

# Interim Regulatory Impact Statement: Modernising professional media regulation

## Coversheet

### Purpose of Document

Decision sought:	Cabinet approval to release a public discussion document
Advising agency:	Ministry for Culture and Heritage
Proposing Minister:	Minister for Media and Communications
Date finalised:	21 October 2024

### Problem Definition

The broadcasting standards regime provides inconsistent and increasingly limited coverage of the media that New Zealanders engage with. This undermines the purpose of regulation (to ensure quality, trusted content and uphold industry and community standards), puts linear television and radio at a regulatory and financial disadvantage, and compounds the fragmentation across the broader content regulation system.

Options to address these issues, while limited by scope constraints in relation to the range of media covered, also provide an opportunity to ensure a regulator has:

- a more coherent remit to administer potential regulation in respect of 'new' media, including online and on-demand platforms; and
- a role and operating model (particularly in relation to the balance of intervention and quality assurance) that is appropriately and efficiently calibrated against well-established industry self-regulation and increased concern from some quarters about media's independence from government.

### Executive Summary

Parts 1 to 3 of the Broadcasting Act 1989 set up broadcast standards, a procedure for dealing with audience complaints about broadcast content, and the Broadcasting Standards Authority (BSA) to administer the standards and complaints regime. While the standards appear to be functioning well within their existing (broadcast) remit, the regime's coverage excludes online and on-demand content, which New Zealanders are increasingly choosing over broadcasting.

Changing audience preferences are also a factor in broadcasters' revenue diminishing. This has flow-on impacts for the BSA's operating budget, which is partially funded by a levy on those broadcasters.

Industry bodies with self-imposed standards (including the New Zealand Media Council) also provide complaints resolution in respect of their members' content. Several other Acts and government entities also play a role in content regulation. Different regulatory focuses and coverage create fragmentation, gaps, and duplication, with impacts both for media and for audiences seeking to raise concerns.

Previous government work, which had a much wider scope (including publicly available user-generated content) and sought to create a more unified regime of content regulation framed around minimising harm from content to individuals and particularly children, has ended without changes being implemented. Comparator jurisdictions are also grappling with content regulation in an age of media globalisation and convergence, and declining trust in media content and organisations.

This interim regulatory impact statement (RIS) considers options to implement a new regime to replace Parts 1 to 3 of the Broadcasting Act. The objective is to increase the consistency and durability of regulation across the range of professional media (that New Zealanders engage with).

The definition of 'professional media' will need further work to precisely determine, but the intent at this stage is to exclude social media and other online platforms hosting user-generated and non-curated content. This scope, and the exclusion of the full content classification regime from options for change, recognises the Minister of Internal Affairs' decision to cease work on broader content regulation.

Should change options progress, further work will also be required to support coherent and efficient labelling and classification requirements, particularly for commercial video on-demand (CVoD) providers that are subject to a specific regime under the Films, Videos, and Publications Classification Act 1993.

Three sets of regulatory choices are considered in respect of a potential new regime for professional media, relating to:

- **regulatory coverage**, with options to maintain the status quo (broadcast media only) or broaden out to professional media organisations based or operating in New Zealand irrespective of the delivery platform;
- **the role of the regulator**, particularly in respect of complaints resolution. Options include the counterfactual (the BSA's current approach but with expanded coverage), a more interventionist approach, a co-regulatory approach that balances industry and regulator responsibilities, or an approach that focuses on self-regulation and places exclusive responsibility for complaints with media organisations and industry bodies.
- **appeal rights** from decisions about complaints, with the counterfactual providing an external appeal pathway from decisions of the regulator only, and the change option to legislate for appeals from industry self-regulatory bodies.

The RIS assesses options against criteria encompassing regulatory stewardship, audience interests, compliance burden for regulated parties, Government costs and efficiencies, and the Crown's Te Tiriti o Waitangi obligations. Options in relation to the regulator's role and appeal rights are also assessed against an extra criterion around preserving and enhancing both perceived and actual media independence.

The analysis suggests a platform-neutral approach that expands coverage to all professional media operating in New Zealand; a regulator that works with industry and industry bodies to develop and oversee standards, with a residual complaints resolution function where industry self-regulatory bodies' processes are not available; and a right for complainants to appeal industry bodies' decisions to the regulator in limited circumstances. Combined, these options appear to present the best opportunity to

modernise professional media regulation in a way that empowers the sector, minimises duplication, and avoids risks and unintended consequences.

However, significant dependencies between regulatory choices mean consultation and more work is essential before determining the overall framework. This work is also needed to inform funding needs and arrangements for the regulator, which (along with the costs and benefits of the preferred approach) have not been quantified at this stage of analysis.

Funding arrangements will affect both the feasibility of, and sector support for, reform. If the proposed approach proceeds to detailed design and analysis following public consultation, careful consideration of the levy (including cost recovery impact analysis) will be required. This would be expected to account for the increased role, and therefore membership fees, of industry self-regulatory bodies, as well as the current economic pressure on both the Government and the industry.

### **Stakeholder views**

Industry and regulator feedback on previous proposals for reform, as well as ongoing engagement, suggests broad agreement that modernising media regulation is necessary and overdue. This feedback highlights that the broadcaster-centric regulatory approach of the BSA risks being ineffective as audience preferences and media technology continue to change. Initial high-level discussions with the BSA, Media Council, and government agencies indicate general support for the direction of preferred options in this RIS, though with some reservations about the scope constraints and a view that the detailed design of arrangements will be crucial.

### **Next steps**

Public consultation will be undertaken on the preferred options in this interim RIS (including seeking feedback on the alternative options), which will help to flesh out analysis and provide a mandate for more detailed design work on options to be progressed (which will also enable costs and benefits to be quantified).

Legislative reform would be required to implement the preferred options; this could be progressed alongside requirements to support increased local content investment and accessibility and/or change to the entities that administer public funding for audiovisual content (each canvassed in separate interim RISs).

### **Limitations and Constraints on Analysis**

The key limitation on the analysis in this document, noting it is intended to support consultation, is the absence of formal views and feedback from affected parties and the wider public.

A key constraint on options centres on Ministerial decisions to conclude previous work, led by the Department of Internal Affairs, on a consolidated framework for content regulation in New Zealand. This decision has informed the scope of this interim RIS, which excludes regulation of social media and changes to the classification regime, both of which sit within the Internal Affairs portfolio. The preferred options would be compatible with future changes to accommodate regulation of social media and/or to standardise or bring together labelling and content classification functions. In the meantime though, this scope means wider fragmentation and gaps across the content regulation system will remain.

All change options are light on detail, in line with an approach of seeking stakeholder inputs early to both provide a mandate for and inform detailed policy analysis and design. However, the lack of detail underscores the interdependencies between the regulatory choices analysed. Combined with the open question of whether the broadcasting levy would be expanded, adjusted or abolished (which cannot be answered reliably until the regulator's coverage, role, and government funding is more settled), these factors significantly limit the certainty of analysis.

Due to time constraints and the need to determine the shape of the preferred option in more detail, neither transitional nor ongoing costs and benefits have been quantified. These costs are expected to be a significant factor in Ministers' policy decision-making.

Should a change option be carried forward, a final RIS following consultation is expected to address these deficiencies so Ministers can be confident in using the analysis to inform final policy decisions.

### Responsible Manager

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Manatū Taonga Ministry for Culture and Heritage

s9(2)(a)

21 October 2024

### Quality Assurance

Reviewing Agency: Ministry for Culture and Heritage, Department of Internal Affairs

Panel Assessment & Comment: A Quality Assurance Panel with representatives from MCH and DIA reviewed the Interim Regulatory Impact Statement, *Modernising professional media regulation*, and considers it meets the quality assurance criteria for an interim RIS.

The analysis is thorough but of an appropriate length and level of detail, with some of the more technical aspects clearly explained. Limitations and constraints, and their potential impacts, are clearly communicated. Most of the criteria used to compare options to the status quo are logical and well-founded. Further sector consultation and cost/benefit analyses are required to fully inform options for Ministerial decision making. The Panel considers the RIS provides sufficient information to inform decisions to consult on the proposals.

## Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

### Legislative context

#### *The Broadcasting Act*

1. The Broadcasting Act 1989 (the Act) reformed regulation and funding arrangements for New Zealand television and radio. Parts 1 to 3 of the Act provide a regime of regulatory oversight for broadcasters and broadcast content, by setting up:
  - 1.1. minimum standards,<sup>1</sup> which every broadcaster is responsible for maintaining;
  - 1.2. a framework for complaints about broadcast programmes, under which primary responsibility for resolving complaints rests with the relevant broadcaster; and
  - 1.3. the Broadcasting Standards Authority (BSA), which administers the regime.<sup>2</sup>
2. The BSA is an Independent Crown Entity, monitored by Manatū Taonga the Ministry for Culture and Heritage (the Ministry), with legislative functions including:
  - 2.1. receiving and determining complaints (generally only after the relevant broadcaster has received and had an opportunity to respond to the complaint);
  - 2.2. issuing advisory opinions relating to standards and ethical conduct;
  - 2.3. encouraging broadcasters to develop and observe codes of practice,<sup>3</sup> and approving such codes or issuing them itself where appropriate; and
  - 2.4. conducting research on matters relating to broadcasting standards.
3. Parties to a complaint (either the broadcaster or the complainant) can appeal against a BSA decision to the High Court within one month of the BSA's decision. The determination of the High Court is final and cannot be appealed further.
4. While the Act's definition of 'programme' is broad,<sup>4</sup> the definition of 'broadcasting' explicitly excludes programmes 'made on the demand of a particular person for reception only by that person.' Parts 1 to 3 therefore do not cover services like Netflix (though the BSA has a specific agreement with Neon to deal with content standards and complaints), and only cover online content if it has previously been broadcast.
5. The Act requires broadcasters to inform the BSA of their total annual revenue, and for those with revenue of over \$500,000, to pay 0.00051 percent of it to the BSA. This levy is used to offset the BSA's costs, which are part-funded by the Government.

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<sup>1</sup> The standards require consistency with the observance of good taste and decency, the maintenance of law and order, individual privacy, the principle of balanced coverage in respect of controversial issues of public importance, and compliance with any relevant code of broadcasting practice approved by the BSA; section 4. This section also prohibits the broadcast of films classified as objectionable.

<sup>2</sup> The BSA also has a role in administering Part 6 of the Act, which concerns electoral broadcasting and is administered by the Ministry of Justice. Part 6 is outside the scope of this RIS (see below at paragraph 58).

<sup>3</sup> In relation to protection of children, portrayal of violence, fairness and accuracy, denigration or unlawful discrimination, alcohol promotion restrictions, content warnings, and privacy; section 21(1)(e).

<sup>4</sup> The definition covers 'sounds or visual images (or a combination) intended to inform, enlighten, or entertain, to promote the interests of any person, or to promote any product or service, but does not include visual images, whether or not combined with sounds, that consist predominantly of alphanumeric text'; section 2.

### *Codes of practice*

6. The Broadcasting Code, issued by the BSA in 2022, provides detailed guidance on standards for broadcasters relating to social responsibilities, balanced and accurate reporting, and rights to privacy and fair treatment. It was co-developed by broadcasters and the BSA in consultation with other stakeholders and the public. A separate code covers election broadcasting (beyond this RIS's scope – see below at paragraph 58).
7. The Broadcasting Code is secondary legislation, which means it is subject to Parliament oversight (and can be disallowed, amended or replaced by resolution).

### *Other regulation of media content in New Zealand*

8. A range of other Acts and bodies regulate media content in New Zealand, including:
  - 8.1. The Films, Videos, and Publications Classification Act 1993 (the Classification Act), which is administered by the Department of Internal Affairs (DIA):
    - establishes the Office of Film and Literature Classification (the Classification Office) and the Film and Video Labelling Body, and
    - contains the requirements and procedure for classifying and labelling films for cinematic and DVD release, commercial video on-demand services,<sup>5</sup> and some video games, and specific provisions dealing with content classified as objectionable.
  - 8.2. The Harmful Digital Communications Act 2015, administered by the Ministry of Justice, includes complaints resolution and education functions assigned to Netsafe (an independent non-profit organisation).
  - 8.3. The New Zealand Police, Customs, and DIA deal with criminal content under a range of legislation including the Classification Act, the Harmful Digital Communications Act, and the Customs and Excise Act 2018.
9. These regulatory regimes have been developed independently over time and reflect distinct and specific policy outcomes. The broadcasting standards regime sits alongside these pieces of legislation and is specifically limited to content that was broadcast on television or radio within the last 20 working days, including streaming versions of previously broadcast content. While some overlaps exist under broadcasting standards, such as classification and advisory requirements, these are complementary and do not adversely impact the other media regulatory regimes.

### **The BSA's inputs and outputs**

10. For 2023/24, the BSA's revenue totalled \$1.732 million, including \$0.859 million from the Crown, \$0.751 million from the levy, and \$0.121 million from interest.

### *The broadcasting levy*

11. The levy was originally introduced in 1996 to help fund the BSA's operations, including the development of standards and complaints resolution, with the \$0.5 million revenue threshold established to reduce compliance costs for smaller broadcasters. It was opposed by broadcasters at the time of its introduction.<sup>6</sup> The BSA noted in 1998 that

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<sup>5</sup> Since 2021, classification and labelling of content has been required on specified commercial video on-demand (CVoD) providers (currently Alphabet, Amazon, Apple, Microsoft, Netflix, Sky Network Television Limited, Sony, and the Walt Disney company); [www.legislation.govt.nz/act/public/1993/0094/latest/LMS408255.html](http://www.legislation.govt.nz/act/public/1993/0094/latest/LMS408255.html).

<sup>6</sup> BSA Annual Report 1997; [www.bsa.govt.nz/assets/Uploads/AnnualReports/e3dbc974d1/Annual-Report-1997-Full.pdf](http://www.bsa.govt.nz/assets/Uploads/AnnualReports/e3dbc974d1/Annual-Report-1997-Full.pdf).

levy income had allowed it to pursue other functions under the Act, such as research and advisory opinions, that had previously been deferred due to funding constraints.<sup>7</sup>

12. Since the late 2010s, levy revenue has declined in line with overall shifts from broadcasting to streaming and on-demand content. Annual levy revenue is difficult to forecast, due to fluctuations in advertising and continuing changes in audience behaviour and broadcasters' activities. Despite a slight increase in the last two years, the BSA expects a more significant decline to \$0.6 million for the 2024/25 year.<sup>8</sup>

#### *Government funding*

13. Government funding for the BSA via Vote Arts, Culture and Heritage has remained relatively static until recently, with Budgets 2022 and 2024 addressing cost pressures via baseline increases (from \$0.609 million in 2021/22 to \$1.009 million in 2024/25). This funding remains subject to annual Budget processes and an ongoing Government emphasis on disciplined spending.

#### *BSA financial position and outputs*

14. For 2023/24 The BSA had total expenditure of \$1.659 million (\$1.171 million in personnel costs, \$0.459 million in other expenses,<sup>9</sup> and \$0.028 million in depreciation and amortisation). It attributed its spending on outputs as:<sup>10</sup>
  - 14.1. \$0.962 million for complaints resolution (including receiving 130 formal complaints, issuing 106 decisions, and addressing 614 enquiries);
  - 14.2. \$0.282 million for oversight and development of the standards system; and
  - 14.3. \$0.415 million for education and engagement (including 104 meetings, seminars and workshops, a campaign around election-related complaints, translation of resources, monthly newsletters, and engagement on government policy).
15. As levy revenue declines, the BSA has taken measures to reduce spending such as reducing research spend and commissioning research and surveys (such as those of public attitudes on a range of matters to inform the development and application of broadcasting standards) on a biennial basis.

#### **Media industry self-regulatory bodies**

16. Two industry self-regulatory bodies, which are operated by industry members independently of government, regulate specific media sectors.
17. The Media Council is a voluntary self-regulatory body funded by its more than 100 members, covering newspapers, magazines, digital publishers, and online and on-demand video and radio providers. Established in 1972 as the Press Council, it has traditionally focused on journalism and news media, but expanded its remit in the 2010s.<sup>11</sup> The Council, chaired by a retired Court of Appeal judge, comprises industry representatives and public members. As of 2021, its annual budget was around \$250,000, almost exclusively from members' fees and contributions.<sup>12</sup>

<sup>7</sup> BSA Annual Report 1998; [www.bsa.govt.nz/assets/Uploads/AnnualReports/06e30e7ebf/BSA-Annual-Report1998.pdf](http://www.bsa.govt.nz/assets/Uploads/AnnualReports/06e30e7ebf/BSA-Annual-Report1998.pdf).

<sup>8</sup> BSA Statement of Performance Expectations 2025; [www.bsa.govt.nz/assets/BSA-SPE-2025-Screen\\_FINAL.pdf](http://www.bsa.govt.nz/assets/BSA-SPE-2025-Screen_FINAL.pdf).

<sup>9</sup> Audit fees; consultancy; research; travel, accommodation and training; rent; IT; and office expenses.

<sup>10</sup> BSA Annual report 2024.

<sup>11</sup> Membership includes some international streaming platforms, but its Video On Demand Classifications Code focuses on the labelling and classification of on-demand content rather than the substance of the content itself.

<sup>12</sup> New Zealand Media Council Annual Report 2021: [www.mediacouncil.org.nz/media/website\\_posts/1885/Media-Council-Annual-Report-2021\\_FINAL.pdf](http://www.mediacouncil.org.nz/media/website_posts/1885/Media-Council-Annual-Report-2021_FINAL.pdf).

18. The Advertising Standards Authority (ASA) was established in 1973. It has 14 member organisations representing advertisers, agencies, and the media. The ASA's jurisdiction covers non-members and international advertisers (to the extent their advertising is seen by New Zealand audiences). The ASA has five staff and an annual budget of about \$800,000 from member subscriptions and advertiser levies.<sup>13</sup>
19. As well as advocating for their industries, these bodies hear complaints about their members at no charge in relation to compliance with self-imposed standards.<sup>14</sup> The standards (framed as broad principles for the Media Council, and more detailed codes of practice for the ASA) generally align with the Broadcasting Code, while reflecting each body's jurisdiction and the operating environment of that industry. For example:
  - 19.1. the Media Council's principles reflect a focus on ethics in reporting and journalism and the ASA's codes have a specific focus on advertising, such as the location of advertisements and the target audience.
  - 19.2. the ASA's codes reflect a wider range of legislative obligations and restrictions in relation to advertising (which sit outside the Broadcasting Act), for example in relation to fair trading, medicines, and the sale and supply of alcohol.<sup>15</sup>

## Sector and audience context

### *Technological and audience shifts*

20. The Act came into force when radio and television broadcasting were the main sources of audiovisual mass media that could be freely accessed by the public.
21. Technological advancements and increasing globalisation have brought new entrants (predominantly multi-national platforms) into the market. Audiences now have significantly more choice around where and how they consume media content, and the types of content they consume. Since 2020, digital audiovisual media (such as streaming services and social media) have attracted bigger audiences than traditional media, and daily reach of streamed music has overtaken radio listening.<sup>16</sup>
22. Linear broadcasting technology is globally in decline, due to the high costs of transmission and audience preferences for online streaming. In New Zealand, industry estimates suggest traditional broadcast television will wind up in the next decade or so – s9(2)(ba)(i) and satellite TV is likely to follow. Linear radio is likely to have more longevity, but its future will also be online streaming.
23. For the purposes of this RIS, the shift from linear broadcasting to on-demand and online streaming (which is dominated by global players) has two key impacts:
  - 23.1. it reduces the reach of the BSA and the broadcasting standards regime; and

<sup>13</sup> <https://www.asa.co.nz/about-us/>.

<sup>14</sup> To hear complaints, the Media Council requires complainants to have sought resolution through the relevant media organisation first, and both require a waiver of rights to further action outside the body's processes.

<sup>15</sup> Due to the ASA's significantly broader remit, options affecting its operations are not included within the scope of this RIS; see further at paragraph 60.

<sup>16</sup> NZ On Air, *Where Are The Audiences? 2024* [www.nzonair.govt.nz/research/where-are-the-audiences-2024/](http://www.nzonair.govt.nz/research/where-are-the-audiences-2024/): Global video sharing platforms (like YouTube and TikTok) reach 64% of the population daily, subscription video on demand platforms (like Netflix) reach 56%, and broadcaster video on demand platforms (like TVNZ+) reach 35%. Linear free-to-air and pay TV reach 29% and 27% respectively. Streamed music reaches 49%, while radio broadcasting reaches 42%.



- 23.2. it reduces broadcasters' advertising revenue (exacerbated by current financial headwinds), which in turn reduces the BSA's revenue from levies.

### *Engagement with regulators*

24. From the BSA's 2024 annual report:
- 24.1. The number of formal complaints to the BSA (130) dropped by 24 percent on the year before, while total enquiries (614) increased by four percent.
  - 24.2. Nearly three quarters of complaints were about news and current affairs (the next most-complained about programme genre, radio/talkback, had 10 percent), with accuracy, balance, and fairness the most-cited standards in complaints.
  - 24.3. Television content was subject to 85 complaints, and radio to 35. Only 4.7 percent of BSA decisions upheld the complaint.
  - 24.4. Complainants' satisfaction with their interactions with the BSA averaged 69 percent across staff professionalism, written correspondence, and phone contact.
25. The BSA's 2023 annual report highlighted survey findings that:<sup>17</sup>
- 25.1. 68 percent of respondents were aware of the BSA, 61 percent knew they could make a formal complaint, and a further 30 percent assumed they could. Māori, Pacific Peoples and Asian people were significantly less aware of the BSA compared with the wider population, and Pacific Peoples and Asian people were significantly less likely to be aware of the ability to make a formal complaint.
  - 25.2. around 80 percent of broadcasters rated their working relationship with the BSA as good or very good, and rated general information from the BSA highly.
26. The Media Council's 2021 annual report indicated 199 complaints were subject to rulings, with 75 against newspapers (including 10 against community newspapers), 83 against online news sites, and 34 against broadcasters.<sup>18</sup> Just under two thirds of complaints were ruled as having insufficient grounds to proceed, and a quarter were not upheld; 13 complaints were upheld in full or in part. The report did not include information about the standards or issues raised in complaints.

### *Audience trust in news media*

27. As is the case globally, evidence indicates New Zealanders' trust in news media is declining. For example, a 2024 Auckland University of Technology report found that:<sup>19</sup>
- 27.1. only 33 percent of respondents trust news 'most of the time' (nine percent less than in 2023), with 87 percent of those who do not trust the news considering it is "biased and unbalanced".
  - 27.2. the proportion of New Zealanders who agreed that the news media was independent of undue political or government influence most of the time decreased from 32 percent in 2023 to 27 percent in 2024, while the proportion who disagreed increased from 43 to 47 percent.

<sup>17</sup> BSA Annual Report 2023: [www.bsa.govt.nz/assets/BSA-Annual-Report-2023\\_WEB-PDF-FINAL.pdf](http://www.bsa.govt.nz/assets/BSA-Annual-Report-2023_WEB-PDF-FINAL.pdf).

<sup>18</sup> [www.mediacouncil.org.nz/media/website\\_posts/1885/Media-Council-Annual-Report-2021\\_FINAL.pdf](http://www.mediacouncil.org.nz/media/website_posts/1885/Media-Council-Annual-Report-2021_FINAL.pdf). Other complaints covered business publications, magazines, and generalised concerns about New Zealand media.

<sup>19</sup> AUT Research Centre for Journalism, Media and Democracy, *Trust in News in Aotearoa New Zealand 2024* [www.jmadresearch.com/files/ugd/a95e86\\_2fd2baf7a9484fff8e0451045e8b7dd1.pdf](http://www.jmadresearch.com/files/ugd/a95e86_2fd2baf7a9484fff8e0451045e8b7dd1.pdf).

28. A report the Ministry commissioned in 2023 to assess the baseline state of the New Zealand Media System provided a slightly more positive picture, finding that:<sup>20</sup>
- 28.1. a majority of New Zealanders think overall news reporting is trustworthy (57 percent of respondents), with 48 percent considering that news reporting is fair and balanced and 43 percent that media organisations are trustworthy;
  - 28.2. a significant minority thought news reporting is not trustworthy or fair and balanced, and/or that media organisations are not trustworthy (21-26 percent);
  - 28.3. those aged 18-29 are less likely to trust the fairness and balance of news reporting (38 percent), or media organisations (37 percent); and
  - 28.4. accuracy and balance are the most important factors for news sources' trustworthiness (this view was shared among all age and ethnicity groups).

### International comparators

29. Approaches overseas to modernising regulation of media content are emerging and varied. Evidence about the impacts of recent or planned changes (for instance, regulation encompassing streaming platforms and online content) is relatively scant.
30. Jurisdictions such as Australia, the United Kingdom and Ireland have legislative protections against harmful content in the media, including online platforms. The Australian approach to regulating CVoD services aligns closely to New Zealand's, including the ability for regulated services to use their own self-rating systems.
31. Regulators in the UK and Ireland have been undertaking work to regulate streaming and on-demand video platforms to more closely align the standards that apply to those platforms with their broadcasting standards. Ireland is also leading the European Union in implementing the Audiovisual Media Services Directive, which will place more content requirements on video platforms.
32. Australia and Ireland require a safety commissioner to receive information via reporting and complaints mechanisms. Approaches and proposals in the UK, Ireland and the European Union consider one primary regulator for traditional and online content.
33. Regulation of content often involves a co-regulatory approach, as in Ireland, the UK, Australia and Canada. In Canada, an industry group develops standards and responds to complaints in the first instance. Complaints decisions can be appealed to the government regulator and then to the Courts. A 2007 evaluation found that the Canadian model of industry self-regulation in the first instance, has been a success and has reduced the workload of the government regulator.<sup>21</sup>
34. Most overseas regulators also have regulatory responsibilities in the wider telecommunications sector including broadband, radio spectrum management and telecommunications infrastructure. This contrasts with New Zealand, where wider telecommunications regulation sits with agencies such as the Ministry of Business, Innovation and Employment and the Commerce Commission.

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<sup>20</sup> Angus and Associates, *The Current State of New Zealand's Media System: A Baseline Report* (Nov 2023); [www.mch.govt.nz/sites/default/files/2024-05/the-current-state-of-nz-media-system-baseline-report-nov-2023.pdf](http://www.mch.govt.nz/sites/default/files/2024-05/the-current-state-of-nz-media-system-baseline-report-nov-2023.pdf)

<sup>21</sup> Review of the Regulatory Framework for Broadcasting Services in Canada, Dunbar and Leblanc, 2007; [https://publications.gc.ca/collections/collection\\_2008/crtc/BC92-62-2007E.pdf](https://publications.gc.ca/collections/collection_2008/crtc/BC92-62-2007E.pdf).

## Related government work programmes

### *Previous Government review of content regulation*

35. From June 2021 to May 2024 DIA conducted a review of content regulation, with support from the Ministry. With a focus on consumer safety and reducing harm to individuals and children, the work aimed to design a unified regulatory system that could cover all major media platforms (including social media), adapt to emerging and future technologies and platforms, and was easy to navigate for users, content creators, and regulators.
36. In mid-2023 DIA consulted on a proposal focusing on safety objectives. This included industry regulation covering all media platforms (including social media), collaboratively developed codes of practice for media sectors, and a new regulator to oversee the framework at arm's length from government. The review was closed without implementing the proposed approach.
37. The Ministry notes that the aims and scope of options analysed in this RIS (discussed further below) are significantly narrower than the DIA-led review. Rather than minimising harm and ensuring a unified approach across the full range of media New Zealanders engage with, this work is focused on modernised regulation of a particular subsector (professional media, the parameters of which are discussed below), which has been seeking updates to the broadcasting standards system for some time.

### *Other Ministry work to reform media funding and regulation*

38. The Ministry's work programme includes concurrent work looking at:
  - 38.1. implementing a more modern, efficient and effective system for administering Crown funding for media content, including options to better align or consolidate the New Zealand Film Commission and NZ On Air; and
  - 38.2. ensuring New Zealanders have access to local audiovisual content, including through options to encourage more investment from streaming platforms into local content, support appropriate 'prominence' of local platforms on smart TVs, and increase captioning and audio description. Any regulatory options progressed in this space will require a competent body to administer.
39. The Ministry is also progressing legislation to remove current restrictions on broadcast advertising (contained in Part 7 of the Act) and support New Zealand news publishers to negotiate on more equal terms with digital platforms that make the news publishers' content available online.

## Counterfactual

40. Programme standards, which are principles-based, and codes of practice and industry self-regulatory bodies, which are adaptable, are likely to continue operating effectively through ongoing sector, audience, and technological shifts. As the media landscape continues to evolve and develop, other industry bodies that focus on specific parts of the media sector may emerge; for example, a stand-alone industry regulatory body that specifically provides guidance and resolves complaints in relation to commercial, free, and ad-supported streaming entertainment content.
41. The BSA's coverage, and therefore its effectiveness, will continue to diminish through these shifts. This impact will be exacerbated by declining levy revenue, which is forecast to decline up to 40 percent compared to previous high levy revenues in the early 2010s. The Government will need to increase direct funding to compensate (which will be

difficult in the current fiscal context), and/or the BSA will need to narrow its focus (further reducing its effectiveness).

42. Over time, the vast majority of content New Zealanders consume will only be regulated in so far as objectionable content or content that is prohibited by the Terms of Service of the platform, or through voluntary self-regulation. For media platforms that do not belong to industry regulatory groups, audiences will have very limited recourse to raise concerns and complaints.
43. The counterfactual leaves a gap in terms of monitoring and enforcement of potential regulatory measures affecting online and streaming platforms (to support local content production and accessibility, noted above at paragraphs 38 and 39), which would most appropriately sit with an independent media regulator.

### What is the policy problem or opportunity?

44. The counterfactual presents problems in relation to:
  - 44.1. regulatory coverage, which is limited to broadcasting (linear TV and radio stations). Inconsistent and increasingly limited oversight of streaming content and media platforms that audiences engage with:
    - a. undermines the intent of regulatory oversight (to ensure quality, trusted content and that industry and community standards are upheld);
    - b. contributes to an uneven playing field by subjecting broadcast media to regulation, and a levy, that other media organisations do not face; and
    - c. compounds the fragmentation of roles and functions across the broader system of content regulation.
  - 44.2. fiscal sustainability. The BSA's reducing levy revenue puts pressure on the government to top up its budget. In the current context, where Government has signalled further Budget savings are required, the BSA's resource may not sustain the full suite of its regulatory responsibilities.
45. This work presents an opportunity to ensure the scope of the regulator can accommodate new regulatory mechanisms affecting online and streaming platforms (noted above at paragraphs 38 and 39) in a way that promotes holistic, strategic, and effective oversight and administration.
46. Work relating to the coverage and funding of the BSA and complaints process requires consideration of the role of a modernised media regulator. The functionality of self-regulatory bodies, and broader issues around trust in professional media, mean it is important to calibrate an operating model in a way that appropriately and efficiently balances powers of intervention, perceived and actual freedom of expression and the press, and the need for quality assurance of regulatory decisions.

### Stakeholder views

47. Alongside New Zealand audiences, key stakeholders for this work include:
  - 47.1. the BSA and Media Council;
  - 47.2. other bodies with roles in the broader content regulation framework (including the ASA, Netsafe, DIA and the Classification Office); and

- 47.3. media organisations and platforms operating in New Zealand.
48. The BSA has highlighted increasing gaps in its mandate and the broadcasting standards regime. For instance, its 2023-27 Statement of Intent notes that “regulatory reform is now urgent. Our outdated legislation leaves us hobbled, and the fastest growing sectors of media – streaming and on-demand video – largely unregulated.”<sup>22</sup>
49. From submissions on previous work and the Ministry’s (and Ministers’) ongoing engagement with New Zealand media organisations, it is clear there is strong support for reform. These organisations (particularly broadcasters) consider that the Act is out of date, the regulatory approach needs reform to reflect the modern media environment and the existence of competent self-regulation, and that a level playing field is required for New Zealand media to compete with overseas providers.

#### *Feedback on previous DIA proposals for reform*

50. Following the closure of DIA’s review of content regulation, it summarised key themes from public submissions on the proposed model. Consistent with paragraph 49 above, submissions from media organisations agreed that the current system can be confusing for users and needs updating. DIA summarised submissions from media and content regulators as supportive of simplifying regulation, using a co-regulatory code-based approach, and ensuring more oversight of platforms that are currently unregulated to minimise harm from content to individuals and particularly children.
51. However, they emphasised that as professional media outlets, they are already covered by and compliant with existing regulations and provide access to content responsibly. They expressed concern about a ‘one-size-fits-all’ approach, and suggested reform should focus on comparatively less-regulated social media platforms.
52. Most submitters agreed Te Tiriti o Waitangi should be embedded in content regulation.

#### **What objectives are sought in relation to the policy problem?**

53. The objective for this work is to increase the consistency and durability of regulation across the range of professional media platforms New Zealanders engage with.
54. This objective complements the overarching aims of the Ministry’s media and content production work programme, which are to:
- 54.1. create a modern, fit for purpose regulatory and funding environment; and
  - 54.2. support healthy and sustainable New Zealand media and content production sectors that deliver for New Zealand audiences.

<sup>22</sup> Statement of Intent 2023-27, p 10. [www.bsa.govt.nz/assets/Uploads/BSA-Statement-of-Intent-20232027.pdf](http://www.bsa.govt.nz/assets/Uploads/BSA-Statement-of-Intent-20232027.pdf).

## Section 2: Deciding on options to address the policy problem

### What criteria will be used to compare options to the status quo?

55. The criteria used across all sets of regulatory options are:
  - 55.1. **Regulatory stewardship:** increasing the consistency and durability of regulation across the range of professional media platforms New Zealanders engage with, and supporting regulatory coherence more broadly;
  - 55.2. **Audience and societal interests:** supporting audiences to navigate and have a voice in the regulatory system, and upholding the quality and standards of professional media content without undermining choice;
  - 55.3. **Government costs and efficiencies:** managing the cost of, and encouraging efficiencies in, government intervention;
  - 55.4. **Compliance burden:** minimising costs to regulated parties; and
  - 55.5. **Treaty of Waitangi:** supporting and upholding the Crown's te Tiriti obligations.
56. For analysis of the regulator's role and appeal rights, an additional criterion is
  - 56.1. **Media independence:** preserving and/or enhancing the perceived and actual independence of professional media in New Zealand.
57. The Ministry notes that this criterion is distinct from the freedom of expression, neither of which should be conflated with freedom from scrutiny. Should change options be progressed, further analysis will be required on the detailed design of the regulator to ensure appropriate protections and expectations around the freedom of expression.

### What scope will options be considered within?

58. The scope of options is framed around Parts 1 to 3 of the Act (programme standards, complaints, and the BSA). Other Parts, which govern NZ On Air,<sup>23</sup> Te Māngai Pāho,<sup>24</sup> and electoral broadcasting,<sup>25</sup> are out of scope.
59. While there are known issues with fragmentation across New Zealand's wider framework of content regulation, earlier in 2024 the Minister for Internal Affairs directed work to cease on a broad review of content regulation, including of social media platforms. Therefore, while the options in this RIS could present a 'stepping stone' toward more fulsome consolidation of content regulation in future, the current scope:
  - 59.1. is limited to regulation of 'professional' media organisations operating in New Zealand. Further work will be required to define the exact scope of coverage under any change options progressed. At this stage the intent is to encompass organisations that distribute media content they have produced, commissioned, or directly paid for and curated (including global streaming platforms);<sup>26</sup> and

<sup>23</sup> NZ On Air, formally the Broadcasting Commission, administers public funding for New Zealand media content and platforms. It is established under Part 4 of the Act, which is administered by the Ministry. Separate, concurrent Ministry work is considering options to modernise and consolidate public funding for content.

<sup>24</sup> Te Māngai Pāho, formally Te Reo Whakapuaki Irirangi, administers public funding for content that promotes Māori language and Māori culture under Part 4A of the Act, which is administered by Te Puni Kōkiri.

<sup>25</sup> Part 6 of the Act, administered by the Ministry of Justice, regulates 'electoral programmes' (in essence, broadcasts that advocate for or oppose political parties or candidates, or notify meetings in connection with an election, during election periods).

<sup>26</sup> Recognising there will be some overlap in relation to the existing CVoD classification regime, further work will be required to ensure the scope and responsibilities of regulators are clear and coherent.

- 59.2. does not extend to the labelling and content classification regime (including the CVoD classification regime), Classification Office, or related institutions established under the Film, Videos, and Publications Classification Act 1993.
60. The scope of options does not include advertising or the jurisdiction of the ASA, which involve multiple regulatory regimes extending beyond the scope of this work. Initial consultation and analysis suggest including the ASA in this work could risk undermining its operations and/or other bodies involved in advertising regulation (including the Commerce Commission, the Financial Markets Authority and the Electoral Commission). Should change options progress to detailed design, further work will be required to determine whether and how the regulator could work with the ASA and other bodies to support coherent regulatory practices and outcomes.
61. The scope also excludes options to consolidate media funding bodies with the Broadcasting Standards Authority and/or other media regulatory bodies.<sup>27</sup> Initial policy analysis suggests that having both media regulation and content funding within the same entity risks exacerbating public concerns about media independence from government. It would also likely complicate the governance and operational independence of these distinct functions. The Ministry is concurrently considering structural consolidation options for funding entities NZ On Air and the New Zealand Film Commission (referred to above at paragraph 38).
62. For the purposes of this analysis, assumptions include that:
- 62.1. the programme standards in Part 1 and the various codes of practice currently in operation would not be substantively affected by any change options;
- 62.2. a regulator would retain an educative function in relation to applicable standards and codes of practice;
- 62.3. a regulator would retain functions relating to electoral broadcasting, unless and until Part 6 of the Act is substantively amended, repealed or replaced; and
- 62.4. the regulator would continue to be funded by both a levy and Crown revenue.
63. In relation to this last assumption, the Ministry notes that depending on which options are progressed in relation to the scope and role of the regulator, and depending on quantified impacts (which consultation and further work are required to determine), funding arrangements will need adjustment. For instance, the levy revenue generated from an increased scope may not be sufficient to offset the corresponding increase in regulator activity. If the regulator did not have a substantive complaints resolution role, there may be a rationale for capping, reducing, or eliminating the levy.
64. However, fiscal pressure and the Government's focus on reducing Crown debt and spending is likely to mean additional taxpayer funding is difficult to secure. Should change options progress, further analysis on the detail of funding arrangements for the regulator (including a cost recovery impact statement if necessary) will consider amendments to the current model of industry and Crown co-funding.

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<sup>27</sup> Recommended in *If not journalists, then who? A position paper on New Zealand's news media* (Dr Gavin Ellis, Koi Tū: The Centre for Informed Futures, May 2024); <https://informedfutures.org/wp-content/uploads/2024/04/If-not-journalists-then-who.pdf>.

## Section A: Coverage of professional media regulation

### What options are being considered?

#### Option A1: counterfactual (coverage of broadcasting)

65. The remit of media regulation under Parts 1 – 3 of the Act (including of the BSA) is limited to broadcasters and the content that has been broadcast. It is assumed industry self-regulatory bodies would continue to adapt and include new types of members. Their operations in respect of non-broadcast content would not be subject to oversight beyond existing classification and objectionable content mechanisms.

#### Option A2: Expand coverage to New Zealand professional media

66. Under this option the remit of media regulation under Parts 1–3 expands from broadcasting to all New Zealand owned/operated professional media, regardless of form or distribution method. This would include print and online text-based media.

67. As noted above in relation to scope, further work and consultation will be required to define the parameters of ‘professional media’,<sup>28</sup> but in general the intent is to:

67.1. capture New Zealand organisations that commission, produce, or directly pay for media content and distribute it as their primary business; and

67.2. not capture platforms that host or provide access to others’ content, with no editorial or substantive curation functions – search engines, social media, and other platforms hosting user-generated material would not be in scope.<sup>29</sup>

68. This option would necessitate a range of amendments across the regulatory framework, for instance to the ‘programme’ standards and the requirement for complaints to be made within 20 days of original broadcast. The extent and nature of required process change will be affected by other options considered in this RIS, and would be designed and analysed should change options progress.

#### Option A3: expand to professional media platforms operating in New Zealand

69. This option builds on option 2, including not just New Zealand professional media and news media, but overseas-based media companies with a business presence in New Zealand. It would therefore bring into scope global streaming platforms that are available in New Zealand like Netflix, again subject to further work on precise parameters and necessary process changes.

70. While beyond this RIS’s scope, option A3 would be more compatible with any future work to incorporate other forms of media (such as social media) or other regulatory functions currently performed by separate entities (like the Classification Office), including classification and labelling requirements of specified CVoD platforms.

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<sup>28</sup> Further work would draw on a range of definitions from here and around the world, including the European Union definition of a “media service provider” (a natural or legal person whose professional activity is to provide a media service and who has editorial responsibility for the choice of content of the media service and determines the manner in which it is organised). An alternative approach may be to establish objective criteria in primary legislation and then specify media organisations to which the new regulation would apply to, that otherwise may be operating on the periphery of the legislative definition – such as media organisations that operate streaming “radio” programmes.

<sup>29</sup> However, regardless of the platform or means of distribution, it is intended that the media organisation that created the content will bear the responsibility for that content. For example, if a news organisation posts a clip on YouTube and is then subject to a complaint, the news organisation would need to respond and if the complaint upheld to correct or amend the content. Media organisations should be able to use existing Terms of Service of online platforms to take down unauthorised copies of their content.



## How do the options compare to the counterfactual?

Key: compared to status quo

++ much better

+ better

0 about the same

- worse

-- much worse

	Option A1: counterfactual	Option A2: New Zealand media platforms	Option A3: media platforms operating in New Zealand
Regulatory stewardship	<p>0</p> <p>Increasing regulatory inconsistency and gaps as media provision (and audience engagement) shifts beyond traditional broadcasting, which is a sunset technology particularly in respect of audiovisual content.</p> <p>Fragmentation across broader content regulation landscape.</p>	<p>+</p> <p>A platform-neutral approach to media regulation would increase consistency and durability as technologies continue to converge and change (along with audiences).</p> <p>Assuming new codes and guidance relating to increased coverage were broadly consistent with industry self-regulation, would involve some regulatory duplication.</p> <p>Leaves some fragmentation and inconsistency across broader content regulation landscape, but closer in line to scope of content classification regime (supporting overarching coherence).</p>	<p>++</p> <p>Including international professional media platforms within scope would significantly increase consistency and durability, noting global streaming platforms' increasing dominance amongst New Zealand audiences.</p> <p>Would support clarity and coherence of regulator's mandate, particularly in respect of new regulatory mechanisms (including those currently under consideration in relation to local content and online news, which would apply to global platforms operating in New Zealand).</p> <p>Some fragmentation remains across broader content regulation landscape.</p>
Audience interests	<p>0</p> <p>Programme standards and the BSA's role (including around education around standards) do not apply to non-broadcast content, which may have impacts on the quality of content audiences are increasingly consuming (though no hard evidence of this).</p> <p>Gaps in coverage mean audiences have increasingly limited opportunity to raise concerns about media content (exacerbated by fragmentation and process differences across different media types and bodies), This may also risk regulation that is less responsive to audience interests (and potentially reflective of societal standards).</p>	<p>+</p> <p>Would support content quality by ensuring that minimum standards are applicable and enforceable across NZ media regardless of distribution method or form (noting that most New Zealand media are subject to codes of practice that broadly align with existing broadcast standards), and increasing the consistency and efficacy of regulator education in relation to standards, conduct, and broader community expectations.</p> <p>Would provide recourse for audiences to raise concerns to the regulator in relation to a broader range of content.</p> <p>Likely to reduce some complexity for potential complainants to navigate – for example, they would be able to approach the regulator with greater confidence without having to determine whether a piece of content was previously broadcast.</p>	<p>++</p> <p>As for option 2, at a greater scale given a wider range of media (including those subject to comparatively less regulation currently) would be within regulatory scope.</p> <p>Risk that some costs of compliance (discussed below) are passed onto audiences in respect of paid and subscription services.</p>
Govt costs + efficiencies	<p>0</p> <p>Declining levy revenue (due to declining broadcaster revenue) increases pressure/need for balance to be funded by government.</p>	<p>0</p> <p>One-off transitional costs, and ongoing additional costs of developing codes and guidance for, and responding to complaints about, non-broadcast professional media.</p> <p>Increased levy revenue (see compliance costs below) may be neutralised by additional regulator workload, so unlikely to reduce need for government funding top-ups.</p>	<p>0</p> <p>One-off transitional costs, and ongoing additional costs of developing codes and guidance for, and responding to complaints about, non-broadcast professional media.</p> <p>Increased levy revenue (see compliance costs below) may be mostly neutralised by additional regulator workload, so unlikely to substantially reduce need for government funding top-ups.</p>
Compliance burden	<p>0</p> <p>Levy and broader compliance costs borne by broadcasters.</p>	<p>-</p> <p>Subject to further work on funding arrangements, obligations to pay the levy for non-broadcast New Zealand media.</p> <p>Could increase other compliance costs for New Zealand media operating outside the broadcasting space. As most are already subject to industry self-regulation, increases are likely to be relatively modest (assuming standards and regulator's role are not substantially altered, and new codes and guidance are broadly consistent with industry self-regulation).</p> <p>Would support more equal distribution of costs across New Zealand media platforms.</p>	<p>-</p> <p>Subject to further work on funding arrangements, obligations to pay the levy for non-broadcasters and overseas based media platforms.</p> <p>Would increase compliance costs for platforms operating in New Zealand (particularly those that do not belong to industry self-regulatory bodies).</p> <p>Would support more equal distribution of costs across media platforms.</p>
Te Tiriti	<p>0</p> <p>The BSA's guidance and corporate documents, and the Broadcasting Code, explicitly incorporate Te Tiriti principles and acknowledge the need for further work to ensure they are reflected properly.</p>	<p>+</p> <p>Would provide more opportunity for government to meet te Tiriti obligations (via regulator), particularly with respect to active protection of Māori taonga and tikanga and options for remedy and redress where Māori content has been misused or used inappropriately.</p> <p>The regulator would be expected to continue and further the BSA's current approach to Te Tiriti compliance and issues.</p>	<p>+</p> <p>Would provide more opportunity for government to meet te Tiriti obligations (via regulator), particularly with respect to active protection of Māori taonga and tikanga and options for remedy and redress where Māori content has been misused or used inappropriately. This would include in relation to non-New Zealand platforms, which are likely to be less accustomed to Māori rights and interests.</p> <p>The regulator would be expected to continue and further the BSA's current approach to Te Tiriti compliance and issues.</p>
Overall	<p>0</p>	<p>+</p>	<p>++</p>

## Section B: Role of regulator

### What options are being considered?

#### Option B1: Counterfactual

71. For the purposes of this analysis, the counterfactual encompasses the preferred option identified above for coverage of regulation – that is, the remit of content standards, complaints processes, and a regulator is expanded from ‘broadcasting’ to cover professional media operating in New Zealand (including global streaming platforms).
72. The regulator would retain existing BSA functions in relation to codes of practice, research, advisory opinions, and complaints unresolved or unsatisfactorily resolved by the relevant media organisation. Industry self-regulatory bodies (including the Media Council, as well as any new or reformed bodies) could also retain their roles with respect to their members, development of standards and guidance, and complaints – though there would be no requirement to maintain these services.

#### Option B2: Proactive regulator

73. Under this option the regulator would retain the functions listed under the counterfactual. However, the regulator would also be available as a ‘first port of call’ for complainants (removing the need to complain to the media organisation first), and could initiate inquiries into potential compliance issues with standards and codes of practice (rather than only responding to complaints). Industry self-regulatory bodies, to the extent they chose to operate complaints mechanisms, would be available as an alternative avenue for complainants.

#### Option B3: Backstop regulator

74. A backstop regulator would retain the functions listed under the counterfactual around codes of practice, research and advisory opinions. However, complaints resolution (where a media organisation’s response was not satisfactory to the complainant) would be dealt with via industry self-regulatory bodies at first instance. The regulator’s complaints resolution function would be as a ‘last resort’, where media are not part of industry bodies or where an industry body complaints process ceased to function.

#### Option B4: Authorising regulator

75. The regulator would retain functions relating to research, education, and advice. It would support the development of and endorse codes of practice, which would be designed by (or co-designed with) industry bodies and media organisations, and seek to standardise complaints resolution processes and terms of service.
76. Media would remain responsible for receiving and responding to complaints at first instance, and industry bodies could deal with referred or appealed complaints about their members. The regulator would not have a role in determining complaints about content, instead focusing on compliance with complaints processes under codes of practice (through limited review, investigation and enforcement powers).
77. Where a media organisation is not a member of an industry body, recourse for would-be complainants would be limited to existing mechanisms (for instance, relating to classification requirements and prohibition of objectionable content under the Films, Videos, and Publications Classification Act).<sup>30</sup>

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<sup>30</sup> This reflects the status quo in respect of media not covered by the BSA’s current remit and are not members of industry self-regulatory bodies, such as Apple TV, Reality Check Radio, and E-Tangata.

How do the options compare to the counterfactual?

Key: compared to counterfactual

++ much better

+ better

0 about the same

- worse

-- much worse

	B1: Counterfactual	B2: Proactive regulator	B3: Backstop regulator	B4: Authorising regulator
Regulatory effectiveness	<p><b>0</b></p> <p>Encompassing broadened scope (see analysis above), regulator's role is durable and internally cohesive.</p> <p>Overlapping/duplicated functions with self-regulatory bodies undermine overarching coherence.</p>	<p><b>0</b></p> <p>Ability to proactively investigate issues with standards, and to address complaints directly without recourse to the relevant media organisation, would support more effective and durable regulation, particularly if audiences' awareness of and alertness to standards decreases or if industry bodies' membership, quality of outputs, or responsiveness to complaints declines.</p> <p>However, would involve further duplication of complaints resolution, decreasing regulatory coherence. As regulator's functions and powers in relation to complaints would be entrenched in legislation (compared with media and industry regulatory bodies' ability to shift and adapt), coherence impacts could be amplified over time.</p>	<p><b>0 / +</b></p> <p>Would be less internally cohesive for the regulator, as responsible for standards but limited ability to enforce them in respect of complaints.</p> <p>However, delineated responsibility for complaints between the industry bodies and the regulator would support overarching coherence.</p> <p>Residual complaints function would ensure durability over time and coverage of 'rogue' operators.</p>	<p><b>--</b></p> <p>Removes regulatory oversight of media platforms that are not members of industry bodies, and means no enforcement mechanisms would be available in respect of their compliance with minimum legislative standards or codes of practice.</p> <p>May encourage non-membership of industry bodies and/or empower 'rogue' operators' deliberate non-compliance with codes of practice, undermining regulatory stewardship and exacerbating 'unequal' playing field.</p> <p>Empowers industry self-regulatory bodies, which appear to be operating well within their current remits, but would not guard against risks that their coverage or effectiveness declines over time.</p>
Media independence	<p><b>0</b></p> <p>Regulator expected to function independently from Government (as an Independent Crown Entity).</p> <p>Duplicated complaints avenues could undermine industry self-regulatory bodies' jurisdiction.</p> <p>Opportunity to explicitly enshrine principles around media independence into governing legislation (without compromising appropriate scrutiny).</p>	<p><b>-</b></p> <p>Ability to proactively investigate issues may be seen to undermine media independence from government, particularly as the rationale for standards and codes of practice is to protect audience interests.</p> <p>Direct and duplicated complaints avenues could disempower media organisations and undermine industry self-regulatory bodies' jurisdiction.</p> <p>Opportunity to explicitly enshrine principles around media independence into governing legislation (without compromising appropriate scrutiny).</p>	<p><b>0 / +</b></p> <p>Minimising regulator's function in relation to complaints would be seen to enhance media independence.</p> <p>Depending on detail of regulator's mandate and operating principles under the counterfactual, and on industry self-regulatory bodies' ongoing independence and robustness of conflict management, this option may present comparatively less protection of media independence from non-government interests.</p> <p>Opportunity to explicitly enshrine principles around media independence into governing legislation (without compromising appropriate scrutiny).</p>	<p><b>0 / +</b></p> <p>Removing regulator's function in relation to complaints would be seen to enhance media independence.</p> <p>Depending on detail of regulator's mandate and operating principles under the counterfactual, and on industry self-regulatory bodies' ongoing independence and robustness of conflict management, this option may present comparatively less protection of media independence from non-government interests.</p>
Audience interests	<p><b>0</b></p> <p>Encompassing broadened scope, regulator has ability to promote quality and consistency with standards (and address complaints consistently) across a broader range of professional media, supporting individual and broader societal interests.</p> <p>Duplicated complaint resolution avenues (with potentially differing standards and processes) likely to mean confusion for audiences/complainants, though they may appreciate having a choice of forum.</p> <p>Costs of duplicated functions (see below) likely to be passed on to consumers for paid/subscription services.</p>	<p><b>0 / +</b></p> <p>Proactive regulation could support better quality and more standards-compliant media content, supporting individual and broader societal interests.</p> <p>Extra duplication of complaints resolution functions may exacerbate confusion for audiences wishing to raise issues, but 'no wrong door' approach could counterbalance this impact and support responsiveness to individual audience interests.</p> <p>Any increased perception of media interference by government (see above) could exacerbate distrust of professional media, which may mean increased engagement with and reliance on lower quality content.</p> <p>Costs of duplicated functions (see below) likely to be passed on to consumers for paid/subscription services.</p>	<p><b>0 / -</b></p> <p>Increased delineation/clarity of processes may help audiences to better navigate complaints resolution, but unlikely to substantively affect outcomes.</p> <p>Would remove choice of complaints resolution body for audiences dissatisfied with the relevant media organisation's response. This impact may become more significant over time, for instance if trust in or quality of industry self-regulatory bodies' decision-making declines.</p>	<p><b>--</b></p> <p>No quality assurance or external avenues to raise complaints about content on platforms not subject to industry self-regulation. This lack of oversight may incentivise non-membership of industry bodies and/or deliberate non-compliance with codes of practice, with impacts on content quality (and therefore audience and societal interests).</p> <p>Increased perception of media independence (see above) could support audience trust in and engagement with professional media sources, which are likely to retain higher quality and standards compliance than other forms of media (particularly if membership of industry self-regulatory bodies increases).</p> <p>Fewer complaints resolution avenues (and encouragement of process consistency within codes of practice) could support clarity for audiences, but would still involve navigating multiple bodies with specific jurisdiction.</p>

<b>Govt costs and efficiencies</b>	0 Subject to balance of levy revenue and government funding for the regulator, government costs are not affected beyond increases due to broader coverage (see analysis table above).	- Subject to balance of levy revenue and government funding for the regulator, likely to increase costs to government as the regulator would likely need to process more complaints as well as proactively investigating issues.	0 / + Subject to balance of levy revenue and government funding for the regulator, smaller scale complaints function would reduce regulator's costs, which could modestly reduce costs to government.	+ Removal of complaints function would reduce regulator's costs, which would likely reduce costs to government (assuming baseline funding continues).
<b>Compliance burden</b>	0 Costs of compliance with standards, codes of practice, and complaints resolution rest with media. Subject to any changes to funding arrangements, media also bear costs of levy and any industry self-regulatory body membership fees. These are likely to be significantly higher than the status quo if they retain or expand roles/duties around complaints resolution and developing new codes (noting this could disincentivise membership, further increasing costs for remaining members).	- Proactive investigations and duplicated complaints processes likely to increase compliance costs for media organisations. As for counterfactual, media also bear costs of levy and any industry self-regulatory body membership fees (which are likely to be significantly higher than the status quo if roles/duties expand).	0 Smaller scale complaints function makes it more likely levy could reduce (subject to further work and depending on a range of factors including government funding and coverage / effectiveness of industry self-regulatory bodies). Costs of complaints resolution may modestly decrease as a result of process clarity and delineation, subject to code requirements and industry bodies' processes and decisions. Greater role for self-regulatory bodies likely to mean further increases in membership fees.	+ No complaints function for regulator makes it more likely levy could reduce or be eliminated (subject to further work). Substantial reduction in compliance costs for non-members of industry self-regulatory bodies compared to counterfactual (though this means member organisations would shoulder unequal compliance costs). Any increases fees and compliance costs for members of industry self-regulatory bodies would likely be outweighed by reduced compliance costs with regulator's complaints processes.
<b>Te Tiriti</b>	0 Balance of regulator and industry responsibilities (combined with assumption that regulator would continue BSA's current acknowledgement of and practices that align with principles of te Tiriti) should support outcomes that appropriately empower Māori media and audiences (self-determination) while also protecting and preserving Māori audience interests (active protection, equity). Codes of practice and regulator guidance could support observance of te Tiriti principles by media organisations and industry self-regulatory bodies.	0 / + Regulator's ability to proactively investigate provides more opportunity for government to meet te Tiriti obligations around active protection and equity (via regulator). Māori media may be disempowered by regulator's ability to consider complaints without prior opportunity to resolve independently (negative impacts on the right to self-determination). This impact may be balanced against the ability for Māori audiences to complain direct to the regulator, which may be particularly aligned with the principles of active protection and options in light of currently heightened societal tension around Māori rights and interests.	0 / - Smaller role for regulator would leave less opportunity for government to meet te Tiriti obligations in relation to active protection, equity, and partnership, with increased reliance on industry self-regulatory bodies to ensure appropriate practices and outcomes in relation to Māori interests. Would empower Māori media organisations to manage complaints internally and through industry self-regulatory bodies they choose to be members of. However, may place more onus on them to advocate for and ensure codes and practices appropriately protect Māori interests.	- As for option 3, but at a greater scale given reduced role. No external oversight of media organisations that are not members of industry bodies may particularly undermine Māori interests, noting some higher-profile examples under status quo may be perceived as less accepting or accommodating of te Tiriti principles.
<b>Overall</b>	0	-	+	- / - -

Proactively Reviewed

## Section C: Appeals

### What options are being considered?

78. Generally, parties to decisions made by government entities have some means of appeal to the judicial system. This is to provide a check on decision making, increase public trust in the decision-making process, and improve the overall quality of decision making by ensuring that relevant judicial principles apply.
79. Under any of the options above,<sup>31</sup> there is an opportunity to consider the right to appeal decisions in respect of complaints. As above, the counterfactual assumes the preferred options identified in the previous sections are carried forward.
80. The options below contemplate appeal pathways with inbuilt parameters and reasonable limitations to minimise unnecessary administrative burden and the prospect of tactical or frivolous appeals – a completely ‘open’ right of appeal is ruled out as infeasible.

#### Option C1: Counterfactual (appeals from regulator only)

81. Current legislative settings for appeals would be carried through; that is, only the decisions of the regulator can be appealed to the High Court (within one month of the regulator’s decision). The Court’s determination cannot be appealed further.
82. Complaints decisions of the Media Council cannot be appealed directly to the courts. Because the Media Council requires the complainant to waive their right to other avenues of complaint, an indirect route of appeal (i.e. asking the BSA to reconsider the Media Council’s decision in order to appeal to the High Court) is not possible either.
83. Under this option, the regulator’s role in respect of complaints decisions made by industry bodies would be limited to ensuring appropriate processes were followed (for instance, in accordance with codes and guidance relating to complaints resolution).

#### Option C2: Appeals to regulator (and then High Court)

84. Under this option, complainants would have a legislated right to appeal decisions of self-regulatory industry bodies to the regulator, subject to appropriate grounds (such as merit, public interest etc., which would require further work to design). This would in turn allow the regulator’s determination of that appeal to be appealed further to the High Court; initial analysis suggests it would not be consistent with principles around appeal rights for the government regulator to be the final appellate body.
85. This approach would mirror some other jurisdictions such as Canada, where decisions of the self-regulatory body (the Canadian Broadcast Standards Council) may be appealed to the government regulator (the Canadian Radio-Television and Communications Commission), and then may be appealed further to the Courts.

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<sup>31</sup> However, initial analysis suggests appellate rights to a regulator without functions relating to complaints resolution would not be compatible with the policy rationale of option B4 (‘authorising regulator’), and the Ministry is not aware of any examples of appeal rights direct to the Courts from self-regulatory bodies.

## How do the options compare to the counterfactual?

Key: compared to counterfactual

++ much better

+ better

0 about the same

- worse

-- much worse

	C1: Counterfactual (appeals from regulator only)	C2: Appeals to regulator (then to courts)
<b>Regulatory effectiveness</b>	<p>0</p> <p>Provides quality assurance of regulator's decision-making.</p> <p>Industry self-regulatory bodies' requirements for complainants to waive the right to external complaints resolution avenues reflects legitimate regulatory goals of providing clarity and certainty for parties, candidness within the procedure to support robust outcomes, and prevent 'shopping around'.</p> <p>However, given the regulator would retain only a residual complaints resolution function, with industry self-regulatory bodies expected to handle the vast majority of complaints, this option would involve no direct check on decision-making or quality assurance in respect of those individual complaints.</p>	<p>+</p> <p>Would support regulatory durability, promote natural justice, and support quality assurance of all complaint decision-making – which is more significant in light of government regulator's reduced role around complaints under the counterfactual.</p> <p>Could complicate procedures of self-regulatory bodies that appear to be working well currently. Careful design and consultation would be required around limitations or grounds for appeals, to mitigate potential impacts on industry self-regulatory bodies' willingness to provide complaints resolution services (or their ability to robustly determine complaints).</p>
<b>Media independence</b>	<p>0</p> <p>Industry self-regulatory bodies' complaints resolution mechanisms are completely independent of government, and include processes for managing conflicts of interest.</p> <p>No check on industry self-regulatory bodies' (expanded volume and scope) decisions may create a risk that perceived or actual independence from non-government interests is reduced.</p>	<p>0 / +</p> <p>Could reduce industry self-regulatory bodies' perceived independence from government, which could have broader impacts in relation to the perceived independence of media themselves.</p> <p>Could support perceived and/or actual media independence from non-government interests, via check on industry self-regulatory bodies' decision-making (though the bodies have clear conflict management procedures in place).</p>
<b>Audience interests</b>	<p>0</p> <p>The Ministry is not aware of evidence around the level of complainant satisfaction with industry self-regulatory bodies' resolution processes (including the waiver of right to pursue the complaint elsewhere); potential for satisfaction (and/or overall trust) to drop given the expanded volume and scope of complaints without avenue to review individual decisions.</p> <p>No check on most complaints decisions means limited quality assurance of outcomes (with potential impacts on audience interests individually and more broadly)</p>	<p>+</p> <p>The right to appeal industry self-regulatory bodies' complaints decisions could provide a check on, and support trust and confidence in, those bodies' processes and outcomes; there is little evidence to indicate issues here at present but this impact is expected to become more significant under the preferred options analysed above and could also increase in future if the industry bodies' quality of decision-making declines.</p>
<b>Govt costs and efficiencies</b>	<p>0</p> <p>Minimal costs to government (regulator and court time and resource). The BSA reports that appeals to the High Court under the status quo are a relatively rare occurrence, only happening once or twice a year on average.</p>	<p>-</p> <p>One-off and ongoing costs for the regulator to set up and administer an appeals process, including frameworks and guidance.</p> <p>Potential additional costs for court time and resource in respect of further appeals from regulator (though these are unlikely to be significant noting low volumes of Court appeals under status quo).</p>
<b>Compliance burden</b>	<p>0</p> <p>Costs for the parties to complaints subject to appeals.</p>	<p>-</p> <p>Would expand costs for parties to complaints subject to appeals (by virtue of there being more appeals).</p> <p>Costs for industry self-regulatory bodies (process changes and guidance); depending on detail of appeal grounds and process, costs in relation to appeals themselves.</p>
<b>Te Tiriti</b>	<p>0</p> <p>Potential impacts in relation to principles of active protection, equity and rangatiratanga – however, the Ministry is not aware of evidence around satisfaction or appeals in relation to complaints about media content about, or targeted or relevant to, Māori interests (or the proportion of complainants who are Māori). The BSA's 2023 public awareness survey notes Māori are significantly less aware of the BSA, but had higher awareness of the ability to find out about complaints processes, compared with the wider population.</p>	<p>+</p> <p>Quality assurance of industry self-regulatory bodies' decision-making may support the Crown's Te Tiriti obligations in relation to active protection, equity, and rangatiratanga over taonga, particularly given current heightened societal tension in relation to Māori rights and interests. It may also become more significant over time, if those bodies' observance of Te Tiriti principles declines.<sup>32</sup></p>
<b>Overall</b>	<p>0</p>	<p>+</p>

<sup>32</sup> Limited collated evidence is available about the nature and trends of complaints to industry self-regulatory bodies, but the BSA's current Statement of Intent notes that "If the more than 300 complaints/enquiries we have received regarding broadcasters' use of te reo or other incorporation of te ao Māori is anything to go by, as a nation, much work is still required to spread understanding and respect for te ao Māori and Te Tiriti principles." [www.bsa.govt.nz/assets/Uploads/BSA-Statement-of-Intent-20232027.pdf](http://www.bsa.govt.nz/assets/Uploads/BSA-Statement-of-Intent-20232027.pdf)

## What options are likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

86. The preferred options identified above are:
  - 86.1. **A3**: platform-neutral regulation of professional media in New Zealand;
  - 86.2. **B3**: a regulator with a 'backstop' role; and
  - 86.3. **C2**: the right to appeal, subject to criteria, in respect of complaints decisions from self-regulatory bodies to the regulator and then the High Court.
87. Expanding the scope of regulation to professional media operating in New Zealand (option **A3**) would support a more equal regulatory playing field and accommodate new functions (including those currently under consideration around supporting investment into local content by international platforms).
88. The alternative option, of covering only New Zealand-based professional media, would improve on the counterfactual but leave inconsistency in respect of the range of media New Zealanders are increasingly engaging with. It would also mean a less compatible base for future work, for example to bring social media into scope or to standardise content classification functions and requirements.
89. Providing the regulator with a backstop role (option **B3**) would build on the self-regulatory approach that much of the non-broadcast media industry already follows, while closing regulatory gaps where media organisations are not members of industry bodies. The rationale for this approach relies on those bodies continuing to function effectively and provide complaints resolution processes on an expanded basis.
90. Option **C2**, where complainants can appeal from self-regulatory bodies to the regulator and then the regulator's decision to the High Court in limited circumstances (subject to criteria such as merit or public interest) is preferred. It would provide quality assurance, meet natural justice principles, and enhance trust in both self-regulatory bodies' processes and the overall system. However, design of the appeal pathway would need to mitigate risks of undermining the effectiveness of, or those bodies' willingness to provide, self-regulatory complaints resolution and the perception of government overreach in the regulation of media.
91. Combined, these options appear to present the best opportunity to modernise professional media regulation in a way that empowers the sector, minimises duplication, and avoids risks and unintended consequences (including around media independence). However, significant dependencies between regulatory choices mean consultation and more work is essential before determining the overall framework, particularly around the regulator's role and external appeals from industry self-regulatory bodies' complaints decisions.
92. The Ministry notes that the open question of funding for the regulator will affect both the feasibility of, and sector support for, reform. A 'backstop' role for the regulator in terms of complaints resolution would reduce costs, which currently make up the bulk of the BSA's spend, and potentially the rationale for an industry levy. However, the regulator's expanded coverage will require more resource, particularly in the first few years of operation as codes, guidance, and systems are developed. Further work on funding arrangements will be informed by the Government's ongoing priority of reducing Crown debt.

## What are the marginal costs and benefits of the options?

93. As monetised costs and benefits have not been quantified and evidence certainty is necessarily low (given options are high-level and consultation has not yet been undertaken) the below table compares one-off and ongoing costs and benefits on a general scale.

Affected groups	Comment	One off	Ongoing.
<b>Additional costs of the preferred option compared to taking no action</b>			
All professional media	Disruption – one-off, monetised and non-monetised, including uncertainty, costs of engagement on changes, and then administrative/process changes. Evidence from previous analogous processes.	Medium	
Other related Crown entities		Low	
Self-regulatory industry bodies	Increased workload for developing codes and practices, complaints resolution – one-off and ongoing, monetised (though most costs assumed to be passed onto members – see below).	Low-Medium	Low-medium
Members of self-regulatory industry bodies	Increased membership fees (ongoing, monetised) Evidence from BSA's current costs, revised up to accommodate additional broader work and potential increases in membership		Medium
Non-broadcast (online / on-demand) professional media	Levy – ongoing, monetised (subject to further work on whether levy continues/changes) Evidence from estimates based on video-on-demand subscribers and advertising revenue information.		Medium
	Compliance costs – ongoing, monetised. Anecdotal evidence from broadcast media subject to BSA's jurisdiction currently, and membership levels of industry bodies.		Low
BSA staff	Role transition/disestablishment – one-off, monetised and non-monetised (organisational costs covered in relation to Government, below). Evidence from previous analogous processes.	High	
Government	Transition costs – one off, monetised and non-monetised (opportunity costs), including legislative process. Possibility of ongoing monetised costs depending on design and functions of the regulator. Evidence from previous analogous processes.	High	Low - Medium
	Increased regulator scope (not including administration of potential new mechanisms being considered separately) – one-off and ongoing, monetised. Evidence from BSA's current costs and outputs.	Medium	Low
Audiences/Public	Disruption – one-off, non-monetised. Potential for compliance costs to be passed through – ongoing, monetised.	Low	Low
<b>Total monetised costs</b>		<i>Medium</i>	<i>Low-Medium</i>
<b>Non-monetised costs</b>		<i>Medium</i>	



Affected groups	Comment	One off	Ongoing.
<b>Additional benefits of the preferred option compared to taking no action</b>			
Broadcast professional media	More level regulatory playing field with non-broadcast media platforms – ongoing, monetised and non-monetised.		Medium
Non-broadcast professional media	Modernised and empowering regulatory settings (easier to navigate, less fragmentation) – ongoing, monetised and non-monetised.		Medium
	Evidence from previous DIA consultation, advocacy for change, general Ministry engagement with stakeholders.		Low
Self-regulatory industry bodies	Evidence from previous DIA consultation, advocacy for change, general Ministry engagement with stakeholders.		Low
Regulator	Improved clarity of purpose and effectiveness through modernised and expanded coverage and legislation – ongoing, non-monetised. Further work and consultation required to quantify.		Medium
	Reduced costs of complaints resolution – ongoing, monetised. Evidence from current costs of BSA complaints resolution, revised down to accommodate residual complaints function.		Low-medium
Government	Increased levy revenue (subject to further work on whether levy continues/changes) – ongoing, monetised Evidence from advertising revenue information and estimates based on subscription numbers, rounded up.		Low-medium
	More effective media regulation – ongoing, monetised (efficiency) and non-monetised. Further consultation and work may provide evidence to quantify benefits.		Medium
Audiences / Public	Quality-assured media content and clarity of complaints resolution processes – ongoing, non-monetised. Limited evidence; unlikely to be quantifiable until impacts can be measured.		Medium
<b>Total monetised benefits</b>			<i>Low-medium</i>
<b>Non-monetised benefits</b>			<i>Medium</i>

## Section 3: Delivering an option

### How will the new arrangements be implemented?

94. Legislative change via Parliamentary processes, funding, and a carefully managed change process would be required to implement new arrangements. Before these steps are taken, substantive further work would be required; while led by MCH, external support (and governance) could help to steer the overall process.
95. Further work would include:
  - 95.1. consultation with the BSA, the Media Council, DIA and the Classification Office, the ASA, the media sector, and the public;
  - 95.2. detailed design of the new arrangements, including in relation to the levy, followed by further targeted consultation with affected parties;
  - 95.3. change process planning, including in relation to contractual obligations to existing BSA staff as well as identification of risks and mitigations across the full transition process.
  - 95.4. costing and securing funding for the change process and regulator's operations; and
  - 95.5. design and drafting of the legislation.
96. Like the BSA, it is expected the regulator would conform to the standard structural, governance, and monitoring features of Independent Crown Entities under the Crown Entities Act 2004. Appropriate expertise in relation to Crown Entities and machinery of government will be required to inform work on the entity's design.

### How will the new arrangements be monitored, evaluated, and reviewed?

97. It is assumed that MCH, as the monitoring agency for the BSA, would continue to hold this role with regard to the regulator.
98. A new set of performance measures would need to be agreed with the entity, reflecting its revised functions and remit, which could include carrying forward some of the existing performance measures from the BSA where relevant.
99. Beyond standard Crown Entity monitoring, an evaluation or review of the new arrangements could be planned at a certain point post-implementation. It is expected this would focus on identifying and actioning opportunities to ensure the entity was meeting its objectives (rather than wholesale reversal of changes). Depending on the entity's final shape and the timing and context of any review, it could also consider opportunities to further consolidate media regulatory functions that remained fragmented across other areas of the system.
100. Whether or not a substantive evaluation or review is carried out, MCH would monitor the operations and impacts of the entity from a policy and stewardship perspective, and could initiate change as and when required to ensure it was best-placed to deliver both on its objectives and overall for New Zealanders.