



Decision No. 2017-101

Under The Broadcasting Act 1989

Between **13 COMPLAINANTS**

And **TELEVISION NEW  
ZEALAND LTD**

Broadcaster

**Before**

Peter Radich, Chair

Te Raumawhitu Kupenga

Paula Rose

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**Decision of the Broadcasting Standards Authority**

**4 April 2018**

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***Summary*** [*This summary does not form part of the decision.*]

The first two episodes of a British dating game show, *Naked Attraction*, were broadcast on TVNZ 2 at 9.45pm on Friday 27 October 2017, and 9.30pm on Friday 3 November 2017. The essence of the programme is that a clothed individual selects a date from six naked individuals, who are gradually revealed in stages from the feet up, with no blurring or pixelation of nudity. Thirteen complainants referred their complaints about these episodes of *Naked Attraction* to the Authority, complaining that the programme contained a high level of full frontal nudity and sexual discussion, which was offensive and contrary to standards of good taste and decency. The complainants also submitted the programme was broadcast at a time on a weekend night when children were likely to be watching. The Authority did not agree with the complainants that this programme ought not to have been broadcast at all. It observed that, while the programme may not have been to everybody's taste, it contained many body-positive messages and those involved in the programme spoke positively of their experiences. However, the Authority upheld the good taste and decency complaints on one aspect, finding the pre-broadcast warning did not adequately signpost the extent of nudity and sexual references in the programme for viewers, meaning viewers did not have all the information they needed to decide whether to watch or continue watching.

*Upheld: Good Taste and Decency. Not Upheld: Children's Interests. No Order.*

## **Introduction**

- [1] The first two episodes of a British dating game show, *Naked Attraction*, were broadcast on TVNZ 2 at 9.45pm on Friday 27 October 2017, and at 9.30pm on Friday 3 November 2017. The essence of the programme is that an initially clothed individual selects a date from six persons. While these persons are naked, initially they are substantially screened. Their bodies are gradually revealed from the feet up. Then, later, the selecting individual also removes his or her clothes and a process of comparisons is undertaken. The nudity was not blurred or pixelated.
- [2] Following the individual's selection of their preferred date, and footage of the couple's (fully clothed) date, the individuals talked about their experience. The participants who were not selected for a date also discussed their experience of being on the show and appearing naked.
- [3] Described briefly and in this clinical way the programme seems astonishing and raises questions of acceptability. However as we will endeavour to say, a closer analysis is needed.
- [4] Thirteen complainants referred their complaints to the Authority about these episodes. These complaints were not upheld by the broadcaster, TVNZ, and they have been referred by the complainants to us for our consideration, on the basis the complainants were dissatisfied with the broadcaster's response.
- [5] The complainants submitted that the programme contained a high level of full-frontal nudity and sexual discussion, which was offensive and contrary to standards of good taste and decency. Further, the programme was broadcast on a weekend evening at a time when children stay up later and were likely to be watching.
- [6] We note that in their original complaints, some complainants raised additional standards. However, their referrals to us raised concerns only about the good taste and decency and children's interests standards. Our decision is therefore based on those two standards alone.
- [7] The issue is therefore whether the first two episodes of this programme breached the good taste and decency and children's interests standards of the Free-to-Air Television Code of Broadcasting Practice.
- [8] The members of the Authority have viewed the episodes complained about, have read the correspondence listed in the Appendix, have given careful thought to these issues and have met and discussed them a number of times.

## **Did these episodes of *Naked Attraction* threaten current norms of good taste and decency?**

- [9] The purpose of the good taste and decency standard (Standard 1) is to protect audience members from listening to or viewing broadcasts that are likely to cause widespread undue offence or distress, or undermine widely shared community standards. Broadcasters should take effective steps to inform audiences of the nature of the programme, and enable viewers to regulate their own and children's listening or viewing behaviour.<sup>1</sup>
- [10] For reasons which we express below, we have reached the view that, overall, these programmes were acceptable for broadcast. However, we do not consider the content of the programmes was adequately signposted for viewers in the pre-broadcast warning, and accordingly we uphold the good taste and decency complaints on this one aspect.

### ***The complainants' submissions***

- [11] The complainants' submissions can be broadly summarised as follows (many of the complaints raised similar points):
- The programme was saturated with full-frontal nudity and adult, sexually-charged discussion, which was offensive and contrary to standards of good taste and decency.
  - The programme did not only contain occasional nudity – the first episode included 282 shots of male genitalia and 96 of female genitalia.
  - The content is akin to pornography, which is available on the internet if people wish to source and view it. It is disturbing that young teenagers, whom parents and caregivers are trying to protect, can view 'adult pornographic material' on free-to-air television.
  - While the programme was rated AO and carried a 'small warning' for nudity, this did not give a sufficient indication of the programme's content.
  - The programme screened at 9.30pm on a weekend night when children were likely to be watching. It is wrong for the broadcaster to broadcast what it likes and then put all responsibility and blame on parents.
  - The programme 'degrades physical attraction to a level of sensuality that is an affront to morality and decency'. It exploits and degrades men and

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<sup>1</sup> Guideline 1b to Standard 1 – Good Taste and Decency

women and degrades human relationships to animalistic instinct, promotes voyeurism and a porn culture which is harmful to our society.

- It is detrimental for adolescents, many of whom already have anxiety about their physical appearance, to hear body parts being criticised for size or shape. This will contribute to body image issues, self-hatred, mental illness and possibly suicide.
- Regarding past decisions on nudity cited by the broadcaster, which were not upheld, the complainants submitted that the content of *Naked Attraction* by comparison was quite different – it was gratuitous, designed to titillate and did not carry any educational or medical value.
- Complainants also argued that the broadcast of *Naked Attraction* would result in a slippery slope, for example live sex shows may soon be permitted on free-to-air television.

#### ***The broadcaster's submissions***

[12] TVNZ did not consider the episodes breached good taste and decency, or that they would have offended a significant number of viewers taking into account the context. TVNZ submitted:

- The aim of the programme is to explore what people find physically attractive and whether choosing a partner based on physical attraction alone can help people find their ideal partner. The participants then go on a clothed date to see if their physical attraction is matched after getting to know the person. The experiences of the participants, presented in their own words during the programme, were universally positive.
- The episodes contained full-frontal nudity and adult discussions containing some sexual inferences. These were matter-of-fact and not designed to titillate.
- It is established in Authority decisions that it is acceptable to see naked people, including genitalia, on free-to-air television. In this case, as the nudity was somewhat sexualised, the programme was rated AO (rather than G or PGR).<sup>2</sup>

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<sup>2</sup> For example, *Keatinge and Television New Zealand Ltd*; Decision No. 2012-016, *Hutt and Television New Zealand Ltd*, Decision No. 2009-103; *Cheyne and Television New Zealand Ltd*, Decision No. 2007-116

- Other decisions by the Authority concerning nudity and sexual content in the AO timeband were not upheld as a breach of standards.<sup>3</sup>
- The Films, Videos and Publications Act 1993 does not restrict publications based on nudity alone.
- The content of the *Naked Attraction* episodes did not amount to pornography, ‘paedophile material’ or ‘prostitution’.
- The programme was classified Adults Only and screened at 9.45pm and 9.30pm, more than an hour after the 8.30pm AO watershed. After 9.30pm is not considered children’s normal viewing time.
- There is an expectation that material screened after 9.30pm may contain strong adult content and a greater degree of sexual material and offensive language.
- There is also an expectation that parents and caregivers monitor children’s viewing of AO material. Technology enabling parents to block content is available on SKY, Freeview and Smart TVs.
- The programme was preceded by a written warning which stated: ‘AO: This programme is rated adults only. It contains nudity.’
- The programme was popular in the 18-49 age group, with a reach of over 140,000 for the 27 October 2017 broadcast, and 170,000 on 3 November 2017.

### ***Our analysis***

- [13] The purpose of the good taste and decency standard is to protect audience members from viewing broadcasts that are likely to cause widespread undue offence or distress, or ‘undermine widely shared community standards’. Attitudes towards taste and decency differ widely, and continue to evolve. While the feelings of the particularly sensitive cannot be allowed to dictate what can be broadcast, there are limits to what can be broadcast. The broad limit is that a broadcast must not significantly violate community norms of taste and decency.<sup>4</sup>

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<sup>3</sup> For example, *Ross and Māori Television Service*, Decision No. 2017-045; *Hall and Television New Zealand Ltd*, Decision No. 2010-169; *Ben and Dragicevich and Television New Zealand Ltd*, Decision No. 2010-128; *Woodham and TV3 Network Services Ltd*, Decision No. 2003-118

<sup>4</sup> Commentary: Good Taste and Decency, *Broadcasting Standards in New Zealand Codebook*, page 12

- [14] It is evident from the unusually large volume of complaints about this programme that there are sections of the community who find the concept and content of this programme offensive and contrary to their taste.<sup>5</sup>
- [15] The level of nudity in *Naked Attraction* went beyond what most viewers would be accustomed to on free-to-air television in New Zealand. As the complainants have pointed out in their submissions, and as reported elsewhere,<sup>6</sup> the first episode broadcast on 27 October 2017 included 282 shots of male genitalia and 96 of female genitalia.
- [16] The extent of nudity in this programme was exceptionally high. This naturally followed as the programme was substantially about the naked human body. However, nudity in itself is unlikely to breach broadcasting standards. This is evident from numerous previous decisions of this Authority, particularly where, prior to the broadcast of the programme, there is a clear warning for nudity.<sup>7</sup>
- [17] We have considered how the nudity in this case was dealt with. The treatment was largely matter of fact and clinical. The discussion of the body parts of the participants went well beyond genitalia. It included discussion of everything from toes to teeth. There was discussion about genitalia but the discussion about genitalia was not different in its tone and approach from the discussion about other body parts and bodily characteristics. The discussion about genitalia was not disproportionate to the discussion about other non-genital body parts.
- [18] In our opinion, the programme was not salacious or designed to titillate. We note, however, that when it comes to assessing broadcasting content, these types of labels ('salacious', 'designed to titillate') are only useful to a certain extent. Whether or not a programme could be described as 'titillating' or 'salacious' is not determinative, as we, and individual members of the audience, will all have different views on what constitutes this type of material, and we will each respond differently to content. The context of the programme and the wider context of the broadcast are also important considerations.
- [19] In our view, the programme presenter in this case was able to keep what could have been an unsatisfactory programme at a level where the course of the

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<sup>5</sup> See guideline 1b to Standard 1 – Good Taste and Decency

<sup>6</sup> For example, 'Ofcom WON'T investigate Channel 4's *Naked Attraction* despite 250 complaints', Sunday Express, 12 September 2016

<sup>7</sup> See footnotes 2 and 3 above

discussion was adeptly steered and where the tone was kept light and, oddly, it may seem because of the content, acceptable. The overall tenor was supported by the intermittent presentation in voiceovers, of research findings or anthropological theories regarding why a person may be inherently or biologically wired to be attracted to certain physical attributes.

- [20] It was very clear that the participants were participating freely and willingly. There was no suggestion of coercion and we could not see any exploitation beyond that which could apply to any participant in any television show. The participants appeared to be relaxed and uninhibited. Possibly there was some element of exhibitionism but no more so than in other similar dating programmes. Some viewers would have seen courage. Some would have taken reassurance. This was not a contest amongst conventionally “beautiful” people but rather showed collections of ordinary people with different features and different configurations.
- [21] There was a positive element to these episodes. The overall messaging about body image and self-esteem was an encouraging one. The essential message was that there is no standard attractive body configuration and that those who do not meet Hollywood standards of body configuration are nevertheless attractive. Moreover, features of one’s body are a mere component of human attractiveness and individual mixes have their own beauty. We saw these messages as being positive and reassuring to some who may lack self-esteem on account of their particular body features.
- [22] In addition to the nudity in the programme, there were numerous sexual references through the discussion of participants’ personal preferences for particular physical attributes.
- [23] We looked carefully at the complaints which categorised the programme as a type of ‘*meat market*’ where humans were paraded like objects for the evaluation of their physical componentry. We did have a concern about this but as we examined the programmes we thought that a contrary message was contained within them. That is that there are no rights and wrongs in bodily features and that everyone can be proud of what they have been given.
- [24] We looked carefully as well at the complaints which suggested that the programmes were pornographic in the sense that they were designed to invoke sexual arousal. In our judgement, they were not pornographic. They did have unusual levels of explicit nudity but it was dealt with in a clinical and matter-of-fact way. No sexual activity was displayed. There were discussions

about sexual activity but, as we say, these were light hearted and good humoured. These were, after all, discussions about fundamental parts of human behaviour and we think that discussions about these topics in this context was permissible. If we saw sexist, exploitative or degrading conduct, our approach to these programmes would have been very different.

- [25] Of course some people would find the programme content challenging and unacceptable. Nevertheless, we think the subject matter was approached carefully. The programme was a matter-of-fact examination of the human body and the topic of attraction. It did not in our opinion obviously threaten current norms of good taste and decency or cross the line of what is acceptable for an Adults Only programme broadcast at 9.30pm.
- [26] Broadcasters are permitted to broadcast AO material after the 8.30pm watershed, and a greater level of adult content can reasonably be expected after 9.30pm and later in the evening.
- [27] We have stood back and asked ourselves what harm have these programmes caused. Putting aside children's interests which we will deal with separately, we struggled to find any palpable harm that would be done to any individual, group or to society generally by the broadcast of these programmes. Some viewers may have been upset but this would have been transitory. There is no compulsion for programmes of this kind to be viewed but they must be adequately signposted. We will deal with this issue separately as well.

## **Signposting**

- [28] A key issue is whether the suite of information and protections available to viewers enable them to make an informed choice about what to watch (for example, the programme classification, time of broadcast and any warnings) were used effectively by the broadcaster. In other words, for those who did not wish to be exposed to this kind of content, including the nudity and sexual discussions, were they given a reasonable opportunity to make that choice for themselves and for any children in their care?
- [29] We acknowledge there was a pre-broadcast warning for 'nudity', and that the programme's title and promotional material also signalled the programme would contain nudity.
- [30] However, we consider that the warning was not sufficient in this case. This programme went beyond nude images and explored sexual issues, albeit in a matter-of-fact way. It is evident from the AO classification and later 9.30pm

time of broadcast that the broadcaster identified the stronger content of the programmes.

- [31] In our view, the sexual references in the programme elevated the programme to another level, beyond simply depicting nudity. Some viewers may have found the more detailed descriptions of sexual preferences and activity by the participants unduly confronting, and they were more likely to be offended in the absence of an explicit warning for sexual content. The extent of nudity and sexual references in the programme was not sufficiently signposted for viewers, meaning they did not have all of the information they needed to decide whether to watch or continue watching.
- [32] Accordingly, notwithstanding our view that overall the content was acceptable for the timeslot, we uphold the Standard 1 complaints on this one ground, that the programmes required a stronger warning to fairly reflect the nature of the content. We are satisfied that this finding does not unreasonably restrict the right to freedom of expression (discussed further at paragraph [47] below). Warnings are an important tool used by viewers and a vital part of the package of information available to them, to enable them to regulate their viewing and to make informed viewing choices. As the good taste and decency standard recognises, viewers are much less likely to be offended, and the standard is less likely to be breached, where the audience is adequately prepared for what is to come.

### **Did the broadcaster adequately consider children's interests?**

- [33] The children's interests standard (Standard 3) states that broadcasters should ensure children can be protected from broadcasts which might adversely affect them. Children's normally accepted viewing times are usually up until 8.30pm, and/or during G or PGR programming.

#### ***The parties' submissions***

- [34] The complainants did not make separate submissions under the children's interests standard, in addition to the points made under Standard 1.
- [35] In addition to its submissions on good taste and decency, TVNZ made the following points:
- After 8.30pm is not considered to be children's normal viewing time, even on a Friday evening, and broadcasters are permitted to screen AO material after this time.

- TVNZ ensured child viewers could be protected from content which might adversely affect them by classifying the programme AO, screening an appropriate warning, and scheduling the programme after 9.30pm.
- The Authority has previously noted that 'Parents must take some responsibility for what their children view after 8.30pm. The 8.30pm watershed marks the end of children's viewing times and the beginning of the AO timeband, regardless of the seasons and whether or not it is daylight saving.'<sup>8</sup>

### ***Our analysis***

- [36] Notwithstanding our decision to uphold one aspect of the complaints as a breach of Standard 1, we are satisfied that the broadcaster nevertheless adequately considered the interests of child viewers.
- [37] As the broadcaster correctly notes, 8.30pm marks the beginning of the Adults Only timeband on free-to-air television, after which the broadcaster is permitted to broadcast AO programming. This programme was clearly rated AO and broadcast at least one hour after the AO watershed. It was targeted at adults and was not intended for a child audience.
- [38] While we acknowledge children may stay up later on the weekend, this does not alter the fact that the programme was clearly signalled as being unsuitable for child viewers. At that point, we consider the broadcaster has taken reasonable steps to ensure children can be protected from the content, and the responsibility falls to parents and caregivers to exercise discretion.
- [39] Accordingly, we do not uphold the complaints under Standard 3.

### **Concluding Remarks**

- [40] The broadcasts which are the subject of the complaints before us challenge the limits of what is acceptable to be broadcast on television in New Zealand. The complaints have caused us to go back to some basics and endeavour to explain what the function of this Authority is and how it determines what is and what is not acceptable.
- [41] We do not have a general supervisory role. We do not constantly review what is being broadcast and then initiate evaluations. Rather, we operate in response to complaints but in limited circumstances. Those limited

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<sup>8</sup> *Fourie and Television New Zealand Ltd*, Decision No. 2012-002

circumstances are where a complaint has been made to a broadcaster and the broadcaster has not upheld that complaint.<sup>9</sup>

- [42] Having said this, we are well aware through receiving complaints and through our positions in New Zealand society of what is typically broadcast on radio and television. Although it is not within our jurisdiction, we are mindful of what is available online.
- [43] We endeavour to keep in touch with community values which themselves are variable and ever changing. We do this through our evaluation of complaints and responses to complaints, through going out into the community and testing responses and through research.<sup>10</sup> Also the different positions that we have in the New Zealand community allow us to sense as best we can what different community values are.
- [44] Our function is not to drive for different values or what some may say are “better” values. We are required to judge what is before us against the values that our communities have and to this extent it is not appropriate for us to be the promoters of change to our societal values.
- [45] Our functions are made more challenging by the reality that in New Zealand there are different communities and diverse communities of interest, and there is no uniformity in values. These differences come about through a multitude of influences. They may be geographical, age-related, beliefs-related or they may arise on account of different cultural backgrounds. These and other factors need to be blended in our endeavours to determine what is acceptable to New Zealand society overall.
- [46] We need to be mindful that the values of one section of the community must not be allowed to predominate over the proper values of another section of

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<sup>9</sup> Or, in circumstances where the broadcaster has upheld the complaint, and the complainant is dissatisfied with the action taken by the broadcaster. The Authority may also directly accept complaints about privacy or election programmes, which do not have to first be made to the broadcaster.

<sup>10</sup> The Authority commissions research into community attitudes to inform its decision making and the broadcasting standards system. Part of this work involves inviting members of the public to ‘litmus test’ BSA decisions on a topic or standard. For example, in 2016 the Authority tested the good taste and decency standard (Litmus Testing 2016). This research suggested that, where the concept of ‘good taste and decency’ is concerned, participants were more accepting of the type of content traditionally considered under this standard, including nudity and sexual content, particularly with reference to the time of broadcast. In contrast, participants were increasingly concerned about other potential harms under this standard, such as potentially sexist, racist or degrading content. The Authority also surveys New Zealanders about their attitudes to potentially offensive language in television and radio broadcasting (What Not to Swear: The Acceptability of Words in Broadcasting, 2013).

our community. We are a society which has many different facets and most of these should be allowed to shine.

- [47] The openness of our society and its liberal character, is recognised in the fundamental concept of freedom of expression which is enshrined in our Bill of Rights. This concept means that there should be a freedom to express and impart ideas and information and a freedom to receive and absorb those ideas and information. This recognised freedom is fundamental in broadcasting. What it means in a practical sense is that the inclination is towards freedom and away from restrictions and intrusions. Restrictions and intrusions are only justifiable to avoid actual or potential harm that may be caused by a broadcast. In some instances a broadcast may be seen to raise issues of actual or potential harm to an individual or to groups of persons. In other cases, such as the complaints before us, what is being said is that the harm may accrue to society generally or to children generally. We have always been more ready to limit broadcasting freedom in circumstances where specific harm or potential harm to an individual can be identified than where generalised harm to society is alleged. That does not mean that there will not be such cases where limitations are appropriate.
- [48] The complaints currently before us are that the *Good Taste and Decency* Standard has been breached. The title of this Standard may suggest that anything that is not in good taste and decent is unacceptable but that is not how this Standard is applied in those liberal societies who have it. It is not our function to declaim against broadcasts which some consider may be in poor taste or "indecent". Our society must be left to find its own values which we must reflect, rather than for us to try to shape values by prohibiting broadcasts which may be unacceptable in some sections of our society. In very simple terms, we see it as being our function to ensure that broadcasters do not cause harm of a kind that in a free and liberal society justifies intervention.
- [49] When we considered the broadcasts which are before us, we saw these as going a step further than where broadcasters have trodden before. The question is whether this is a step too far. To some people these broadcasts will undoubtedly be seen to have been several steps too far. However, for reasons which we have endeavoured to express, we do not see them as being harmful, we see some value in them and we do not think that they justify our intervention to the extent that we should be saying that the broadcasts ought not to have taken place.

- [50] Each programme was visually explicit to a level not in our experience seen on New Zealand free-to-air television before. Verbal discussions and descriptions were also explicit. However, we did not see these combinations as being such to justify our saying that the programme ought not to have been broadcast. It addressed aspects of human social behaviour which are real. It was more descriptive and enlightening than titillating (though as we have said, these kinds of terms only take us so far). It was clinical and good humoured in its evaluation of human behaviours and attitudes in areas of human conduct which are often shrouded. We have asked ourselves should these areas of human conduct be examined on public television in the later evening. Ultimately we came to the conclusion that, subject to our concern that appropriate signposting is required, in our society this ought to be permissible when in our view no demonstrable or significant harm accrues to individuals, groups or society.
- [51] We are of course conscious of the concerns, verging in some cases on outrage, that these broadcasts should have occurred. We respect those who hold those views which they are free to hold. But this does not mean that these views can be imposed on society generally. Within society we all need to adjust what we do and where we go to fit and accommodate our preferences and maintain our own happiness. This is so in most facets of our lives and it is so in broadcasting where we constantly make choices around what we look for and receive. Some in our society are repelled by images of animal suffering. Some are upset by harsh views being expressed in relation to religious beliefs. There are many sensitivities and there are many adjustments that all of us as recipients of broadcast programmes have to make to avoid discomfort and to enhance our pleasures, knowledge and happiness.
- [52] We are very conscious of the need to protect the interests of children. This programme was broadcast in the time zone where adult material is permitted to be broadcast. The concept of freedom of expression means that adults are entitled to receive adult material and broadcasters are entitled to deliver it to them. It is accepted that at certain times material unsuitable for children (which this was) may be broadcast. Ultimately we cannot limit what adults should be allowed to see within the confines of community safeguards (such as timebands, classifications and warnings), on account of what some children may see despite those safeguards.

[53] The views which we express have been reached after careful consideration. We do not however expect these views to be accepted by everyone. The structure in which we operate is such that what we say is able to be reviewed by the High Court on the application of any party to these complaints. We are always very open to review by a higher authority.

**For the above reasons the Authority upholds the complaints that the broadcast by Television New Zealand Ltd of two episodes of *Naked Attraction* on 27 October 2017 and 3 November 2017 breached Standard 1 of the Free-to-Air Television Code of Broadcasting Practice.**

- [54] Having upheld one aspect of the complaints, the Authority may make orders under sections 13 and 16 of the Broadcasting Act 1989. Our preliminary view was that, having upheld only one aspect, our decision provided sufficient guidance to the broadcaster and we were not minded to make any orders. Nevertheless, we invited the parties to make submissions on our preliminary findings outlined in the provisional decision, and on the matter of whether any orders are warranted.
- [55] Having considered the parties' submissions, we continue to be of the view that no orders are warranted, and we expand on our reasons for this below.

### **Submissions on the provisional decision**

- [56] We received comments on the provisional decision from one complainant, who submitted:
- Overall, he disagreed with the Authority's decision. He argued that it was clear from the complaints received that the Authority's decision did not reflect the views of a majority of New Zealanders, and the programme therefore clearly caused widespread undue offence.
  - He asked how the Authority, made up of three members, was able to keep in touch with community values.
  - The Authority's finding that the programme was not 'titillating' was incorrect and the implication that the programme had merit due to its clinical examination of anthropological theories and biology was disingenuous, as most would have viewed the programme for its salacious content.

- A majority of New Zealanders are ‘somewhat conservative’ by nature, and the Authority’s decision minimised the portion of society offended by the programme.
- Increasing levels of ‘abnormal’ social behaviour has a detrimental effect on young adults.

[57] TVNZ submitted:

- Only two complainants alleged the programme warning was inadequate in their complaints, while the other complainants were of the view that the programme should not have been broadcast at all, which was a higher threshold. As such, it requested the Authority issue two separate decisions, with one outlining the upheld decisions and one outlining the not upheld decisions, for clarity.
- The decision did not address all of the standards nominated by complainants in the original complaints.

### **Authority’s response to submissions on the provisional decision**

[58] After careful consideration, we do not consider the parties’ submissions alter our findings overall.

[59] The complainant in his submissions has reiterated a number of arguments raised by the complainants during the complaints process, which we consider are addressed in our decision. However, where appropriate, we have taken the complainant’s views into account and we have made the following amendments to our reasoning within the decision:

- We have clarified that the use of terms, such as ‘titillating’ or ‘salacious’, are not always helpful in determining whether content is in breach of standards. To say whether or not material meets the definition will require a subjective assessment, and these types of terms will mean different things to different people. For this reason, our provisional decision expanded on why we made this finding, explaining our views on the programme itself and the particular content. These reasons are set out in our final decision from paragraph [18] onwards.
- We have noted at footnote 10 our statutory mandate to carry out research to inform the broadcasting standards system, including litmus testing our decisions with members of the public through focus groups. This allows us to test whether the community agrees with our decisions.

- [60] In relation to the broadcaster's submissions, we note that four of the complainants referred to the alleged inadequate warning in their complaints. In our view, contextual factors such as the information provided to viewers about the programme are key considerations in assessing whether a particular programme is in breach of the good taste and decency and children's interests standards. The contextual factors which are relevant include the programme's classification, the time of broadcast, and any warning broadcast – whether or not these specific points are raised in the complaint being determined.
- [61] As such, it is open to the Authority to make a finding that a programme did not meet these standards, in circumstances where the information provided to viewers was inadequate. Given all of the complainants raised good taste and decency in their referred complaints, regardless of whether they explicitly referred to the pre-broadcast warning, we are able to find that the standard was not met on the basis that the broadcast warning was inadequate.
- [62] Regarding the broadcaster's second point, we have clarified at paragraph [6] that while some complainants raised other standards in their original complaints to the broadcaster, their referrals raised concerns about the good taste and decency and children's interests standards only. We have therefore focused our decision on those standards.

### **Submissions on orders**

- [63] We received no submissions from complainants on what orders, if any, would be appropriate in this case.
- [64] TVNZ submitted that it believed that the suite of measures taken at the time of screening the programme, including the extensive pre-publicity on the programme, the later time of broadcast, the classification and audience advisory, were consistent with broadcasting standards. It said it had taken the Authority's decision on board for any future broadcasts of the programme and, as such, submitted that publication of the decision was sufficient penalty in the circumstances.

### **Authority's decision on orders**

- [65] When the Authority upholds a complaint, whether in whole or in part, we may make orders, including directing the broadcaster to broadcast and/or publish a statement, and/or pay costs to the Crown.

- [66] Having carefully considered the submissions received, we are of the view that publication of this decision is a sufficient response in the circumstances. We have upheld only one aspect of the complaints raised with us, finding that the warning screened prior to the programme was insufficient to give a reliable indication of the programme's content. In this respect, we consider our decision provides clear guidance to broadcasters and to the public about the importance of audience advisories and the deficiency of the warning in this case. We also note that TVNZ has advised it has taken the Authority's decision on board for any future screenings of this programme, which we expect will prevent a similar breach being repeated.
- [67] Finally, we wish to record that we found the determination of these complaints to be challenging. The complaints raised important issues about New Zealand society and the value we place on freedom of expression, and we acknowledge the complainants' efforts in raising their genuine concerns with us.

Signed for and on behalf of the Authority



Peter Radich

Chair

4 April 2018

## **Appendix**

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

### *Stephen O'Leary's formal complaint*

- 1 Steven O'Leary's formal complaint – 6 November 2017
- 2 TVNZ's response to the complaint – 24 November 2017
- 3 Mr O'Leary's referral to the Authority – 27 November 2017
- 4 TVNZ's response to the Authority – 22 December 2017
- 5 Mr O'Leary's submissions on Authority's provisional decision and orders – 9 March 2018
- 6 TVNZ's submissions on Authority's provisional decision and orders – 16 March 2018

### *Neil and Linda Cameron's formal complaint*

- 7 Neil and Linda Cameron's formal complaint – 11 November 2017
- 8 TVNZ's response to the complaint – 1 December 2017
- 9 Neil and Linda Cameron's referral to the Authority – 6 December 2017
- 10 TVNZ's response to the Authority – 22 December 2017

### *Louise Donald's formal complaint*

- 11 Louise Donald's formal complaint – 7 November 2017
- 12 TVNZ's response to the complaint – 1 December 2017
- 13 Ms Donald's referral to the Authority – 1 December 2017
- 14 TVNZ's response to the Authority – 22 December 2017

### *Carey Conn's formal complaint*

- 15 Carey Conn's formal complaint – 5 November 2017
- 16 TVNZ's response to the complaint – 1 December 2017
- 17 Carey Conn's referral to the Authority – 7 December 2017
- 18 TVNZ's response to the Authority – 22 December 2017

*Roger Cole's formal complaint*

- 19      Roger Cole's formal complaint – 5 November 2017
- 20      TVNZ's response to the complaint – 1 December 2017
- 21      Mr Cole's referral to the Authority – 2 December 2017
- 22      TVNZ's response to the Authority – 22 December 2017
- 23      Mr Cole's final comments – 15 January 2017

*Korina Murray's formal complaint*

- 24      Korina Murray's formal complaint – 5 November 2017
- 25      TVNZ's response to the complaint – 1 December 2017
- 26      Ms Murray's referral to the Authority – 8 December 2017
- 27      TVNZ's response to the Authority – 22 December 2017
- 28      Ms Murray's final comments – 15 January 2018

*Robita Johnston's formal complaint*

- 29      Robita Johnston's formal complaint – 5 November 2017
- 30      TVNZ's response to the complaint – 1 December 2017
- 31      Ms Johnston's referral to the Authority – 3 December 2017
- 32      TVNZ's response to the Authority – 22 December 2017

*Dave Stanton's formal complaint*

- 33      Dave Stanton's formal complaint – 5 November 2017
- 34      TVNZ's response to the complaint – 1 December 2017
- 35      Mr Stanton's referral to the Authority – 11 December 2017
- 36      TVNZ's response to the Authority – 22 December 2017

*Melody Harrington's formal complaint*

- 37      Melody Harrington's formal complaint – 6 November 2017
- 38      TVNZ's response to the complaint – 1 December 2017
- 39      Ms Harrington's referral to the Authority – 3 December 2017
- 40      TVNZ's response to the Authority – 22 December 2017

*Mark Blackie's formal complaint*

- 41      Mark Blackie's formal complaint – 5 November 2017
- 42      TVNZ's response to the complaint – 1 December 2017
- 43      Mr Blackie's referral to the Authority – 4 December 2017
- 44      TVNZ's response to the Authority – 22 December 2017

*Grant Cullen's formal complaint*

- 45      Grant Cullen's formal complaint – 6 November 2017
- 46      TVNZ's response to the complaint – 1 December 2017
- 47      Mr Cullen's referral to the Authority – 4 December 2017
- 48      TVNZ's response to the Authority – 22 December 2017

*Family First's formal complaint*

- 49      Family First's formal complaint – 7 November 2017
- 50      TVNZ's response to the complaint – 1 December 2017
- 51      Family First's referral to the Authority – 1 December 2017
- 52      TVNZ's response to the Authority – 22 December 2017
- 53      Family First's final comments – 18 January 2018

*Dean Emmerson's formal complaint*

- 54      Dean Emmerson's formal complaint – 6 November 2017
- 55      TVNZ's response to the complaint – 1 December 2017
- 56      Mr Emmerson's referral to the Authority – 17 December 2017
- 57      TVNZ's response to the Authority – 22 December 2017