nz
Relevant-Standards: Public Decency.

offensive cruelty to animals
Complaint-Details: I wish to make a complaint about the use of live crayfish on
> \"Masterchief NZ \"on TV1 a couple of Wednesdays ago- chasing one crayfish
> around the studio and putting it in boiling water. I am also concerned about
> the killing of a supposedly \"asleep on ice\" crayfish on Mark Sainsbury's
> programme :\"Tonight\", at 7pm just after that. The makers of \"Masterchief\"
> must have known that having a tank of crayfish on the set with inexperienced
> cooks, would lead to an inhumane situation for entertainment. It is a false
> assumption to say, (on \"Tonight\"), that because crayfish don't have an
> internal central nervous system and spinal cord, that they don't feel pain
> or fear. EVERY creature has to be able to feel pain (and has a physical
> system for feeling this), as it is a warning to try to get away from
> predators, and is essential for survival.
> My question to BSA is, are there standards for the use of animals on TV
> programmes in NZ, and does any welfare body have to police these standards
> ? - eg, in USA, the Humane Society of the US has to be present when animals
> are being filmed.
> Thank-you,

realname: Sylvia Irwin.
email: _____
Complainant-Address: /

From: Complaints Committee
Sent: Wednesday, 5 May 2010 9:44 a.m.
To:
Subject: FW: [BSA] Formal complaint, from BSA website

59(2)(a)

Dear Ms Irwin

As per my letter of 22 April, I need more information before I can accept your complaint including the dates that these programmes screened and the broadcasting standards you believe have been breached (a full list of standards can be found at www.bsa.govt.nz under "Free to Air Standards"). Unfortunately "March" is not enough information to locate an episode of "Close Up" -which plays nightly during the week or even "Masterchef" which plays weekly. I have not had any formal complaints about "Masterchef" this year.

Regards

-----Original Message-----

From: BSA Complaints [mailto:complaints@bsa.govt.nz]
Sent: Wednesday, 5 May 2010 9:06 a.m.
To: Sylvia Irwin
Cc: Complaints Committee
Subject: RE: [BSA] Formal complaint, from BSA website

Dear Ms Irwin

I assume this email was intended for TVNZ as the BSA has not sent you any letters, so I have copied it to their Complaints Committee.

Regards

Legal Manager
Broadcasting Standards Authority
Wellington, New Zealand
www.bsa.govt.nz

-----Original Message-----

From: BSA Complaints [mailto:complaints@bsa.govt.nz]
Sent: Tuesday, 4 May 2010 9:55 a.m.
To:
Cc: BSA Complaints; Sylvia Irwin;
Subject: [BSA] Formal complaint, from BSA website

The following complaint was submitted through the BSA website
by Sylvia Irwin

on 4th May at 09:55

subject: Formal complaint, from BSA website
To: The Chief Executive
Programme-Title: Masterchief NZ and Closeup
Programme-Date: March
Programme-Time: Wed 7.30
Programme-ChannelStation: TV1
recipient: info@bsa.govt.nz
Relevant-Standards: Re your letter about my complaint about the killing
of crayfish on Masterchief, (and chasing one around the studio
beforehand), and killing a crayfish on Closeup. I cannot remember the
exact Wednesday of the Masterchief programme, but the incident on
Closeup was a couple of nights later, and the crayfish might not have

been still frozen and \"asleep\", under the hot studio lights. You apparently had so many complaints about that programme of Masterchief, that you will know the date of that programme.

Complaint-Details: See previous e-mail.

realname: Svlvia Irwin.

email: .

Complainant-Address:

s 9(2)(a)

12 July 2010

Sylvia Irwin

59 (2)(a)

Dear Sylvia Irwin

Further to your email received 18 May I wish to advise that TVNZ's Complaints Committee has completed its enquiry into your formal complaint about *Masterchef NZ* and *Close Up* shown on 31 March and 1 April on TV One.

Your complaint has been considered with reference to Standards 1, 8, 9 & 10 of the Free-to-Air Television Code of Broadcasting Practice.

The Decision

The Complaints Committee has not identified any breach of the relevant standards and accordingly declines to uphold your complaint. The reasons for this decision are discussed below.

The Programme

Masterchef NZ is a New Zealand made cooking programme where cooking novices compete to win the title of masterchef and a job at a top restaurant. In the episode of 31 March the contestants are divided into three teams and they have to prepare lunch on barbeques in two hours. As part of the challenge the teams are given seafood and crayfish. One team kills the crayfish in the accepted manner by using a knife to sever the head of the animals – the other team places the live crayfish directly into boiling water. This "boiling" method is roundly criticised by the judges who discuss the correct manner to kill the crayfish. When the teams buy the seafood at the start of the programme (at the fish market) this same team dropped one of the crayfish and had to pick it up.

In the episode of *Close Up* that screened on 1 April one of the judges from the *Masterchef NZ* episode and the contestant that incorrectly killed the animals discuss with Mark Sainsbury the correct way to kill a crayfish – i.e. severing the animal lengthways along the head. There is also some discussion that the crayfish could be placed into a freezer before this severing occurs. The Auckland SPCA has confirmed to *Close Up* that the correct way to kill the crayfish was the severing method endorsed by the judges in *Masterchef NZ* (with or without the added method of freezing the animal first). This is discussed on the programme. The *Masterchef NZ* judge shows the correct method to kill a crayfish on *Close Up*.

Your Complaint

You state that *the episode of Masterchief in question, which had the chasing and boiling of the crayfish, was on Wed 31st March 2010. The episode of Closeup where the "frozen"*

T: -

F: -

E: -

crayfish was killed was on the following Tuesday. Standards breached were 9 "children's interests", and guideline 9d, "animals badly treated", Standard 1 "good taste and decency" Standard 8 "responsible programming", Standard 10, "violence",- connected to standard 9d. Kapiti Animal Welfare Society was also not impressed with these Sylvia Irwin, Safely Graze Animal Welfare Trust, Waikanae.

And:

I wish to make a complaint about the use of live crayfish on "Masterchef NZ" ..chasing one crayfish around the studio and putting it in boiling water. I am also concerned about the killing of a supposedly "asleep on ice" crayfish on Mark Sainsbury's programme "Tonight" ..The makers of Masterchef must have known that having a tank of crayfish on the set with inexperienced cooks would lead to an inhumane situation for entertainment.

The Relevant Standards

Standard 1 Good Taste and Decency

Broadcasters should observe standards of good taste and decency.

Guidelines

- 1a *Broadcasters will take into account current norms of good taste and decency bearing in mind the context in which any content occurs and the wider context of the broadcast e.g. programme classification, target audience, type of programme and use of warnings etc.*
- 1b *The use of visual and verbal warnings should be considered when content is likely to disturb or offend a significant number of viewers except in the case of news and current affairs, where verbal warnings only will be considered. Warnings should be specific in nature, while avoiding detail which may itself distress or offend viewers.*

To constitute a breach of Standard 1 the material shown must be unacceptable to a significant number of viewers in the context that it is shown. Contextual factors include (but are not limited to): the programme classification, the time of broadcast, the intended audience and the use of warnings (if any). In the case of this episode of *Masterchef NZ & Close Up* the relevant contextual factors are:

- The Broadcasting Standards Authority has previously stated (e.g. Decision 2008-080 & 2008-087) that standards relating to good taste and decency are primarily aimed at broadcasts that contain sexual material, nudity, violence or coarse language. The Committee does not consider that the broadcast referred to in the complaint falls into any of these categories.

However, the Authority has also said it "will consider the standard in relation to any broadcast that portrays or discusses material in a way that is likely to cause offence or distress". (*Practice Note: Good Taste and Decency (BSA, November 2006)*).

- The Complaints Committee does not agree that the *Masterchef NZ & Close Up* items would cause offence or distress to a significant number of viewers. Both programmes discussed the correct way to prepare the animals for eating and this was demonstrated on *Close Up* by one of the *Masterchef NZ* judges. The discussion about the most humane way to kill crayfish is an evolving one and scientists are still debating whether or not the animals can feel pain (in fact a

Norwegian paper in 2005 said that it appeared that the animals couldn't feel pain, while a 2007 study at Queen's University, Belfast, suggested that crustaceans do feel pain).

- The discussions on both *Masterchef NZ* and *Close Up* enabled a discussion about the most humane way (as accepted at the moment) to kill a crayfish. This information was perhaps different to commonly accepted practice by some sections of New Zealand society and it was important to the welfare of crayfish that have been caught for eating in New Zealand to have this information and discussion on television.
- While some of the contestants on *Masterchef NZ* did kill their crayfish inhumanely they were scolded for this behaviour and this enabled the discussion of proper practice to take place. This behaviour was not endorsed in the programme.
- The crayfish that was killed on *Close Up* was killed in the accepted humane way – accepted practice is to sever the head of the animal. It is not required to freeze the animal first.
- The Committee notes you also complain about the crayfish being dropped by one of the contestants in a seafood market– this is clearly accidental. The Committee does not agree that the footage would offend a significant number of viewers.

Accordingly the Committee finds that *Masterchef NZ & Close Up* was acceptable to screen and that the footage would not have offended a significant number of viewers. No breach of Standard 1 has been identified.

Standard 8 Responsible Programming

Broadcasters should ensure programmes

- are appropriately classified;
- display programme classification information;
- adhere to timebands in accordance with Appendix 1;
- are not presented in such a way as to cause panic, or unwarranted alarm or undue distress ; and
- do not deceive or disadvantage the viewer.

Guidelines

8a *Broadcasters should use established classification codes.*

- Classification symbols should be displayed at the beginning of each programme and after each advertising break.
- Warnings should be considered when programme content is likely to offend or disturb a significant number of the intended audience.

8b *All promos (including promos for news and current affairs) should be classified to comply with the "host programme" (the programme in which they screen):*

- Promos for AO programmes shown outside AO time should comply with the classification of the host programme;
- Promos shown in G or PGR programmes screening in AO time should comply with the G or PGR classification of the host programme;
- When a promo screens during an unclassified host programme (including news and current affairs) in G or PGR time, the promo must be classified G or PGR and broadcasters should pay regard to Standard 9 – Children's Interests.

- When a promo screens adjacent to an unclassified host programme (including news and current affairs) in G or PCR time, the promo should comply with the underlying timeband.
 - Broadcasters should be aware that promos showing footage of violence or other explicit material outside the context of the original programme may be unacceptable to viewers in the context of the host programme in which they screen.
- 8c Except as justified in the public interest, news flashes screening outside regular news and current affairs programmes, particularly during children's viewing time, should avoid unnecessary, distressing or alarming material or should provide a prior warning about the material.
- 8d Advertisements and infomercials should be clearly distinguishable from other programme material.
- 8e Broadcasters should ensure that there is no collusion between broadcasters and contestants that results in unfair advantage to any contestant.
- 8f Broadcasters should not use the process known as "subliminal perception" or any other technique which attempts to convey information to the viewer by transmitting messages below or near the threshold of normal awareness.

This Standard relates to broadcasters ensuring that the programme is correctly censor rated and that the ratings are displayed when the programme screens. *Masterchef NZ* was censor rated and the rating was shown at the beginning of each programme part. *Close Up* is news and current affairs programming and as such is unrated. The footage was acceptable to screen in each programme and it did not require a warning.

No breach of Standard 8 has been identified.

Standard 9 Children's Interests

During children's normally accepted viewing times (see Appendix 1), broadcasters should consider the interests of child viewers.

Guidelines

- 9a Broadcasters should be mindful of the effect any programme or promo may have on children during their normally accepted viewing times – usually up to 8.30pm – and avoid screening material that would disturb or alarm them.
- 9b When scheduling AO material to commence at 8.30pm, broadcasters should ensure that strong adult material is not shown soon after the watershed.
- 9c Broadcasters should have regard to the fact that children tend to:
- stay up later than usual on Friday and Saturday nights and during school and public holidays and,
 - watch television through to midday on Saturday and Sunday mornings, and during school and public holidays.
- Accordingly, special attention should be given to providing appropriate warnings during these periods.
- 9d Programmes containing disturbing social and domestic friction or sequences in which people – especially children – or animals may be humiliated or badly treated, should be handled with care and sensitivity.
- All gratuitous material of this nature should be avoided and any scenes shown must pass the test of relevancy within the context of the programme. If thought likely to disturb children, the programme should be scheduled later in the evening.
- 9e Children's cartoons should avoid gratuitous violence – especially violence involving humans or human-like creatures - unless it would be clear to the child viewer that the themes are fanciful or farcical.

As discussed above, the crayfish in the *Close Up* item was not badly treated. No breach of Standard 9 has been identified in this regard.

In regard to the *Masterchef NZ* episode, it was made clear in the item that the team that boiled their crayfish had acted inappropriately and they were scolded for their actions. The chefs killed their crayfish in this way from ignorance and they did not intend to be

callous. The footage of the boiling was not disturbing and the correct method to kill a crayfish was discussed in both programmes.

In BSA decision 2004-076 relating to the crushing of live earthworms and an alleged breach of Standard 9 the Authority found that:

[28] Ms Cooling contended that the ill-treatment of earthworms for entertainment - indeed their mass destruction - breached the guideline. The programme, she wrote, displayed a callous attitude to these living organisms. In response, TVNZ's complaints committee shared Ms Cooling's distaste for the broadcast but argued the earthworms were not the type of animals contemplated when the guideline was drafted.

[29] The Authority agrees that the guideline was not intended to include earthworms or, possibly, crustaceans, molluscs or insects. It reaches this conclusion by noting that the word "animal" was not used in the sense of all living creatures, or in contrast to "vegetables" and "minerals". Rather, the Guideline refers to "people ... or animals".

[30] Moreover, the Authority refers to Standard 9 – noting it is the Standard and not the Guidelines with which the broadcasters must comply. As the Television Code records, guidelines are included to assist in the interpretation of the standards. Standard 9 requires broadcasters to consider the interests of child viewers. The types of animals whose ill-treatment would upset children, the Authority considers, do not include earthworms, making Guideline 9e inapplicable.

The *Masterchef NZ* programme and the *Close Up* items became teaching opportunities for the correct way to kill the crustaceans.

No breach of Standard 9 has been identified.

Standard 10 Violence

Broadcasters should exercise care and discretion when dealing with the issue of violence.

Guidelines

10a *Any violence shown should be justified in the context of screening and not be gratuitous.*

10b *Broadcasters should be mindful of the cumulative effect of violent incidents and themes.*

- *The impression that violence is dominating a single programme, a programme series, or a line-up of programmes screened back-to-back should be avoided.*

10c *Programmes in which rape or sexual violence is a theme should be treated with care.*

- *Explicit detail and prolonged focus on sexually violent contact should be avoided.*
- *Any programme in which rape is depicted should be preceded by a warning.*
- *The combination of violence and sexuality in a way designed to titillate should not be shown.*

10d *In news, current affairs and factual programmes, where disturbing or alarming material is often shown to reflect a world in which violence occurs, the material should be justified in the public interest.*

- *Editors and producers must use judgement and discretion in deciding the degree of graphic detail to be included in news programmes when children are likely to be watching.*

- Warnings within news programmes should be used when appropriate.
- When executions and assassinations are shown the coverage should not be explicit, prolonged, or repeated gratuitously.

10e In sports programmes violent incidents during or surrounding play should not be repeated gratuitously.

Sports announcers and commentators should avoid making comments which appear to approve of, or glamorise, any dangerous or violent behaviour, on or off the field, that is not in accordance with the rules of the particular sport.

As discussed above the footage of the killing of the crayfish was brief and relatively inexplicit. Crayfish are eaten and they must be killed before they are cooked. The Committee does not agree that this Standard was written to prevent such footage being shown.

The footage in each programme was handled in an appropriate and socially responsible manner.

No breach of Standard 10 has been identified.

Right to Refer to Broadcasting Standards Authority and Time Limit

In accordance with section 7(3) of the Broadcasting Act you are hereby notified that it is your right, should you be dissatisfied with this decision, to refer the matter to the Broadcasting Standards Authority, P O Box 9213, Wellington, as provided under section 8 of the Act, for the purpose of an investigation and review of the decision. You have 20 working days after receipt of this letter to exercise this right of referral.

Yours sincerely

59(2)(a)

Programme Standards Manager

COPY SENT

From: .
Sent: Sunday, 18 July 2010 5:13 p.m.
To:
Subject: FW: [BSA] Feedback, from BSA website

Administration Manager
Broadcasting Standards Authority
Ph:

59(2)(a)

Original Message-----
From: Sylvia Irwin [mailto:;
Sent: Saturday, 17 July 2010 9:14 a.m.
Cc: ; Sylvia Irwin
Subject: [BSA] Feedback, from BSA website

The following feedback was submitted through the BSA website
by Sylvia Irwin on 17th Jul at 09:13

subject: Feedback, from BSA website
To: The BSA
Name: Sylvia Irwin
Email:
Phone:

Feedback: Please read the following reply by TVNZ to my complaint about Masterchief and Closeup. I find their reasons declining to uphold my complaint patronising, and cowardly and having no regard for the agony and terror that Masterchief directors knew befoirehand that the crayfish would go through, being (chased around the studio and) boiled alive. To say that the cooks were \"scolded\" afterwards, is too late, and to say that only a minority would be offended, is patronising us and treating us and the cooks like naughty kiddywinkles with a slap on the wrist. It ignores the fact that ALL creatures feel pain, and inflicting pain for entertainment is offensive to many people as the number of entries on Facebook , and the discussion on TV/radio showed.

From:
Sent: Monday, 19 July 2010 7:40 a.m.
To:
Subject: FW: Reply to my complaint to TVNZ
Attachments: Sylvia Irwin CClose Up Masterchef New Zealand decision TVNZ Letterhead.pdf; image001.jpg; image002.jpg

59(2)(a)

Administration Assistant
Broadcasting Standards Authority

Phone:

From: Sylvia Irwin [mailto:
Sent: Saturday, 17 July 2010 9:18 a.m.
To:
Subject: Fw: Reply to my complaint to TVNZ

I have submitted my comments on this reply to you, by contacting you on your website. Please follow up on this complaint about breach of broadcasting standards.

Thank-you for upholding my complaint about the killing of the mice on "Birdland".

Sylvia Irwin

----- Original Message -----

From: Complaints Committee

To:

Sent: Monday, July 12, 2010 2:09 PM

Dear Sylvia Irwin

Please find attached the decision of the TVNZ Complaints Committee in regard to your formal complaint about *Close Up* & *Masterchef New Zealand*.

Regards

TVNZ

Television New Zealand Ltd
Te Kōwhiri

Programme Standards Manager

D.

F.

For more information on the Television New Zealand Group, visit us online at tvnz.co.nz

CAUTION: This e-mail and any attachment(s) contain information that is intended to be read only by the named recipient(s). This information is not to be used or stored by any other person and/or organisation.

19 July 2010

2010-087

Sylvia Irwin

s 9(2)(a)

Dear Ms Irwin

Thank you for your email referring your complaint about items on *Masterchef NZ* and *Close Up* broadcast on TV One on 31 March and 1 April 2010.

The following is an outline of the process from here:

- I have sent a copy of your letter to the broadcaster, Television New Zealand Limited, for comment. I have also requested a recording of the broadcast for the Authority.
- If the broadcaster makes any comments I will forward them to you and ask for your final submissions. You are not required to make any further comments at this stage, but may do so if you wish.
- If you do make any final submissions, I will forward them to the broadcaster.
- Once the broadcaster has made its final submissions, the matter will be placed before the Authority for determination.

The Authority meets to determine complaints once every five weeks. Depending on when we receive a response from the broadcaster, it will be placed on the agenda for one of these meetings. After the meeting, the Authority will release a decision within 20 working days (unless further information is required).

Your name and your city/town of residence will appear in the Authority's written decision. Your correspondence will also be summarised in the decision. Feel free to look on our website (www.bsa.govt.nz) if you wish to know more about how the final decisions appear.

Once the decision has been finalized, a copy will be sent to you, and it will also be released to the public through the BSA website and newsletter.

Please feel free to contact me if you have any questions in relation to this matter.

Yours sincerely

Legal Manager

19 July 2010

2010-087

Programme Standards Manager
TVNZ
P O Box 3819
AUCKLAND 1140

59(2)(a)

Dear :

Sylvia Irwin has referred to the Authority a complaint about items on *Masterchef NZ* and *Close Up* broadcast on TV One on 31 March and 1 April 2010.

The correspondence is enclosed.

I would be grateful if you could send me a copy of the original complaint, your decision on the referral, your comments on the referral, and recordings of the broadcasts by Monday 16 August 2010.

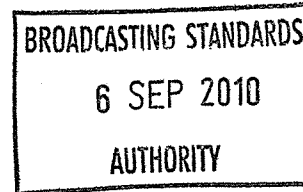
Thank you for your assistance. Please feel free to contact me if you have any queries in relation to this matter.

Yours sincerely

Legal Manager

Encl:

1 September 2010



Legal Manager
Broadcasting Standards Authority
P O Box 9213
WELLINGTON

59(2)(a)

Dear

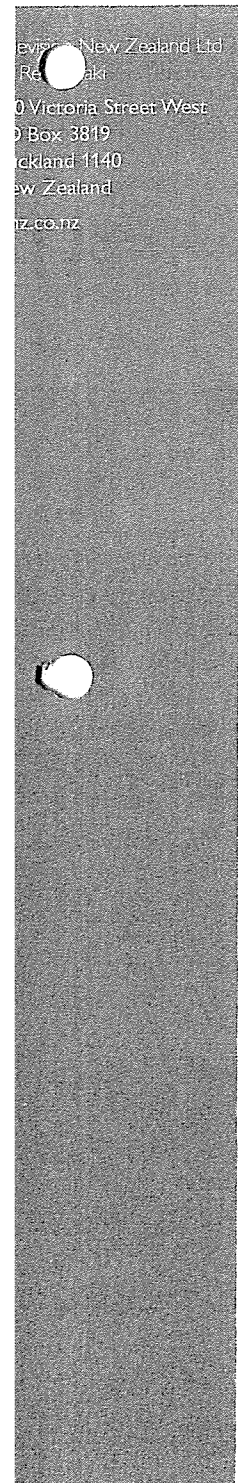
Please find enclosed the complaints, TVNZ response and DVD's for the following referrals:

- | | |
|----------|--|
| 2010-087 | Irwin (sorry one of the programmes is a VHS as the time between her complaint and the transmission date was so long. She did not know the date the episode screened) |
| 2010-088 | Wilkins |
| 2010-090 | North |
| 2010-095 | Tucker |
| 2010-096 | Riley |
| 2010-099 | Lee |

As always if you need any further information or have questions in regard to these complaints please let me know.

Yours sincerely .

Programme Standards Manager



6 September 2010

2010-087

Sylvia Irwin

S 9(2)(a)

Dear Ms Irwin

TVNZ has not made any further comments in relation to your complaint about items on *Masterchef NZ* and *Close Up* broadcast on TV One on 31 March and 1 April 2010.

The matter will now be put before the Authority at its next meeting on 30 September and 1 October 2010 and I anticipate that you will receive a decision within 20 working days of the meeting.

Please feel free to contact me if you have any questions in relation to this matter.

Yours sincerely

Legal Manager

BROADCASTING STANDARDS AUTHORITY

The 255th Meeting of the Broadcasting Standards Authority held in the boardroom, 2nd floor of the Lotteries Commission Building, 54 – 56 Cambridge Terrace, Wellington.

Thursday 30 September 2010

MINUTES

PRESENT: Peter Radich (Chair)
Tapu Misa
Leigh Pearson
Mary Anne Shanahan

Staff (as required)

*Outside
scope of
request*

outside scope
of request

ITEM 7: NEW COMPLAINTS

The Authority declined to uphold the following complaints and instructed staff to prepare decisions for consideration and, if acceptable to members, release:

outside
scope of
request

7.15 Irwin – TVNZ – Masterchef

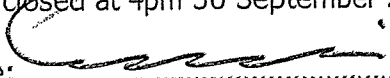
outside scope
of request

outside scope
of request

Date of Next Meeting

The next ordinary meeting of the Broadcasting Standards Authority will be held in Wellington on Wednesday 27 October 2010.

The meeting closed at 4pm 30 September 2010

For Signature:  Dated: 27.10.10

26 October 2010

2010-087

Sylvia Irwin

59(2)(a)

Dear Ms Irwin

I have been asked to advise you that the Broadcasting Standards Authority has not upheld your complaints about items on *Masterchef NZ* and *Close Up* broadcast on TV One on 31 March and 1 April 2010.

A copy of Decision 2010-087 is enclosed. The decision will be released to the media and subscribers on Monday 1 November 2010. We request that you do not publicise the decision before this date.

Your attention is drawn to section 18 of the Broadcasting Act 1989 which provides that a complainant or a broadcaster may appeal a decision of the Authority to the High Court. Any appeal must be lodged within one month of the date on which you were notified of the decision.

Please feel free to contact me if you have any questions in relation to this matter.

Yours sincerely

Legal Manager

Encl:

26 October 2010

Programme Standards Manager
TVNZ
P O Box 3819
AUCKLAND

s 9(2)(a)

Dear

I have been asked to advise you that the Broadcasting Standards Authority has not upheld the following complaints:

- Tucker – *One News* – 22 June 2010
Decision No. 2010-095
- Lee – *One News* – 15 June 2010
Decision No. 2010-099
- North – *The Vampire Diaries* – 20 June 2010
Decision No. 2010-090
- Wilkins – *One News* – 20 May 2010
Decision No. 2010-088
- Irwin – *Masterchef NZ* and *Close Up* – 31 March and 1 April 2010
Decision No. 2010-087

Copies of the above decisions are enclosed. They will be released to the media and subscribers on Monday 1 November 2010. **We request that you do not publicise the decisions before this date.**

Your attention is drawn to section 18 of the Broadcasting Act 1989 which provides that a complainant or a broadcaster may appeal a decision of the Authority to the High Court. Any appeal must be lodged within one month of the date on which you were notified of the decision.

Please feel free to contact me if you have any questions in relation to this matter.

Yours sincerely

Legal Manager

Encl:

Complainant
SYLVIA IRWIN
of Waikanae
Broadcaster
**TELEVISION NEW ZEALAND
LTD**
broadcasting as TV One

Members

Peter Radich, Chair
Tapu Misa
Mary Anne Shanahan
Leigh Pearson

Complaint under section 8(1B)(b)(i) of the Broadcasting Act 1989

Masterchef NZ – three teams shown taking part in cooking competition – all teams used fresh crayfish as an ingredient – live crayfish shown accidentally being dropped onto the floor – one contestant placed three live crayfish into boiling water – allegedly in breach of good taste and decency, responsible programming, children’s interests and violence standards

Close Up – item on how to kill a crayfish correctly – interviewed the *Masterchef NZ* judge and contestant who boiled the crayfish – using a live crayfish the chef showed viewers how to kill it humanely – allegedly in breach of good taste and decency, responsible programming, children’s interests, and violence standards

Findings

Standard 1 (good taste and decency) – contextual factors – not upheld
Standard 8 (responsible programming) – *Masterchef NZ* correctly classified G – *Close Up* was an unclassified news and current affairs programme – neither programme required a warning – not upheld
Standard 9 (children’s interests) – programmes were educative and demonstrated the correct method for humanely killing crayfish – not upheld
Standard 10 (violence) – programmes did not contain any violence – not upheld

This headnote does not form part of the decision.

Broadcasts

- [1] During an episode of the cooking competition *Masterchef NZ*, broadcast on TV One at 7.30pm on Wednesday 31 March 2010, the contestants were divided into three teams and had to prepare a lunch involving seafood on a barbeque.
- [2] The teams went shopping for seafood, and one of the teams was shown taking live crayfish out of a tank and putting them into their basket. As one contestant was trying to move the crayfish from the tank to the basket, he accidentally dropped the crustacean onto the floor. The crayfish briefly flopped around on the shop floor as another contestant tried to pick it up. It was eventually picked up and placed into the basket.
- [3] During the barbeque contest, a guest judge was shown speaking to a contestant who intended to drown his team’s crayfish as a method to kill them before cooking.

The guest judge stated that he strongly objected to the inhumane killing of crayfish and explained how to correctly kill a crayfish by holding its tail and using a knife to quickly sever the head lengthways. He then told the contestant, "If I see you drown it, you're gone".

- [4] Another contestant was shown killing her team's crayfish by placing them directly into boiling water. Her actions drew much criticism from the judging panel and the guest judge gave his opinion on the most humane method to kill a crayfish. The contestant said that she did not feel guilty about cooking the crayfish while they were still alive and put another into the pot of boiling water.
- [5] During the judging segment towards the end of the episode, one of the judges criticised the contestant who boiled the live crayfish and told her that she needed to respect her ingredients, especially if they were alive.
- [6] The following night, an item on *Close Up*, broadcast on TV One at 7pm on Thursday 1 April 2010, looked at how to kill crayfish correctly. The presenter interviewed the guest chef from *Masterchef NZ* and the contestant who had boiled the crayfish while they were still alive. The chef, the contestant, and *Close Up*'s presenter discussed the previous night's episode of *Masterchef NZ* and the various methods to kill crayfish.
- [7] The chef, using a live example that had been put into a freezer to go to sleep, showed viewers the correct method, in his opinion, for humanely killing a crayfish. This involved the chef holding the crayfish down by its tail on a chopping board and using a knife to quickly sever its head lengthways.

Complaint

- [8] Sylvia Irwin made a formal complaint to Television New Zealand Ltd, the broadcaster, alleging that both programmes breached broadcasting standards relating to good taste and decency, responsible programming, children's interests, and violence.
- [9] With respect to the episode of *Masterchef NZ*, the complainant noted that a crayfish had been dropped on the floor and that a contestant had been shown boiling crayfish alive. She stated that, "The makers of *Masterchef* must have known that having a tank of crayfish on the set with inexperienced cooks would lead to an inhumane situation for entertainment".
- [10] Referring to guideline 9d to the children's interests standard, she argued that the programme showed animals being treated badly. She also maintained that Standard 10 (violence) was breached.
- [11] Turning to the *Close Up* item, Ms Irwin stated that she was concerned about the killing of the live crayfish that was "supposedly asleep on ice". She contended that the item had also breached broadcasting standards.

Standards

- [12] Standards 1, 8, 9 and 10, and guidelines 1a, 1b, 8a, 9a and 9d of the Free-to-Air Television Code of Broadcasting practice are relevant to the determination of this complaint. These provide:

Standard 1 Good Taste and Decency

Broadcasters should observe standards of good taste and decency.

Guidelines

- 1a Broadcasters will take into account current norms of good taste and decency bearing in mind the context in which any content occurs and the wider context of the broadcast e.g. programme classification, target audience, type of programme and use of warnings etc.

- 1b The use of visual and verbal warnings should be considered when content is likely to disturb or offend a significant number of viewers except in the case of news and current affairs, where verbal warnings only will be considered. Warnings should be specific in nature, while avoiding detail which may itself distress or offend viewers.

Standard 8 Responsible Programming

Broadcasters should ensure programmes:

- are appropriately classified;
- display programme classification information;
- adhere to timebands in accordance with Appendix 1;
- are not presented in such a way as to cause panic, or unwarranted alarm or undue distress; and
- do not deceive or disadvantage the viewer.

Guideline 8a

Broadcasters should use established classification codes.

- Classification symbols should be displayed at the beginning of each programme and after each advertising break;
- Warnings should be considered when programme content is likely to offend or disturb a significant number of the intended audience.

Standard 9 Children's Interests

During children's normally accepted viewing times (see Appendix 1), broadcasters should consider the interests of child viewers.

Guidelines

- 9a Broadcasters should be mindful of the effect any programme or promo may have on children during their normally accepted viewing times – usually up to 8.30pm – and avoid screening material that would disturb or alarm them.
- 9d Programmes containing disturbing social and domestic friction or sequences in which people – especially children – or animals may be humiliated or badly treated, should be handled with care and sensitivity:
- all gratuitous material of this nature should be avoided and any scenes shown must pass the test of relevancy within the context of the programme. If thought likely to disturb children, the programme should be scheduled later in the evening.

Standard 10 Violence

Broadcasters should exercise care and discretion when dealing with the issue of violence.

Broadcaster's Response to the Complainant

- [13] With respect to Standard 1, TVNZ argued that the episodes of *Masterchef NZ* and *Close Up* would not have caused offence or distress to a significant number of viewers. It considered that both programmes discussed the correct way to prepare crayfish for eating and that this had been demonstrated on *Close Up* by one of the judges from *Masterchef NZ*.
- [14] The broadcaster contended that the discussion about the most humane way (as currently accepted) to kill crayfish was evolving and scientists were still debating whether or not they could feel pain. It argued that "it was important to the welfare of crayfish that have been caught for eating in New Zealand to have this information and discussion on television".

- [15] TVNZ noted that while some contestants on *Masterchef NZ* killed their crayfish inhumanely, they were scolded for their behaviour. It considered that the programme enabled the discussion for proper practice to take place and maintained that the inhumane killing of crayfish had not been endorsed in the programme.
- [16] The broadcaster argued that the dropping of a crayfish on the seafood market's floor had been accidental and that it would not have offended a significant number of viewers.
- [17] TVNZ was of the view that the crayfish on *Close Up* had been "killed in the accepted humane way – accepted practice is to sever the head of the animal. It is not required to freeze the animal first". It declined to uphold the complaint that the programmes had breached standards of good taste and decency.
- [18] Turning to Standard 8 (responsible programming), the broadcaster contended that the standard related to ensuring that programmes were correctly classified and that ratings were displayed. It noted that the ratings for *Masterchef NZ* had been shown at the beginning of the programme and that *Close Up* was an unclassified news and current affairs programme. It argued that the footage contained in both programmes was acceptable to screen and that neither required a warning. It declined to uphold the complaint that Standard 8 was breached.
- [19] Looking at Standard 9 (children's interests), TVNZ contended that it was made clear during *Masterchef NZ* that the team that had boiled the crayfish alive had acted inappropriately and had been "scolded for their actions". It said that the particular contestant had killed the crayfish in this way out of ignorance and had not intended to be "callous".
- [20] The broadcaster reiterated its belief that the footage of the boiling crayfish was "not disturbing" and that the correct killing method had been discussed in both programmes.
- [21] TVNZ also noted a previous decision by the Authority¹ in which the Authority said that the guideline to Standard 9 requiring care and sensitivity to be shown in programmes in which animals were badly treated was "not intended to include earthworms or, possibly, crustaceans or insects". It argued that both broadcasts became teaching opportunities for the correct way to kill crayfish, and it declined to uphold the children's interests complaint.
- [22] With respect to Standard 10 (violence), the broadcaster contended that the footage of the crayfish being killed was brief and relatively inexplicit. It noted that crayfish are eaten and that they must be killed before they are cooked. It considered that the standard was not intended to prevent such footage being shown.
- [23] TVNZ was of the view that the footage in each programme was handled in an appropriate and socially responsible manner, and it declined to uphold the complaint that Standard 10 had been breached.

Referral to the Authority

- [24] Dissatisfied with the broadcaster's response, Ms Irwin referred her complaint to the Authority under section 8(1B)(b)(i) of the Broadcasting Act 1989. She argued that all creatures could feel pain, and that inflicting pain for entertainment was offensive. She considered that the "scolding" of the chef after the fact was too late and maintained that both programmes had breached broadcasting standards.

¹ Decision No. 2004-076

Authority's Determination

[25] The members of the Authority have viewed recordings of the broadcasts complained about and have read the correspondence listed in the Appendix. The Authority determines the complaint without a formal hearing.

Standard 1 (good taste and decency)

Masterchef NZ

- [26] When we consider an alleged breach of good taste and decency, we take into account the context of the broadcast. With respect to *Masterchef NZ*, the relevant contextual factors include:
- the programme was rated G
 - was broadcast at 7.30pm during children's normally accepted viewing times
 - the expectations of regular viewers
 - the programme had a broad target audience.
- [27] Dealing with the complainant's concerns about the crayfish being dropped onto the floor during *Masterchef NZ*, we consider that it was clearly an accident and that it was dealt with quickly and effectively by the contestants involved.
- [28] With respect to the footage of the crayfish being boiled alive, we are of the view that such actions are a common method of cooking crayfish in New Zealand. While some viewers may have been shocked by the footage, we note that members of the programme's judging panel were heavily critical of the contestant's actions and that a panel member explained the humane way to prepare crayfish for cooking.
- [29] Taking the above contextual factors into account, we decline to uphold the complaint that *Masterchef NZ* breached Standard 1.

Close Up

- [30] With respect to *Close Up*, the relevant contextual factors include:
- was an unclassified news and current affairs programme
 - it was broadcast at 7pm during children's normally accepted viewing times
 - the expectation of regular viewers
 - the programme had an adult target audience.
- [31] With respect to the killing of the crayfish on *Close Up*, we note that the segment was a follow up item relating to the previous night's episode of *Masterchef NZ* and that it dealt with what the broadcaster saw as a legitimate public issue which needed to be addressed.
- [32] We are of the view that the item was an educational demonstration about the most humane method to kill crayfish. We also note that the chef and the presenter discussed alternative viewpoints on the various ways to kill crayfish, and agree with TVNZ that the item served as a teaching opportunity which enabled a discussion about proper practice to take place.
- [33] Taking the above contextual factors into account, we decline to uphold the complaint that *Close Up* breached Standard 1.

Standard 9 (children's interests)

- [34] Standard 9 requires broadcasters to consider the interests of child viewers during their normally accepted viewing times – usually up to 8.30pm.
- [35] We note that, while boiling crayfish alive may now be considered cruel and inhumane, such actions are typical of how many people cook crayfish in New Zealand. While some child viewers may have been upset by the footage on

Masterchef NZ, the contestant was criticised for her actions and the correct preparation method was explained.

- [36] We consider that the killing of the crayfish on *Close Up* was humane, educational, and enabled a discussion about the proper practice to take place. We also consider that the killing of the crayfish was well signposted and that parents were given adequate time to exercise discretion.
- [37] Further, it is a fact of life that we live in a society that eats meat and seafood, and that living creatures must be killed in order for this to happen. We consider that any children watching would have learnt why it was important to follow best practice and kill crayfish humanely.
- [38] With respect to both programmes, we are of the view that the broadcaster exercised an appropriate level of care and sensitivity. In these circumstances, we find that TVNZ adequately considered the interests of child viewers and we therefore decline to uphold the complaint that the broadcasts breached Standard 9.

Standard 8 (responsible programming)

- [39] Standard 8 requires programmes to be correctly classified and screened in appropriate time-bands.
- [40] In our view, the episode of *Masterchef NZ* was correctly classified G because it did not contain any material that warranted a higher rating. We also note that *Close Up* was an unclassified news and current affairs programme.
- [41] We consider that, while footage of crayfish being killed in both programmes may have upset some viewers, the images would have been quite familiar to a number of New Zealanders and neither broadcast required a warning.
- [42] Accordingly, we decline to uphold the Standard 8 complaint.

Standard 10 (violence)

- [43] Standard 10 provides that broadcasters should exercise care and discretion when dealing with the issue of violence. In our view, while the programmes showed crayfish being killed in preparation for making food, the actions did not constitute "violence" as envisaged by the standard.
- [44] Accordingly, we decline to uphold the complaint that Standard 10 was breached.

For the above reasons the Authority declines to uphold the complaint.

Signed for and on behalf of the Authority



Peter Radich
Chair

26 October 2010

Appendix

The following correspondence was received and considered by the Authority when it determined this complaint:

- 1 Sylvia Irwin's formal complaint – 21 April 2010
- 2 TVNZ's response to the formal complaint – 12 July 2010
- 3 Ms Irwin's referral to the Authority – 17 July 2010
- 4 TVNZ's response to the Authority – 1 September 2010

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No	Quick name	Programme	File status
Less 2010/87A	Irwin	Masterchef NZ	Closed -on site

WARNING. Clicking this link will add a decision

Complainant	IRWIN, Sylvia Change		
Broadcaster	Television New Zealand Ltd		
Channel/Station	TV ONE		
Received	19	dd 7	mm 2010
Broadcast time	31	dd 3	mm 2010
	7.30		pm

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Notes

Crayfish boiled alive
Standard 1 Good taste and decency
Standard 8 Responsible Programming
Standard 9 Childrens interests
Standard 10 Violence

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Stage	Date	Notes
<input checked="" type="checkbox"/> Referral acknowledged	19 7 2010	
<input checked="" type="checkbox"/> Broadcaster's response received	6 9 2010	
<input type="checkbox"/> Final correspondence requested		
<input type="checkbox"/> Final correspondence received		
<input type="checkbox"/> First meeting date		
<input type="checkbox"/> Last meeting date		
<input type="checkbox"/> Work on hold		
<input checked="" type="checkbox"/> Decision Date	26 10 2010	

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