

# Departmental Disclosure Statement

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Aotearoa New Zealand Public Media Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by Manatū Taonga Ministry for Culture and Heritage.

Manatū Taonga Ministry for Culture and Heritage certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

15 June 2022

## Contents

Part One: General Policy Statement.....	3
Part Two: Background Material and Policy Information .....	5
Part Three: Testing of Legislative Content.....	7
Part Four: Significant Legislative Features .....	9

## Part One: General Policy Statement

This Bill seeks to strengthen the delivery of public media services to New Zealanders by establishing a new public media entity.

The media landscape in New Zealand is changing rapidly. Trends include increasing competition from international content providers, along with a continued audience shift to online platforms for all genres of entertainment and for news and current affairs. These trends will continue to evolve as technology and delivery of content changes.

In the face of these challenges, the Government's objective is to ensure that all New Zealanders can access relevant and trusted public media content across the platforms they use by—

- better aligning Government investment across platforms, increasing flexibility to respond to future demographic and technological changes, and reducing inefficiencies
- ensuring a more sustainable long-term funding model:
- enabling a greater focus on currently under-served and under-represented audiences, while continuing to provide for existing audiences.

The Government also intends to consider and provide for Māori interests through the delivery of public media services.

To achieve those objectives, the Bill establishes Aotearoa New Zealand Public Media (ANZPM) as an autonomous Crown entity that will—

- be required to focus on achieving public media outcomes through objectives, functions, and operating principles set out in a Charter:
- have obligations through its governance arrangements, delivery of its Charter, engagement with Māori, and working with the Māori media sector, so as to recognise and respect the Crown's responsibility to give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi:
- be editorially independent, with Ministers unable to direct the entity or remove board members in relation to editorial matters and the entity being required by its Charter to demonstrate editorial independence, impartiality, and balance, and to provide reliable, accurate and comprehensive regional, national, and international news and information:
- be required to maximise access to content, including by ensuring that content is made freely available and accessible to all New Zealanders; it is broadcast predominantly free of charge; and, where it has been charged for on its first broadcast, it is subsequently broadcast free of charge within a reasonable timeframe:
- be required to work collaboratively across the media sector, wherever appropriate and financially responsible, to support a diverse, capable, and resilient media ecosystem and to co-ordinate with NZ On Air and Te Māngai Pāho to avoid any gaps or duplication in the public provision of content:

- be governed by a board that has skills and experience relating to financial management and te ao Māori and tikanga Māori:
- be able to be held to account for delivery of its Charter, its other statutory functions, and its financial performance through planning and reporting requirements over and above the standard requirements in the Crown Entities Act 2004, and a requirement to report on specific aspects of its performance in its annual report (informed by audience research), and provision for the House of Representatives to review the Charter and ANZPM's performance against it.

The Government intends that the transition from RNZ and TVNZ to ANZPM should be as efficient as possible, while providing certainty for employees and the broader media sector, providing continuity of service for audiences, and giving ANZPM adequate time and flexibility to resolve more complex contractual issues.

The Bill therefore provides, that on commencement, all shares in RNZ and TVNZ will transfer to ANZPM (along with functions, land, and property), and RNZ and TVNZ will exist as subsidiaries of ANZPM. RNZ and TVNZ subsidiaries will become subsidiaries of ANZPM.

RNZ and TVNZ employees (with the exception of the chief executives) will transfer to ANZPM on the same terms and conditions, with no impact on their entitlements or continuity of service.

All services that were previously provided commercial-free by RNZ will continue to be provided commercial-free.

Agreements with international parties will remain with RNZ and TVNZ, unless renegotiated separately, and will not be affected by the commencement of the legislation.

ANZPM's board must set a date on which RNZ and TVNZ will be dissolved and any contractual rights remaining with RNZ and TVNZ will be transferred to ANZPM.

The Bill also clarifies how other enactments will apply during and after the transition from RNZ and TVNZ to ANZPM, reflecting that the ultimate owner of RNZ and TVNZ would not change (it remains the Crown).

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>YES</b>
<ul style="list-style-type: none"><li>Manatū Taonga, Strong Public Media Business Case, 2021. Available at: <a href="https://mch.govt.nz/sites/default/files/projects/spm-business-case-v12.0_0.PDF">https://mch.govt.nz/sites/default/files/projects/spm-business-case-v12.0_0.PDF</a></li><li>Strong Public Media Business Case Governance Group Report, 2021. Available at: <a href="https://mch.govt.nz/sites/default/files/projects/spm-business-case-governance-group-report_0.pdf">https://mch.govt.nz/sites/default/files/projects/spm-business-case-governance-group-report_0.pdf</a></li></ul> <p>The following papers are also publicly available:</p> <ul style="list-style-type: none"><li>Cabinet Paper: <a href="#">Establishment of a new public media entity</a></li><li>Cabinet Minute: <a href="#">CAB-19-CAB-SUB-0034</a>, of the same title.</li><li>Annex two: <a href="#">View and perspectives from targeted engagement to inform the development of a charter for a new entity</a></li><li>Cabinet Paper: <a href="#">Strengthening Public Media</a></li></ul>	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>

### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>NO</b>
<p>Treasury's Regulatory Impact Analysis team has determined that this proposal is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it would substantively duplicate the Strong Public Media Business Case. It has reviewed the business case and confirmed that it contains the requirements that would otherwise be included in a Regulatory Impact Statement.</p> <p>A link to the business case is provided at 2.1 above.</p>	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>NO</b>
Refer to section 2.3.	

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>NO</b>

## Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>

<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
<p>a) Information relating to both financial and non-financial costs and benefits can be found in the Business Case, Strong Public Media Business Case Governance Group Report and associated Cabinet papers referred to at 2.1 above.</p> <p>b) Some participants in the targeted engagement process expressed concern about the potential impacts of a large public media entity on competition for commercial funding for other entities within the media sector. To address these concerns the bill includes obligations for the entity to collaborate with other media entities. Further details regarding the role the entity will play to support the broader media ecosystem are set out at paragraph 72 of the Cabinet paper: Establishment of a new public media entity referred to at 2.1 above.</p>	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>YES</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>NO</b>
<p>a) The entity board has a collective responsibility to ensure the entity acts in accordance with its charter obligations. Poor performance or a failure to effectively implement the charter will impact on the entity's ability to achieve the intended public media outcomes and meet its other objectives. This risk will be mitigated through accountability measures including a requirement for the entity to assess the extent to which its performance fulfils its Charter and appropriate monitoring arrangements, as well as adequate Crown funding.</p> <p>b) The bill does not include an enforcement role for regulators. However, the entity will be subject to the Broadcasting Standards Authority and Media Council's respective standards and complaints services.</p>	

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b>
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Manatū Taonga is unaware of any international obligations relevant to the policy to be given effect by the bill.
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### Consistency with the government's Treaty of Waitangi obligations

<b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b>
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Based on advice from Te Arawhiti, Te Puni Kōkiri and Parliamentary Counsel Office, the bill has been developed to ensure it reflects a strong commitment to the principles of the Treaty of Waitangi, while ensuring the entity maintains the ability to make independent decisions on editorial matters.
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The approach taken is to include a specific Treaty clause in the bill that summarises the ways in which the entity will reflect the Crown's responsibilities in relation to Treaty principles as previously agreed by Cabinet – for instance by engaging on strategies and policies and through consulting the Minister for Māori Development on board appointments
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This approach has been informed by recently released Te Arawhiti guidelines: Providing for the Treaty of Waitangi in legislation and supporting policy design.
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Targeted engagement, including with Māori media and Māori representative entities was undertaken to inform the development of the charter. Engagement occurred through a series of virtual and face-to-face hui with organisations and interest groups representative of Māori and with Māori media.
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### Consistency with the New Zealand Bill of Rights Act 1990

<b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b>
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YES
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If the Attorney-General chooses to waive legal privilege to this advice, it will be published on the Ministry of Justice website at: <a href="http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights">http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights</a> .
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### Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?
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NO
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(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?
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NO
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### Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>
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NO
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### External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>YES</b>
<p>Targeted engagement was undertaken to inform the development of the charter including with;</p> <ul style="list-style-type: none"><li>• media organisations including current public media, private media, community media, industry bodies, advertisers, and content producers</li><li>• Māori media and Māori representative entities</li><li>• key audiences for a new public entity including those who are currently under-served or under-engaged.</li></ul> <p>A summary of the feedback received through the consultation process is available at the link set out in 2.1 above.</p> <p>The following agencies were consulted on the Cabinet paper and Bill: The Treasury, Te Puni Kōkiri, Public Service Commission, Ministry for Pacific Peoples, Office for Disability Issues, Ministry of Business, Innovation and Employment, Ministry of Youth Development, Ministry for Ethnic Communities, Ministry of Foreign Affairs and Trade, Te Arawhiti, Department of Internal Affairs, the Office for Seniors, Ministry for Women, and the National Emergency Management Agency.</p> <p>Manatū Taonga also engaged with RNZ, TVNZ and NZ On Air and other media sector stakeholders during the development of the business case supporting this proposal.</p>	

### Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>NO</b>
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## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

### Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO

### Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

### Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

### Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

### Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO

### Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>NO</b>

**Any other unusual provisions or features**

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>
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