

# Departmental Disclosure Statement

---

Broadcasting (Repeal of Advertising Restrictions) Amendment Bill
--

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.

14 November 2024

**Contents**

Contents.....2

Part One: General Policy Statement.....3

Part Two: Background Material and Policy Information .....4

Part Three: Testing of Legislative Content.....6

Part Four: Significant Legislative Features .....8

## Part One: General Policy Statement

The Bill repeals section 81 of the Broadcasting Act 1989. Section 81 restricts broadcast television advertising on Sunday and Anzac Day mornings between 6 am and noon, and both television and radio broadcast advertising on Christmas Day, Good Friday, and Easter Sunday.

The stated intent of the restrictions when they were enacted in 1989 was to maintain a place for a diversity of less commercial programming (i.e. public and special interest content).

Since the Broadcasting Act 1989 was enacted, technology and audience consumption habits have changed. The advent of the internet and smart phones, and emergence of on-demand and streaming services, has meant that fewer people are engaging with content through traditional linear formats. These changes have reduced the reach and impact of section 81, which applies only to traditional linear television and radio broadcasting. On-demand and live-streamed content are not subject to the restrictions under section 81.

The Bill—

- supports a level playing field for New Zealand media companies by removing the regulatory distinction between different media platforms:
- helps to modernise the Broadcasting Act 1989 by removing restrictions that are out of step with contemporary commercial regulation:
- allows New Zealand media companies to realise additional advertising revenue, which will help to support the ongoing production and distribution of local content.

## 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>NO</b>
--	-----------

### 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>
The Ministry for Regulation has determined that the repeal of section 81 of the Broadcasting Act 1989 is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.	

### 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>
<b>Benefits to media companies:</b> Engagement with media companies suggests that the current restrictions see them unable to realise an estimated \$6 million in advertising revenue each year, with additional lost revenue potential during significant events (such as the Rugby World Cup). A previous estimate by Sapere from 2021 (prior to the current economic downturn and associated impacts on the media sector) suggested this could be in the order of \$8 million per annum ( <a href="https://www.mch.govt.nz/publications/report-media-plurality-new-zealand">https://www.mch.govt.nz/publications/report-media-plurality-new-zealand</a> ). <b>Benefits to government:</b> Repeal of section 81 will see a limited benefit to government by removing the costs of administering and enforcing section 81. The number of complaints about breaches has historically been low, averaging one per year, and only one case has ever proceeded to prosecution.	

<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>NO</b>

<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>NO</b>
The Bill removes existing obligations (and therefore the need for compliance).	

## 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>
--

Analysis has confirmed there are no international obligations affected by the repeal of Section 81 of the Broadcasting Act 1989. Section 81 applies to domestic linear television and radio broadcasters. It does not apply to broadcasts where the signal for that programme originates outside New Zealand, is produced and transmitted simultaneously to both New Zealand audiences and audiences outside New Zealand, and is targeted primarily at audiences outside New Zealand.

### 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>
---

Analysis, informed by consultation with Whakaata Māori, Te Māngai Pāho, and Te Puni Kōkiri, has not determined any inconsistencies with the principles of the Treaty of Waitangi.

The original policy intent of section 81 was to maintain a place for a diversity of less-commercial programming (i.e. public and special interest content). In a contemporary context, this suggests content in te reo Māori and/or about te ao Māori, which can be recognised as a taonga requiring enhanced duty of care by the government.

However, consultation indicated that while Māori broadcaster audiences are traditionally more appreciative of the current ad-free periods, Māori audiences overall represent a younger demographic for whom the existing restrictions have increasingly limited effect, and repealing the restrictions leaves broadcasters free to cater to their audience preferences.

### 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>	<b>YES</b>
---	------------

Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/>.

### Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
--	--

<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>YES</b>
--	------------

<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>NO</b>
---	-----------

(a) The Bill repeals the offence relating to advertising restrictions in section 81 of the Broadcasting Act 1989.
---

<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
The Ministry of Justice is comfortable with the repeal of section 81(3).	

## 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>	<b>NO</b>
---	-----------

## 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>Prior to Cabinet policy agreement to the repeal of section 81 [CAB-24-MIN-0236], Manatū Taonga officials undertook limited, targeted consultation with New Zealand broadcasters to support understanding of the potential financial impacts of repealing the restrictions. Crown entities NZ On Air and Te Māngai Pāho were also consulted.</p> <p>Media sector stakeholders have been raising issues around section 81 for a number of years. Local TV and radio broadcasters view the provisions as out of date, unfair and ineffective. In 2015, consultation was undertaken on potential changes to the Broadcasting Act, including section 81. At this time, views on changes to the regime included:</p> <ul style="list-style-type: none"> <li>• Support for changes to / removal of the restrictions from broadcasters and advertisers.</li> <li>• Concern from some submitters that relaxing the restrictions would mean broadcasters would be reluctant to screen public interest and special interest content when programmes of wider appeal would be more likely to attract advertisers.</li> <li>• Concern at the removal of protections from advertising for sacrosanct days and times.</li> </ul> <p>It is likely that some stakeholders would hold the same views if consulted today. However, given the passage of time and further changes in technology and audience behaviour it is likely that some views would have shifted. A 2021 report by Sapere recommended the restrictions be removed, noting they “have no reasonable foundation in today’s media market. Any initial rationale behind the restrictions has long since been undermined by the dramatic shift in New Zealanders’ consumption of online content” (<a href="https://www.mch.govt.nz/publications/report-media-plurality-new-zealand">https://www.mch.govt.nz/publications/report-media-plurality-new-zealand</a>).</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>
---	-----------

## 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?	YES
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO
The Bill would repeal a strict liability offence (not create or amend).	

### 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
--	----

4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
---	----

### Any other unusual provisions or features

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