

# If not journalists, then who?

## A position paper on New Zealand's news media

Dr Gavin Ellis

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## KOI TŪ: THE CENTRE FOR INFORMED FUTURES

Koi Tū: The Centre for Informed Futures is a research centre and an independent, non-partisan think tank at Waipapa Taumata Rau, University of Auckland with associate members across New Zealand and the world.

We address critical long-term national and global challenges arising from rapid and far-reaching social, economic, technological, and environmental change.

Our name, Koi Tū, was gifted by Ngāti Whātua Ōrākei. It means ‘the sharp end of the spear’. Like our namesake, Koi Tū aims to get to the heart of longterm issues challenging our future.

### Author



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## Foreword

Koi Tū: The Centre For Informed Futures focuses much of its work on issues of the future of our society, the maintenance of social cohesion and how New Zealand will thrive in the face of massive sociological, technological, and environmental change. We are strictly non-partisan seeking to focus on those issues which transcend the political cycle, while recognising that every so-called “wicked” problem involves understanding multiple viewpoints as well as the empirical evidence. In doing so, our primary purpose is opening difficult conversations, highlighting the issues and the options, but not necessarily closing the conversation that must involve many stakeholders.

Over the past four years much of our work has focused on how the liberal democracies can sustain social cohesion in the face of a very changed information environment which, along with many other factors, can pull societies apart. Conflicting narratives may be real and have to be reconciled but they can also be manipulated and manufactured, greatly undermining the capacity of liberal democracy to function well on behalf of its citizens. More specifically the changed nature of the information environment creates fundamental risks to a society. Whereas information traditionally came through linear processes of print and broadcasting journalism that had relatively robust filters to ensure validity, and where the boundaries between opinion and fact were relatively obvious and respected, over the past two decades the world has changed. Digital platforms, social media and digital advertising have changed the economics of public interest journalism with the result being a conflation of entertainment and information and a reduction in validation processes. In turn this has driven a decline in trust in the traditional media. But, more importantly, digital media have become the dominant way individuals receive information, reliable or otherwise and, as technologies have evolved discrimination of fact and non-fact has become very complicated. And all this is happening in a political environment where rhetoric and personality outweigh policy and ideology.

Koi Tū’s core argument along with that of many scholars of democracy is that democracy relies on honest information being available to all citizens. It needs to be provided by trustworthy sources and any interests associated with it must be transparently declared. The media itself has contributed much to the decline in trust. This does not mean that there is not a critical role for opinion and advocacy – indeed democracy needs that too. It is essential that ideas are debated. But when reliable information is conflated with entertainment and extreme opinion, then citizens suffer and manipulated polarised outcomes are more likely.

Over the past year, starting with consideration of the attempted merger of RNZ and TVNZ, Koi Tū has engaged with many stakeholders over the future of public media in New Zealand. It seems indeed possible that NZ could be the first country to end linear broadcasting (beyond perhaps radio) and thus we face, in our small ecosystem a deep challenge – of how to sustain the fourth estate as acting in the public and domestic interest.

We have convened workshops, including with industry and public sector partners because they are the reality of what we have now. We face a truly wicked and existential problem of how to ensure trustworthy information is available to our citizens. There are issues here for government, business, communities and indeed for our societal futures. There are no easy solutions in what is a complex and unstable information world.

This report authored by our honorary fellow, Dr Gavin Ellis, explores the many issues, identifies a range of options and signals those that may be preferred. None are simple and all can be debated. But what we cannot do is ignore the situation, sit back and see the collapse of our fourth estate. The conversation is urgent, and we hope this paper helps open and expand the conversation. Its aim is to take it from a narrow focus on the viability of particular players to an examination of the needs of a small liberal democracy which must face many challenges in which citizens must have access to trustworthy information so they can form views and contribute appropriately to our society's decision making.

Sir Peter Gluckman ONZ KNZM  
Director, Koi Tū: The Centre for Informed Futures

# Contents

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<b>Foreword</b>	<b>3</b>
<b>Introduction</b>	<b>5</b>
<b>Executive summary</b>	<b>7</b>
<b>Part 1: Situation Report</b>	<b>10</b>
Democratically significant journalism	10
A perilous environment	12
Status of news media	18
Challenging technologies	22
Outdated oversight	25
Cultural identity	32
Civil society and news media	35
The AI challenge	40
<b>Part 2: Options</b>	<b>43</b>
Democracy and social cohesion	43
Playing fields	46
Technology	50
Media law and regulation	53
Financial sustainability of the news	55
<b>Part 3: Structure</b>	<b>59</b>

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# Introduction

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*Every day, when we wake up, we seek information. From weather and traffic reports to news of political developments at home and abroad to whether our favourite sports team has finally won, we turn to journalists for the information we need for our daily lives.*

– Committee to Protect Journalists

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News media and the provision of reliable news to citizens in Aotearoa New Zealand are suffering a form of ecosystem collapse. A combination of predation, changes to the media, destructive behaviour, and adaptive limitations are pushing the environments in which journalism is produced to the point where their effective extinction may be measured in years rather than decades.

Like any ecological loss, this extinction will have consequences that extend beyond the disappearance of the interacting organisms that form the news ecosystem. Just as the disappearance of Amazonian rainforests affects world climate, the loss of professional, institutional journalism has profound implications for democracy and social cohesion.

It is not the purpose of this paper to make a special pleading for journalism for its own sake. Rather, it sees journalism's role as an indispensable part of the engine that drives democracy. A large body of scholarship supports this stance. It should not require repeating here because, ever since Thomas Carlyle's attribution (to Edmund Burke) of the phrase "the fourth estate", there has been a recognised and inextricable link between journalism and the institutions of democracy. However, that importance has been under-rated by some people, lost on some others, and deliberately undermined by a few.

There is, therefore, an urgent need to impress upon politicians and the public alike the reasons why journalism must be brought back from the brink of that ecological collapse.

There are numerous explanations of the role that journalism plays in a democracy, from the eloquent, through the obviously self-serving, to prosaic explanations of what journalists actually do.

Herbert Gans, author of one of the most significant observational studies of news media, *Deciding What's News* (Medill School, 2004), had a straight-forward explanation of the relationship:

*The country's democracy may belong directly or indirectly to its citizens, but the democratic process can only be truly meaningful if these citizens are informed. Journalism's job is to inform them.*<sup>1</sup>

In the 45 years since Gans penned those words, the digital revolution has exponentially increased the channels through which people receive a multitude of communications. It promised the redistribution of political influence, broadening of the public sphere, increased political participation, opening closed political doors, and challenging of traditional elites. It was to do much of the work that had previously fallen to journalists. It has, in fact, failed to deliver on many of its promises.<sup>2</sup>

For information to have real utility in citizens' quest for understanding in the contested arena that constitutes democracy as we know it, there must be means by which statements and assertions can be tested. To understand the effect of democratic rule on society, there needs to be an ongoing uncovering and assessing of facts as well as motive, cause, and consequence.

An exponential increase in sources and volume of information does not per se lead to greater understanding. On the contrary, in the age of social media judging what might be true and what might not be has shifted to the individual. What they encounter might be called derivative news – paraphrased and then reinterpreted through successive postings. For now, journalists may produce the feedstock that was at

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1 Herbert Gans, *Democracy and the News* (OUP, 2003).

2 Matthew Hindman, *The Myth of Digital Democracy* (Princeton University Press, 2009)

the beginning of the social media journey.<sup>3</sup> However, it is the nature of social media that this genesis is too often lost in the process.

And individuals all too often lack the time – and the skills – to establish veracity for themselves. The result is growth in the ranks of the ill-informed, mis-informed, and dis-informed.

For now, individuals may still check their perceptions against curated and tested information in news media, where they are also able to ‘triangulate’ information across multiple news outlets. However, the notion of a network of gatekeepers to tell the public things that have been established or proven is breaking down.<sup>4</sup> If it reaches the point where the ecosystem has collapsed, society will still be left with a need for trusted curation and verification of matters that are in the public interest. The need to hold power to account will be undiminished. We will be left with the consequences of a simple (unanswered) question: *If not journalists, then who?*

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3 This journalism would have been funded by news organisations who have no way of monetising its derived use by individuals on social media platforms.

4 Kovach & Rosenstiel, *Blur: How to know what's true in the age of information overload* (Bloomsbury 2011)

## Executive summary

Journalism and the vehicles that support it in New Zealand are beset by a complex range of inter-related issues that call for coordinated solutions. While much of the destiny of this fundamental aspect of democracy and community lies in the hands of the people and organisations that produce it, there is a crucial role that Government must also play.

Within the next three years, it is likely we will have no mainstream broadcast television, hollowed-out newsrooms, news media closures, and sections of the community disenfranchised by cost or age. The vacuum created by retreating journalism may be filled by disinformation. The social and political risks are high.

*'If not journalists, then who?'* describes the current news media landscape, assesses the options, and suggests options that Kōi Tū believes will contribute to the continued existence and sustainability of democratically significant journalism. Just as democracy extends well beyond the debating chamber of Parliament, this form of journalism has significance that affects the very fabric of social cohesion.

That significance is articulated in a statement of the values to which journalists must adhere if they are to meet the standards required of a profession, and which places democracy at the centre of their *raison d'être*.

By any assessment the situation currently facing news media organisations in New Zealand is dire. The advertising revenue earned by the country's traditional media has dropped by 23.6 per cent over the past decade, while the Consumer Price Index has risen by more than 25 per cent. In the same period the total advertising market has risen by more than 56 per cent. The difference disappears offshore to digital platform owners.

Rising costs – newsprint costs have more than doubled in five years and magazine postal charges have outstripped rises in letter postage – combined with declining revenues have seen the total number of journalists employed in media organisations fall by almost 60 per cent.

We run the risk of following North America, Australia, and the United Kingdom with the creation of 'news deserts' in which there are no local news outlets. Such areas have seen significant decline in political participation and civic engagement.

A general decline in institutional trust has been paralleled by a deeply disturbing effect on news media: Two-thirds of New Zealanders say they do not trust the news. An even greater number sometimes or always avoid seeing or hearing the news. There is a massive task to be done by news media and the journalists they employ to restore public trust. Not least is to provide audiences with the ability to clearly distinguish between fact and opinion.

At the same time, the ways people access media are changing and technology is impacting media in new ways. 'Push' technologies are being supplanted by 'pull'. Linear broadcasting is giving way to streaming and generative AI offers the prospect of 'news creation' and 'news invention' by users, and the ignoring of intellectual property rights by Large Language Model scrapers.

All of this occurs against a background of delayed or deferred reform of governance and structures that were devised in the pre-digital era and which are no longer fit for purpose. Recognition of the media needs of tangata whenua and Pacific peoples, which started with good intentions, have faltered through frozen funding.

This paper is structured in order to lay out the factors that lead to its final recommendations. That is why it first examines the media landscape, then the various options available for addressing the issues raised. The final part, recommending the most substantive change, addresses the consolidation of the multiple governance functions affecting media under a single umbrella organisation. That organisation would be a hybrid. It would provide administrative and coordinating services but functions within it that require freedom from any forms of external influence would be manifestly independent.

## Options

The status quo is not an option. Media outlets face existential threats and the institutional underpinnings that sustain journalism are beyond the point where they are merely outdated.

The options on the table – for both news media and Government – are for incremental change aimed at solving individual problems one at a time, or for fundamental change to ensure the future of democratically significant journalism and vital cultural vehicles.

The study of the sector undertaken by Koi Tū suggests New Zealand has run out of time for incremental change. There needs to be concerted broadly based action to achieve the following:

- Ensure the public understands the importance of journalism that is in the public interest and why it must be sustained.
- Overcome gross distortions caused by the dominance of the market by unregulated transnational digital platforms.
- Find sustainable – and publicly and politically acceptable – ways of supporting pluralistic media at national, regional, local and hyper-local levels.
- Ensure New Zealand is prepared for (a) an orderly transition from linear to digital delivery of media services and (b) the impact of artificial intelligence.
- Reform anachronistic regulatory systems and laws/regulations, recognising the impacts of social media.
- Provide the means by which media at all levels can operate under structures and conditions that recognise their contributions to the community.
- Consolidate the multiplicity of agencies, organisations, and lines of authority that have grown around governance of the sector.

## Key recommendations

- **News media should urgently review their practices in order to rebuild trust and reduce news avoidance.**
- **Government should formally recognise the vital role that professionally responsible news media need to play in a cohesive functioning democracy.**
- **The Digital Services Tax Bill should be amended to allow for a ring-fenced levy on digital platforms to compensate media for direct and indirect use of content, and establish an equitable means of distribution.**
- **The Broadcasting Commission should be reconstituted as a commission responsible for the consolidation and administration of the following autonomous, independent functions:**
  - **Content standards and complaint adjudication**
  - **Content classification (including social/search digital platforms)**
  - **Funding allocation**
  - **Research and advocacy**
- **Under the commission proposal, negotiations should begin with self-regulated media to establish within the commission a single independent content complaints system in line with recommendations of the 2013 Law Commission report on media.**
- **NZ On Air and Te Māngai Pāho, which would sit under the commission umbrella, should have their funding models reviewed in light of changes to linear services, funding of news/current affairs, and – if implemented – the administration of levy distributions.**
- **The impact of algorithmic manipulation should be investigated, including possibilities for countervailing measures.**



- **Central and local government advertising spending should be primarily directed to domestic media.**
- **Distortional government funding of state-owned media should be avoided but there should be a review the adequacy of Māori and other ethnic media funding.**
- **An industry working group should be established to prepare practical, timetabled options for Digital Terrestrial Television (DTT) switch off or phase down.**
- **Initiate a comprehensive, coordinated review of legislation governing regulation of both state-owned and private sector media, and laws relating to reputation, privacy, and harmful content.**
- **Interim protection against Large Language Model scraping of media organisations' content and archives should be provided as a precursor to comprehensive measures to govern generative artificial intelligence in line with international initiatives.**
- **Journalism (defined to ensure the production of journalism that is in the public interest) should be recognised as a charitable purpose for philanthropic donations, and Government should investigate structural forms of tax relief for eligible media entities.**

# PART 1: SITUATION REPORT

## Democratically significant journalism

Democracy extends well beyond the ballot box and the individuals whose right to govern flows from it. It must be seen in a much broader context, one which defines ‘democracy’ in ways that recognise the fine balance the institution maintains between collective living and individual agency.

Koi Tū has articulated democratic principles in a range of discussion papers<sup>5</sup>, each of which take democracy beyond the political theorist’s view of a mechanism for institutionalising the general will.<sup>6</sup> Democracy, in the sense that drives the issues addressed here, is the exercise of rights and obligations, underpinned by vertical and horizontal trust, through which the inhabitants of this country pursue social cohesion, equitable co-existence, and individual happiness.

These goals – to which the news media make indispensable contributions – have been usefully summarised in the June 2023 discussion paper *Addressing the challenges to social cohesion*.

*[Democracies] seek to find ways for society to function while giving agency to individuals and not imposing a singular belief, identity, value set or worldview...democracy’s focus is on mechanisms to allow individuals and groups with different interests and world views to reach agreement. The intent is to protect and give rights to citizens, thus upholding their personal agency to a greater extent... unlike autocracies, accountability in democracies is meant to be assured by political systems of representation, notably elections, upheld via scrutiny of those in government by an effective opposition, the encouragement of debate over policy, and by a free and independent fourth estate (media).*

Democratically significant journalism is an endeavour that serves the interests of those who live and interact within that public sphere. It enables individual communities to know about themselves, and for communities to collectively share information to inform a broader consensus.

Legislators and jurists have struggled with defining ‘the public interest’, rightly concerned that specificity might exclude a function worthy of protection. News media have generally followed the principle voiced by Justice Potter Stewart in relation to a much less worthy commodity: “I know it when I see it”.<sup>7</sup>

If news media and government are to find common ground in pursuit of policies aimed at sustaining democratically significant journalism in Aotearoa New Zealand, they must have a common understanding of what that means.

The first director-general of the BBC, John Reith, gave us the mantra “To inform, educate and entertain.”<sup>8</sup> He saw the role of the fledgling broadcaster as suffused with goals that support a broadly defined democratic environment. This included the fight for freedom of speech and assembly, and for spaces of public debate and deliberation in which matters of common interest could be aired and in which governing institutions could be held to account. Reith wanted to foster a reasoning citizenry that would engage in a more inclusive participatory democracy.

Such public interest goals are not the sole preserve of public service broadcasters. They apply across the news media landscape and lie within what New York Times journalist Alex S. Jones called “... the iron core of information that is at the centre of a functioning democracy.” Like Jones, we must recognise it is not perfect:

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5 See, for example, the Koi Tū discussion papers *Sustaining Aotearoa New Zealand as a cohesive society* (December 2021) and *Addressing the challenges to social cohesion* (June 2023).

6 Ian Shapiro, *The State of Democratic Theory* (Princeton University Press, 2003)

7 *Jacobellis v Ohio* 1964.

8 The BBC’s programming under Lord Reith was based on cultural homogeneity, which required a broad offering to be made available to all. It soon became evident that diversion drew mass audiences – who were then exposed to the informative and educative functions the broadcaster offered (Curran & Seaton, *Power Without Responsibility*, 2009).

it is “a sphere of pitted iron, grey and imperfect like a large cannonball.”<sup>9</sup> Nonetheless, within this big and unwieldy iron core that represents the total mass of each day’s serious news lie the ingredients upon which that democracy relies.

That core has not changed fundamentally in decades. Its constituent elements were articulated by the Hutchins Commission in the United States after World War II and, although the language may seem stilted, the functions are as applicable today as they were 77 years ago.

*Today our society needs, first, a truthful, comprehensive, and intelligent account of the day’s events in a context which gives them meaning; second, a forum for the exchange of comment and criticism; third, a means of projecting the opinions and attitudes of the groups in society to one another; fourth, a method of presenting and clarifying the goals and values of the society; and fifth, full access to the day’s intelligence.*<sup>10</sup>

The forms in which journalism is delivered, and the structures within which it is produced, change over time, and will continue to do so. In contrast, the constituent elements of democratically significant journalism do not change. It is evident, however, that they need to be restated.

The value that journalism brings to society is indispensable. That value is spoken of by the media themselves, by politicians including those who regularly upbraid reporters, and by academics. However, it is articulated in terms that have failed to have impact on the very people who need it most – the general public.

If insufficient value is placed on the nation’s journalism, there will be insufficient pressure to ensure its survival. The following sections provide evidence that, without changes across a broad spectrum, it will lose the ability to fully discharge its democratic purpose.

A workshop convened by Kōi Tū and attended by representatives of 17 national, regional, ethnic, and local news media organisations found unanimous support for a unified statement of the value of the sector in a democracy. Following consultation with those organisations, we believe that value can be expressed in the following terms:

**Support for democracy sits within the DNA of New Zealand media, which have shared goals of reporting news, current affairs, and information across the broad spectrum of interests in which the people of this country collectively have a stake. Trained news media professionals, working within recognised standards and ethics, are the only group capable of carrying out the functions and responsibilities that have been carved out for them by a heritage stretching back 300 years. They must be capable of holding the powerful to account, articulating many different voices in the community, providing meeting grounds for debate, and reflecting New Zealanders to themselves in ways that contribute to social cohesion. They have a duty to freedom of expression, independence from influence, fairness and balance, and the pursuit of truth.**

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9 Alex S Jones, *Losing the News* (OUP, 2009)

10 Commission on Freedom of the Press, *A Free and Responsible Press* (University of Chicago Press, 1947)

# A perilous environment

The existential threats faced by news media in New Zealand and other western democracies cannot be sheeted home to a single cause. Identifying their multiple causes is a crucial part of finding a sustainable future for democratically significant journalism.

No part of the sector is immune. Our discussions with entities from the largest national providers to those serving small local communities and ethnic groups have revealed deep concerns over their futures.

Nor is any single medium immune. Print has been in decline for more than a decade but recent announcements by Newshub and TVNZ – the former announcing complete closure of in-house news services as a precursor to ceasing traditional broadcasting altogether, and the latter significant cuts to news and current affairs – point to immediate pressure on linear television broadcasting. Sections of the broadcast radio audience are transitioning to digital audio.

Attrition is nothing new in the news business. According to Statistics NZ, the number of enterprises engaged in newspaper publishing declined by almost a third in the first two decades of this century. New Zealand has, however, reached the end of its ability to absorb such attrition without serious consequence.

It is highly likely that, within the term of the present government, there will be consolidation and closures that call into question the maintenance of a pluralistic media sector and push New Zealand below a credible minimum of journalistic resources.

## Level playing fields

All media complain that domestic media lack a level playing field and the following graph dramatically backs their assertion.

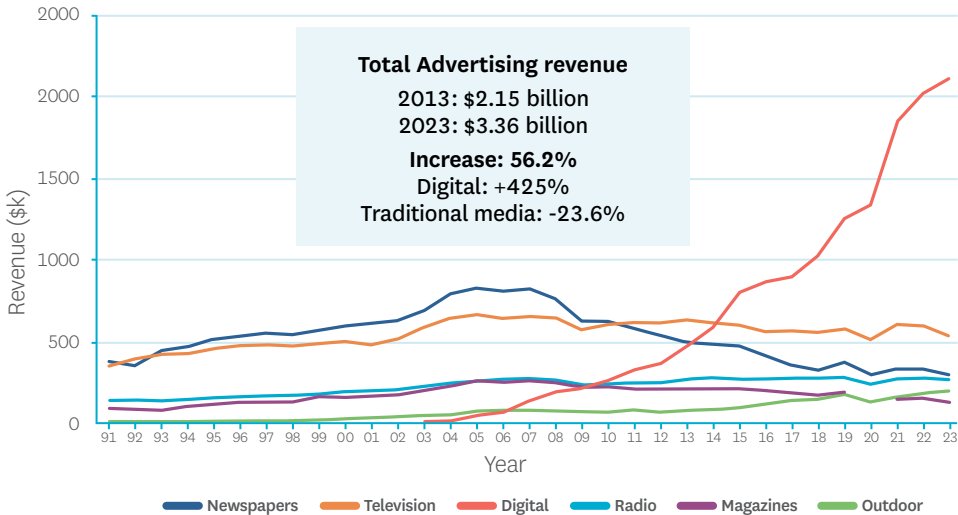


Figure1: Advertising revenue 1991–2023. Source: Advertising Standards Authority.

The past decade has been one of significant growth in total advertising spend that has failed to flow through to domestic sources. Print media have borne the brunt of the decline in domestic spend – newspaper and magazine spend are down almost 40 per cent on a decade ago – but the past year has seen commercial broadcasting hit in ways that mirror an earlier impact on newspapers. Television revenue is down \$100 million on a decade ago. Whereas radio has shown the greatest resilience, one of the principal operators, MediaWorks, has faced significant losses.

In fact, the latest reported results by NZME, TVNZ, Warner Bros Discovery and MediaWorks show all registered reduced operating revenue in 2023. Only NZME recorded a profit. Total advertising revenue for the year to December 2023 fell by \$30 million, with minimal growth forecast for the next two years.

The domination of the advertising market by multinational digital platforms has seen the vehicles that produce the country's journalism *collectively* accruing less than half the total spend. In the digital market itself, domestic media earn only 10 cents in every dollar spent – 90 per cent goes to the offshore entities. Those entities produce no news content within New Zealand and make token contributions (if any) for news use.

The past year was a difficult one for local media. Total advertising spend was down and the brunt of that was borne entirely by the local industry. Income for the multinationals rose in real terms as did their percentage of the total advertising pie – up from near 60 per cent to almost 63 per cent. Domestic digital spend was flat at 7.3 per cent.<sup>11</sup>

The market dominance is matched by an ability to minimise taxation that is not available to domestic news media. In 2022, Google's New Zealand income tax bill was \$4.3 million, up from \$2.9 million the previous year. This was on recorded revenue of \$78 million (\$58 million in 2021), a figure dwarfed by the \$870 million 'service fee' remitted to the U.S. parent company.<sup>12</sup> In the same period, Meta (owner of Facebook, Instagram and Messenger) paid company tax of approximately \$1 million on revenue of \$8.7 million after service and inter-company payments of \$196 million to Meta's Irish subsidiary.<sup>13</sup> In the same year, NZME (publisher of *The New Zealand Herald*) paid \$8.6 million in taxation on revenue of \$355 million, according to its annual report.

In addition to market dominance, the unregulated multinationals have manipulated and reduced access to news content that refers users back to the sites where it was created, thereby limiting their ability to attract direct digital advertising. All New Zealand domestic media report reduced Facebook traffic in 2023/4 and the Reuters Institute at Oxford University revealed in January that the total number of referrals internationally had dropped by 47 per cent between January and November 2023. There is growing evidence that Meta has deprioritised news by manipulating algorithms in retaliation to moves in a number of jurisdictions to require it to pay for news content use.<sup>14</sup> So, too, has Google.<sup>15</sup>

Meta has withdrawn its news tags on Facebook and has declined to renegotiate arrangements with news media in Australia and New Zealand for use of content. The Australian rejection<sup>16</sup> is an indication of the difficulties of legislating for equitable bargaining with multinationals whose market capitalisation is almost five times New Zealand's gross national product. Meta also exhibits a low tolerance towards media it perceives to be acting contrary to its interests. For example, a New Zealand media entity had its positive working relationship with Facebook abruptly cancelled when it announced it would join with other New Zealand media to seek collective bargaining with Meta.

Facebook has declining reach, particularly among the young, allowing platforms such as WhatsApp and TikTok to gain market share. NZME in March announced the launch of a WhatsApp channel. While such platforms may offer new opportunities for referral to news sites, they also attest to growing complexity in the digital landscape and the emergence of strategic and security issues.<sup>17</sup>

Although larger New Zealand media organisations have supported legislation promoting bargaining with the platforms, smaller operations have little bargaining power and see negligible benefits. Google NZ has

11 Advertising Standards Authority Annual Advertising Revenue survey.

12 <https://businessdesk.co.nz/article/media/google-nz-makes-205m-profit-pays-us-parent-870-million>

13 <https://www.nzherald.co.nz/business/facebook-nz-grows-profit-pays-196m-to-irish-associate/6JQ30H63W5A0XK5MQJ3DOGNDU/>

14 <https://reutersinstitute.politics.ox.ac.uk/journalism-media-and-technology-trends-and-predictions-2024#header--2>

15 *The Economist* 1 February 2024 "As Facebook turns 20, politics is out; impersonal video feeds are in".

16 <https://www.smh.com.au/business/companies/meta-pulls-out-of-crucial-news-commercial-deals-20240301-p5f93d.html>

17 <https://www.nytimes.com/2024/03/13/technology/tiktok-ban-house-vote.html>

made efforts to reach funding agreements with New Zealand media organisations, but the value of such arrangements is minor, certainly when compared to that group's New Zealand turnover. One example provided to Koi Tū was a recent arrangement where the total sum was less than the annual salary of the recipient's most junior producer.

Commercial media operators in New Zealand point to a further factor that tilted the financial playing field against them. In April 2023 the then government announced a funding boost of \$104 million over four years for Radio New Zealand – at a time when commercial media were experiencing a significant revenue downturn. It provided financial stability that the commercial sector did not enjoy and the ability to maintain resources that others were forced to reduce.

At the same time, commercial operators complained that RNZ was attempting to produce material similar to their own to attract audience. This, they said, could affect ratings-driven advertising spend on commercial media. It should be noted, however, that RNZ has made its news content available to many of those operators free of charge and that the state broadcaster has now been asked to make savings (in common with other parts of the public sector).<sup>18</sup>

The cost-saving directive from Government extends to funding agencies such as NZ On Air. That could have impact on private sector news media, and an even greater effect on creative industries. That sector is already under threat from a potential reduction or withdrawal from local production by Warner Bros Discovery when TV3 ceases to broadcast. If cuts are made in this area of government expenditure, the impact could be out of proportion to the savings and the effect long-lasting.

## Costs

In common with many New Zealand industries, the media sector has been hit by the costs of doing business.

Newsprint costs have risen by 56.6 per cent over the past five years,<sup>19</sup> along with increased printing production costs. As older printing plants were forced to close and production became consolidated to a small number of printing hubs serving the needs of multiple companies, the cost of distribution rose through newspapers being trucked longer distances (and incurring higher road user charges).

Newspapers and magazines have been impacted by unilateral decisions by New Zealand Post. A decision to cease rural deliveries at weekends has denied newspaper publishers the ability to distribute to rural customers the publications that in many cases attract the most advertising. For their part, magazine publishers have been hit with ongoing increases in postal charges. Over the same period in which letter rates doubled, publication rates tripled.

In the face of declining revenue, transmission costs have become a significant burden on broadcasters, to the point where Warner Bros Discovery sought relief. Rising production costs have become an increasing burden and WBD has signalled to Government its intention to end its TV3 broadcast transmissions next year.

Cost of living increases have placed wage pressure on all news media entities, many of which have been able to make modest adjustments only by cutting their workforces to meet their employment costs.

## Cutbacks

Static or falling revenue and rising costs have inevitable consequences. That has been brought into stark relief by a succession of actions from which the media sector will not recover:

- Ongoing downsizing that has reduced the total number of journalists employed in media organisations from more than 4000 in 2006 to fewer than 1700 today. That number will reduce to about 1450 when the Newshub/TVNZ cuts take effect.<sup>20</sup>

18 <https://www.thepost.co.nz/business/350212973/another-blow-media-ministry-talking-rnz-identify-potential-savings>

19 Actual cost-per-tonne comparison 2019-2024 supplied to Koi Tū on a confidential basis.

20 <https://thespinoff.co.nz/media/18-03-2024/how-many-journalism-jobs-are-left-in-aotearoa>

- In October 2022 the reporting strength in the newsrooms of Stuff regional titles was cut by up to 50 per cent and senior editing roles disestablished.
- In April 2023 MediaWorks closed its talk station Today FM with the loss of 30 jobs and consequential reductions in newsroom numbers. Today FM was replaced by a music-only station.
- In mid 2023 both NZME<sup>21</sup> and Stuff restructured their operations, separating print and digital functions, with the loss of experienced senior editorial staff.
- In December 2023 Stuff’s long-form investigative unit Stuff Circuit was disestablished.
- In March 2024, Times Media, publisher of the *Howick & Pakuranga Times* and a number of other titles that collectively provided an invaluable source of local news, was placed in voluntary administration.
- In April 2024 Warner Bros Discovery confirmed it would close its entire Newshub news operation on 5 July, affecting up to 75 per cent of the 400 TV3 staff. It is expected to cease broadcast television next year, signalling the closure of TV3.<sup>22</sup> Stuff has been contracted to supply a daily news bulletin but will repurpose content also appearing on its other platforms – a form of ‘mirror news’ – and there will still be a net loss of plurality and journalistic resource.
- Also in April 2024 TVNZ announced 68 staff cuts and the end of the Sunday current affairs programme, the Fair Go consumer show and an end to midday and late night news bulletins.

The domestic revenue downturn (which continues) is being felt across the board but may have disproportionate impacts outside the metropolitan centres. Infometrics economist Brad Olsen predicts regional communities will be hit by economic headwinds in 2024 as prices in the rural sector remain under pressure.<sup>23</sup> The ASB Regional Scoreboard for Q4 2023 indicates a number of regions that are heavily dependent on the primary sector are faring poorly. The outlook for the lowest-ranked region, Manawatū-Whanganui, stated it was “hard to envisage a swift turn-around in fortunes” and several other regions remain similarly depressed.<sup>24</sup>

There is a direct and immediate relationship between farm income and regional media revenue. Owners of regional newspapers are predicting closures within two to three years. They hope to transition to digital-only models but admit they will not be able to sustain present (already reduced) resourcing levels. Smaller regional catchments may not be able to reach the threshold where digital operations are viable.

Community newspaper owners bluntly told Koi Tū that “for some there is no digital future”, indicating that transfer from print to online advertising would lead to an unsustainable cut in revenue. These publications will simply fold.

There are clear signals that New Zealand faces the ‘news deserts’ already created in Australia, Canada, the United States, and the United Kingdom. This phenomenon is discussed later in the paper.

Sectoral media (entities serving ethnic, cultural, and special interests), together with digital start-ups serving defined demographics, survive but none sees its future as guaranteed. Organisations that receive funding from the state, such as Whakaata Māori and iwi radio stations, may not survive if that money is withheld. They are already facing inflationary pressures. As one manager put it: “Generally we are just struggling to keep pace with inflationary pressure, let alone building on what it is we’re trying to do. We were already running a super lean operation, and now it is leaner and leaner. I think the big question now for us is how on earth do we plug the gap?”

Such operations have limited scope to attract advertising, particularly when serving less affluent markets. The manager continued: “The big boys are struggling while appealing to the broadest possible audience.

21 NZME cut its workforce by 15 per cent in 2020.

22 <https://www.thepost.co.nz/business/350229951/tv3-owner-expected-go-internet-only-after-next-year-minister-advised>

23 <https://www.infometrics.co.nz/article/2024-02-media-release-quarterly-economic-monitor-december-2023>

24 <https://www.asb.co.nz/content/dam/asb/documents/reports/asb-regional-economic-scoreboard/asb-regional-scoreboard-q4-2023.pdf>

We're appealing to a narrower, arguably socio-economically more deprived audience that is not very attractive from an advertiser's point of view. So what do we do? Do we resort to the likes of fast food chains and the sort of companies that tend to prey on lower socio-economic groups?"

Digital start-ups see their futures as uncertain because their models rely on vulnerable sources of funding. Some rely on annual grants from donors, while others are subsidised by associated non-news enterprises. Some, including one which wishes to expand its operations, require funding through a variety of government streams. However, even government funding is no guarantee of survival. The digital arts magazine *Pantograph Punch* – which over 14 years has made a significant contribution to cultural journalism and art criticism in New Zealand – went into “indefinite hiatus” at the end of March 2024 citing static state funding since 2006.<sup>25</sup>

If all announced cutbacks go ahead – and the likelihood is that they will – the journalistic resources of New Zealand will have been reduced by almost 20 per cent in the space of a little more than a year. More reductions will inevitably follow if current conditions persist.

Declining finances do not affect news operations alone. The New Zealand film and video production industry faces parallel existential issues, some of which impact the funding of journalism-based projects. The chief executive of NZ On Air, Cam Harland, warned in March 2024 of “serious upheaval”.<sup>26</sup>

## News deserts

News deserts are a phenomenon that has yet to reach New Zealand but there are strong indications they are not far away. We already have multiple local drylands.

News deserts are zones in which there is no news media presence or ability to cover activities within them. Drylands are areas where there are nominal news outlets but they carry little local news. Some of these are ‘zombie’ newspapers that have a local masthead but contain no local news.

In the United States (where overall newspaper employment has fallen by 70 per cent since 2005) there are 204 counties with no news outlets and a further 228 are predicted to become news deserts this year.<sup>27</sup> In Australia, 29 local government areas (5.4 per cent of the total) have no local print or digital news outlets.<sup>28</sup> In the United Kingdom there are 38 local authority areas that are not served by any dedicated local news outlet and an estimated 4.1 million people live in these areas.<sup>29</sup>

International studies link news deserts and drylands to declining civic participation and election turnout, and to increased vulnerability to disinformation and official corruption.<sup>30</sup>

In some areas where traditional local news outlets have closed, they have been replaced by digital alternatives. These have tended to be centred on metropolitan areas and a number have failed. There have been calls for non-profit and philanthropic models to sustain local journalism, particularly in rural and economically deprived areas.<sup>31</sup>

New Zealand has already seen closures and consolidations in the local market. The former owner of Stuff, the Australian publisher Fairfax (now part of Nine Entertainment) closed 28 community titles in 2018 and

25 <https://www.nz.co.nz/news/national/511008/funding-woes-prompt-arts-magazine-publishers-to-press-pause-on-pantograph-punch>

26 <https://www.nzonair.govt.nz/news/shorts-newsletter-march-2024/>

27 *The State of Local News 2023* Medill School, Northwestern University <https://localnewsinitiative.northwestern.edu/projects/state-of-local-news/2023/>

28 Angus et al. *Socio-economic determinants of Public-Interest Journalism in Australia*. Monash 2023.

29 Public Interest News Foundation [https://www.publicinterestnews.org.uk/\\_files/ugd/cde0e9\\_97c4fe55ab0c49a0a29f40937e71d216.pdf](https://www.publicinterestnews.org.uk/_files/ugd/cde0e9_97c4fe55ab0c49a0a29f40937e71d216.pdf)

30 Ramos G, Torre L, Jerónimo P. No Media, No Voters? The Relationship between News Deserts and Voting Abstention. *Social Sciences*. 2023; 12(6):345. <https://doi.org/10.3390/socsci12060345>

31 Ellen Clegg & Dan Kennedy. *What Works in Community News: Media Startups, News Deserts, and the Future of the Fourth Estate* (B, 2024).



the regional newspaper market has been consolidated by reduced frequency or the substitution of local news pages with group syndicated content.

It is unlikely that owners of community or regional titles have the capacity to further reduce costs in this way and closures have already begun. Not all news deserts are in remote areas: The potential loss of the *Howick & Pakuranga Times* will create a significant hole in local coverage in metropolitan Auckland. We face the real prospect – if not certainty– of some parts of New Zealand having either no local news coverage or limited reporting by journalists working for national outlets or adjacent publications that turn a vacuum into a semi-vacuum.

Koi Tū asked a senior regional journalist for a personal assessment of the sector.

*Life for New Zealand's remaining regional daily newspapers now amounts to a gruelling challenge involving too few journalists trying to maintain news coverage that bears little resemblance to that expected by aging audiences used to a history of comprehensive local reporting.*

*It can't be done consistently, so the result is a blend of stories hastily rewritten from local council media releases, PR-like promotions of positive events and achievements, and hopefully at least one story that can be boosted enough to lead the front page.*

*Local content for a paper selling a few thousand hard copies and compromised by a constant need to feed its chain ownership's general news website is clumsily blended with stories from the whole group, deemed generally Kiwi enough to claim the interest of readers who would rather have more detailed material about people they know.*

*Informal arrangements relying on an unstable mix of opportunism and goodwill are producing additional content in areas like sports news that would not otherwise appear because there is no longer an editorial budget to pay for it.*

*Because there aren't enough reporters to go around, the roles of backroom staff like subeditors and even editors have changed to a blend of emergency stand-in reporter and highly pressured quality controller, That in itself will lead to exhaustion and errors, possibly legally dangerous ones.*

*In short, the regional daily newspaper is burning out and may only survive in ownership revolutions such as that in the Wairarapa<sup>32</sup>. Having local owners again may be the only option left if this long journey to oblivion is to be slowed.*

The managing director of the Ashburton Guardian, Daryl Holden, told the select committee considering the Digital News Fair Bargaining Bill that “simply breaking even and remaining financially viable has become an uphill battle”. Declines in advertising and subscription revenue – all of which he linked back to “the power and influence of the internet giants” – had forced his company to restructure, dramatically reduce staff, and reduce operations to survive. In oral evidence he warned the committee that the country could be facing “the collapse of New Zealand media”.

History has shown that where the media of other countries go, New Zealand follows. Without an environment that sustains news operations, this country *will* face the consequences of news deserts and drylands.

Indeed any reduction in media diversity is a cause for concern. Rangahau Aotearoa Research New Zealand conducted a national survey in the wake of the announcements by Warner Bros Discovery signalling closure of Newshub and by TVNZ announcing news cuts, It revealed that 67 per cent value having a choice in television channels to watch for news and current affairs. Three-quarters of those surveyed rated the availability of local news and current affairs on television as important or very important.<sup>33</sup>

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32 In 2016 the *Wairarapa Times-Age* returned to local ownership when general manager Andrew Denholm bought the title from NZME.

33 [https://assets-global.website-files.com/609b31c20fd604566f87ef29/65f755347cb19001111c1fda\\_65f26d58077626ffe6a4c9d5\\_ResearchNZ\\_MediaRelease\\_In\\_News\\_We\\_Trust%5B1%5D.pdf](https://assets-global.website-files.com/609b31c20fd604566f87ef29/65f755347cb19001111c1fda_65f26d58077626ffe6a4c9d5_ResearchNZ_MediaRelease_In_News_We_Trust%5B1%5D.pdf)

## Status of news media

News media in western democracies are suffering arguably their lowest status levels since World War II. They sit at the centre of a triangle of adversity. One vertex is occupied by the digital technologies that bring both ‘creative destruction’ through changes to user patterns, and more malevolent forms of destruction through advanced means of disinformation; another by complex changes in social attitudes; and the third by the media’s own reaction to international influencers that turned news values on their head, introduced us to ‘click bait’, and through which our media have suffered a number of self-inflicted wounds.

There are interdependencies in this model that are complicated by unpredictable socio-economic factors, by the possibility that artificial intelligence may not be a development within the current ‘communications revolution’ but a new – and potentially unstable and unreliable – paradigm shift, and by the potential emergence of a last-man-standing stratagem among media companies fighting for survival.

Deteriorating or flat-lining revenues have forced news media operations into strategies and tactics that would not have been contemplated in more prosperous times. Increasing reliance on the Internet – in its many iterations – has seen online analytics become a driving force. This has led to changing news values and the adoption of ‘clickbait’ tactics, some of which are redolent of London’s mass circulation ‘red top’ tabloids.

Media’s status should be determined by a different set of metrics. Their standing in terms of fulfilling democratically significant roles will not be determined by commercially driven ‘clicks’. It will be measured by three factors: trust, the behaviour of potential audience, and reach. The latter is an evaluation of the sector’s ability to access a critical mass of the public with sufficient resources to fulfil the purpose defined above. To be democratically significant, journalism must be capable of reaching enough people within a target group – be it a local community, ethnic community, or national audience – with information that allows that group to seek consensus on a common set of facts. For some media, the task is to reach across communities to provide a sufficient mix of perspectives to reflect a broad national consensus.

### Trust

New Zealanders’ trust in news has dropped dramatically in the past year, according to multiple surveys. AUT’s JM&D Trust in News survey and the Acumen Edelman Trust Barometer both show declining trust. The former puts trust in news at 33 per cent and the latter has trust in media at 36 per cent. In other words, about two-thirds don’t trust the news. This calls for immediate remedial action by news media who must rebuild confidence in their ability to carry out their democratically significant functions.

Trust in institutions – media, civic, scientific, or religious – is a critical dimension in the functioning of open democratic societies. It is in decline across many jurisdictions. That decline did not start because people used Facebook and Twitter to anonymously give vent to their baser instincts in their opinions of a perceived Establishment. Nor can it be dated to the Covid pandemic. The phenomenon predates social platforms.

In his study of social capital, Robert Putnam plotted trust declining since 1965.<sup>34</sup> Recent research shows sharper declines in general levels of trust after the 2008 recession, the political rise of Donald Trump, and the pandemic, but trust in *media* has been traced by sociologist Michael Schudson to changes to journalism in the decades preceding the rise of the Internet.<sup>35</sup>

Over a period that roughly matches Putnam’s downward curve, Schudson says American journalism became more aggressive, more independent, and more interpretive. At the same time coverage of presidential candidates (from both parties) became more negative. As Schudson put it: “As news grew more negative and more critical, people had more reason to find journalism distasteful.” At the same time scepticism (by the public) became “institutionalised as a value”.

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34 Robert Putnam, *Bowling Alone* (New York: Simon & Shuster 2000)

35 Michael Schudson What does ‘trust in media’ *Dædalus, the Journal of the American Academy of Arts & Sciences*. Vol. 151:4 2022.

Although countries like New Zealand were slower to follow such trends, inevitably these journalistic traits have been followed here. So, too, has the rise of a climate of scepticism and cynicism which, in common with other countries, grew in intensity as a result of the rise in disinformation, particularly surrounding Covid and, judging by images and utterances during the occupation of the grounds of the New Zealand Parliament, the anti-media stance of former president Trump.

The 2024 global report of the Edelman Trust Barometer<sup>36</sup> shows western democracies are among the least trusting societies. In that report, the United Kingdom dropped four percentage points to rank lowest. The survey of 28 countries asked which establishment leaders were “purposely trying to mislead people by saying things they know are false or gross exaggerations”. The ranking of journalists continues to decline with 64 per cent of respondents saying they could not be trusted (one percentage point worse than government leaders).

Media overall are distrusted in 15 of the 28 surveyed nations, including Australia and the United States, although 62 per cent say they do reside trust in ‘traditional’ media. The associated Acumen Adelman Trust Barometer in New Zealand shows traditional media lagging behind the global average, with only 54 per cent expressing trust in them.

The Journalism Media & Democracy project has tracked trust in news since 2020. Over that period overall trust in news has declined by 20 percentage points. The trajectory is in line with international surveys conducted by the Reuters Institute at Oxford University. Even trust in the news that people continue to personally consume has fallen by 17 percentage points to 45 per cent.

A March survey by Rangahau Aotearoa Research New Zealand found that almost two thirds of respondents stated they were personally concerned about the falling trust in the news in general. More than three-quarters said they were concerned about the spread of fake news and disinformation.<sup>37</sup>

Assuming such surveys accurately reflect the public mind, the disturbing fact is that too many New Zealanders do not believe what they see and hear from media.

The blurring of the line between reportage and opinion – in all forms of mainstream media – has become problematic. It has allowed polarised factions to claim bias in the news.

Kevin Lerner, professor of journalism at New York’s Marist College, has noted that what journalists may see as a distinction between reporting and opinion may be lost on the public. He believes “the idea that opinions bleed into the news report potentially leads readers to suspect that reporters have a political agenda, which damages their credibility and that of their news organizations.” News organisations, he says, need to do a better job of explaining to news consumers where – or if – the ‘wall’ between news and opinion exists.<sup>38</sup>

In common with other civic institutions, professional news media face an urgent task in restoring public trust if they are to fulfil their democratic objectives. English philosopher Thomas Simpson, who visited New Zealand to deliver the Maxim Institute’s 2023 Sir John Graham Lecture and participate in a workshop at Koi Tū pointed to the complexities of that challenge. Part of the challenge, he said, lay in restoring the thinking within elites “so that those in power have an instinctive understanding for a genuinely inclusive common good”.

*“There have always been contrary pressures that would undermine an ethos of public leadership. But that ethos is, I think, under significant strain now. We live in a culture in which calls to authenticity (“you be you”), self-definition, and putting yourself first (“self-care”) are reinforced by a highly image-conscious media and dominate over those of service. Self-focused ideals have a place, at times, but the primary and enduring call for our leaders is to put the common good over personal good. Claiming rights is easy; the hard part is fulfilling them.”*

36 <https://www.edelman.com/trust/2024/trust-barometer>

37 [https://assets-global.website-files.com/609b31c20fd604566f87ef29/65f755347cb19001111c1fda\\_65f26d58077626ffe6a4c9d5\\_ResearchNZ\\_MediaRelease\\_In\\_News\\_We\\_Trust%5B1%5D.pdf](https://assets-global.website-files.com/609b31c20fd604566f87ef29/65f755347cb19001111c1fda_65f26d58077626ffe6a4c9d5_ResearchNZ_MediaRelease_In_News_We_Trust%5B1%5D.pdf)

38 <https://www.niemanlab.org/2020/06/journalists-know-news-and-opinion-are-separate-but-readers-often-cant-tell-the-difference/>

Media leaders, like political leaders, hold power in their hands. While power may be placed in those hands, they cannot simply claim trust. It must be earned, and that will take time. It will require fundamental recalibration of journalistic norms, news values, and the drivers that define each media entity.

Declining institutional trust is due to a range of factors including cultural backlash<sup>39</sup> and polarisation. These may be evident in reasons cited for distrust of news in the JM&D survey including accusations of bias ('it's not my world view') and government funding ('bribery'). However, there are also indicators that are less subjective and directly related to the way journalism is practised. These pointers are cited repeatedly in studies (including JM&D) that are related to a growing problem for media – news avoidance.

## News avoidance

More New Zealanders are 'tuning out' and avoiding news altogether than is the case in many other countries. The JM&D survey found 75 per cent often or sometimes avoid the news. New Zealand was followed by Greece (58 per cent), Argentina (46 per cent), Poland (43 per cent) and the United Kingdom (41 per cent). The fact that 75 per cent nonetheless expressed interest in the news to one degree or another suggests their needs are not presently being adequately met.

Reasons given for news avoidance included the belief that news reports were negative, depressing and caused heightened anxiety. There were conflicting beliefs that news was either boring or overly dramatic, but many found it repetitive across different sources. There was also a direct correlation with reasons people did not trust the news.

Although New Zealand is yet to join the United Kingdom, Italy and Germany in the group of countries in danger of severe polarisation of the sort that is already found in the United States and five other countries, it sits close to the danger zone. According to the 2023 Acumen Edelman Trust Barometer we are in "moderately polarised territory". Polarisation leads to the rejection of ideas that do not fit the beliefs of the beholder and, with it, the rejection of news outlets for real or imagined bias.

Perceptions of bias and lack of political independence are subjective and likely driven by external influences. So the levelling of such criticism at media must be treated with some caution. It is clear, however, that the public is worried by the mixing of reportage and opinion in news coverage. Almost three-quarters of respondents feel the news is too opinionated and lacks factual information. Almost two-thirds are also concerned that there is a lack of transparency in the way newsgathering and presentation takes place. There are significant concerns about accuracy, although this needs to be tempered by evidence of a tendency to disbelieve material with which the consumer disagrees.

Consistent news avoidance tends to be more common among young people, women, and lower socioeconomic groups. There is also a strong correlation with those who are largely indifferent towards politics. When they do encounter news, it is second-hand (or even more hand-me-down) and has been reinterpreted.

Researchers also found cumulative impacts on news literacy and political knowledge. When people are reliant on others to digest news on their behalf, they do not develop the skills to find, filter and verify current events information nor accumulate political knowledge.<sup>40</sup>

Research by Toff et al (2023) highlights anxiety as a key driver in news avoidance. Their survey participants felt stressful material was negative, manipulative, and sometimes 'fearmongering'. Such attitudes were also expressed in the 2024 JM&D report which included statements by New Zealand respondents claiming there was a disproportionate amount of negative news and depressing news. Ongoing research by a Koi Tū associate has found that 37 per cent of the front page lead stories in one New Zealand daily newspaper in 2023 were about crime or serious/fatal injury.

39 Verboord et al, *Institutional Trust and Media Use in Times of Cultural Backlash: A Cross-National Study in Nine European Countries*, International Journal of Press/Politics 2023.

40 Toff, Palmer & Nielsen, *Avoiding the News*, Columbia University Press 2023.

A survey of international media leaders by the Reuters Institute on their predictions for 2024 reveals a number of initiatives planned to both improve trust and reduce news avoidance. They are moves that should be emulated by media in this country. They include better ways of explaining complex issues (67%), delivering news that doesn't just point out problems but offers potential solutions (44%), and producing more inspiring human stories (43%).

These are issues that are manifestly matters for the media themselves to resolve, although political rhetoric that undermines media for effect or advantage must be constrained if trust in both institutions is to be improved.

The task is a difficult one, made all the more challenging by the fact that our media must now compete with a multitude of foreign sources that may be good, indifferent, bad, or malevolent. Those sources traverse the spectrum of news media from *The New York Times* to the worst of London's 'red top' tabloids and conspiratorial digital start-ups. Manipulative social media players add to the mix. As a result, there is growing evidence of low media literacy.<sup>41</sup> Some are unable to recognise professionally produced news when they see it, how to find it, and why it may be useful.

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41 Ed Coper, *Facts and other Lies* Allen & Unwin 2022.

## Challenging technologies

It has long been recognised that the printing presses will eventually fall silent. Opinions differ on the date the lights will be turned off in the press hall, but the shutdown will have one of two causes: either they will no longer be economic, or component parts and software updates will no longer be available to keep them running. Perhaps it will be a combination of both.

Consolidation of plant has already occurred, with multiple titles including those of rival companies being printed at the same plant. There is limited scope for further consolidation if daily print schedules are maintained. These are, however, commercial decisions for media companies to make.

It is in the area of broadcasting that Government faces policy issues that are fast approaching.

Recent announcements by Warner Bros Discovery and TVNZ have highlighted the existential necessity and therefore their intention to accelerate the transition of their free-to-air network linear scheduled services from terrestrial transmission (DTT). This progression from 'digital soon' to 'digital first' then 'digital now' and ultimately 'digital only' has timing and policy implications for the Government.

### Distribution

Providing a linear broadcast television service first requires a long-term non-refundable lease from Government for the slice of the frequency 'highway' allocated to each broadcaster. The much greater cost, however, is for Kordia to provide access to and operation of the masts, towers and transmission equipment that delivers the audio-visual services to the consumer.

As a state-owned enterprise, Kordia can claim commercial confidentiality for its contracts. Nevertheless, some indicative, conservative but informed assumptions can be made. Each major DTT broadcast network is likely currently paying more than \$5 million a year for a ten-year contract that probably expires at the end of 2030. If any broadcaster still wants to continue with DTT, negotiation (for a new term and at a new price) must start eighteen months beforehand – about July 2028.

Unlike the private enterprise telecommunications network companies regulated under the Commerce Act, Kordia, by virtue of its control of critical transmission infrastructure at unique locations, is the main provider of broadcasting infrastructure.<sup>42</sup>

Kordia does not negotiate with open book or fixed cost/plus margin pricing, so any anti-competitive issues arising from its dominance cannot be discerned. Their annual accounts do not reveal what proportion of their costs and revenues are attributed to their broadcasting contracts, or the depreciation/pricing relationship of their fifty-year use of some of these assets dedicated to broadcasting use.

### Network Broadcasters

If Warner Bros Discovery or TVNZ (or any other television broadcaster with a Kordia or JDA contract) decided that their own survival and the interests of their audiences and advertisers depended on accelerating to 'digital now', the DTT distribution contracts must still be paid out to full term.

If they decided to have fully completed their respective transition to exclusively digital by the end of, say, 2025 they would need to continue paying Kordia for five years of a service they no longer needed and at a cost between them of \$50 million. For any broadcaster running at a financial loss, or even one not required to pay a dividend, that represents a lost investment opportunity to accelerate the re-purposing of their business to ensure their survival and credibility as major providers to our media ecology.

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42 Another company, JDA Limited, provides DTT coverage from nine smaller regional and provincial infrastructure locations that supplements Kordia's coverage to a total of 87% of the population. JDA secured this contract from broadcasters at a significantly lower price than that offered by Kordia.

## Radio and Māori Television Services

DTT switch-off (or phase-down) does not directly affect radio network or individual station transmissions. However, there should be no doubt that distribution changes will ultimately also have a profound impact on radio broadcasters. Although radio services use different 'slices' of frequency (AM and FM) to television – and some of their audiences have been transitioning to digital listening in both delay and real time – a DTT phase out could impact their business models. Overlaying any other considerations are the fact that AM's extremely powerful and stable signal and FM's local infrastructure make them essential for national and local disaster recovery.

Like television, existing radio broadcasters are bound by a government broadcast distribution regime (spectrum costs and charges) that was devised well before organisations like Netflix, Facebook, TikTok and Google entered the market. The traditional broadcasters pay for the cost of transmission, while the international platforms pass on the cost to consumers – bundled within the users' broader telecommunication charges.

Koi Tū understands the radio industry pre-paid \$96 million for its frequency use from 2011 to 2032. In hindsight the industry believes that was an overpayment. Whether that is correct or not may be debatable. However, the lack of certainty around tenure and costs that arise with the cessation of DTT is a significant issue for the industry. Without some certainty, it will be unable to plan for essential innovation and a long term viable business model.

The greatest fear for the radio industry is that it will be asked to pick up television's share of Kordia costs after linear tv transmission ends. Government would need to be persuaded of the justification for such an increase before it could be considered but the impact on the radio industry would be severe.

The situation for Whakaata Māori (Māori Television) is different from that of the other linear scheduled free-to-air television broadcasters. Their DTT frequencies are not fixed-term commercial leases from Government but are included within the spectrum that has been irrevocably allocated to Te Mātāwai, the agency which manages the ownership of all the spectrum provided to Māori interests. Government cannot therefore realistically develop a shut down or phase out plan for DTT without the full agreement of Māori Te Mātāwai and Whakaata Māori.

In any event, transition from DTT would probably require legislative or regulatory change to clear all the DTT spectrum used for broadcasting if the plan was for it to be then auctioned to the telco sector for 5G use. The Māori ownership interests in their share of this spectrum could be expected to assert that their cultural, economic, and public interest remits demand maximum 'reach' of Whakaata Māori to all New Zealanders, and at no cost to their audience constituency.

Remaining the only DTT broadcaster would be as commercially unrealistic for Whakaata Māori as for other broadcasters, as the Kordia and JDA costs of operating the transmission system for only one customer would be prohibitive. Compensation could be expected for Whakaata Māori to deal with transition costs and to maintain their historical level of population coverage.<sup>43</sup>

## Consumer Access

DTT services reach about 87 per cent of our population. The rest live mainly in remote rural and/or socially deprived parts of the country, and can receive the same linear scheduled content services as delivered by DTT, but direct to their home via satellite (DTH) which can technically provide 99 per cent coverage.

Reception requires either a satellite dish, or a subscription to Sky. However, those in the community who depend on free-to-air linear services are the ones least likely to afford the DTH option. In any event, it seems probable that Sky, like the DTT linear scheduled broadcasters, will have transitioned from satellite

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<sup>43</sup> In a recent development, Tu Atea (Maori Spectrum and Telecommunications Services) have acquired Broadtech Limited, the holding company of JDA which itself provides DTT network and other telecommunications services.

to digital by the time their contracts with the international satellite contractors have expired. The impact of single user exiting will not be explored here as International satellite contracts are complex.

Every household (as opposed to other premises) that is connected (as opposed to being 'passed' by) digital fibre broadband can be said to be 'digital ready'. However, data and estimates are needed on numbers of households connected and projected, and with what level of capability to support video streaming.

DTT delivery is a cost to the broadcaster, but not to the consumer. In the case of digital, that burden is effectively reversed. Most consumers have contract plans with service providers for a specified amount of use—the more they use the more they may have to pay. A policy decision will be needed to decide if this matters, and its implications for publicly funded content, and for free-to-air broadcasters subsidised in one way or another by public funds.



## Outdated oversight

The technological paradigm shift that has reshaped the media landscape has had the same effect on the laws and regulation that set the boundaries for the practice of journalism. However, while the media have reacted to the shift with increasing haste, the regulatory environment has failed to keep pace. It is disturbing that legislative reticence exists in spite of repeated calls for change.

The Government review of the Broadcasting Act currently underway is a start to the process of renewal but should be seen only as a commitment to make legislative change rather than an end in itself. The need for change extends far beyond that particular Act.

Change will be needed to a raft of acts and legislative instruments if the needs of democratically significant journalism are to be met and the structures to provide it are to be sustainable.

Legislation and regulation governing broadcasters are no longer fit for purpose. Professional news media are constrained in ways that the providers and users of social media are not, and forms of redress are out of balance. The structures and funding mechanisms that may be required for sustainable journalism do not envisage that purpose. Civil law is outpacing statute in areas such as privacy. The valuable information resource held by news organisations is inadequately protected against generative AI scraping for Large Language Models. In short, legislation binds the sector perilously to the past.

Among the Acts requiring change are the following – and the list is not exhaustive:

- Broadcasting Act
- Television New Zealand Act
- Radio New Zealand Act
- Copyright Act
- Commerce Act
- Companies Act
- Defamation Act
- Human Rights Act
- Harmful Digital Communications Act
- Official Information Act
- Local Government Official Information and Meetings Act
- Crimes Act
- Electoral Act
- Privacy Act
- National Security Legislation
- Tax law
- State Owned Enterprises Act

There are five key legal and regulatory issues faced by the industry:

- The medium-based nature of legislation that, to be truly effective, must be technology neutral.
- Medium-specific regulators that are no longer fit for purpose
- Lack of legislation/regulation that effectively captures large digital platforms.
- The need to more positively reflect matauranga Māori.
- The need for manifest and transparent independence from political influence or control.

Many of the legal and regulatory issues facing the media are inter-related. It is vital that a review is undertaken on a co-ordinated multi-ministry basis and **not** addressed in isolation by individual ministers reviewing acts or legislative instruments within their own portfolios.

There is an urgent need to replace medium-specific laws formulated to meet the needs of single delivery systems – principally radio and television – or enacted at a time that did not foresee the digital age.

The most obvious area of need is in regulatory oversight, which has not been fit for purpose for more than a decade. New Zealand has four regulatory bodies that, to one degree or another, have oversight of our news media. They are the statutory Broadcasting Standards Authority and Office of Film and Literature Classification, and the self-regulatory Media Council and Advertising Standards Authority.

It is, frankly, nonsensical to have such a diversity of oversight when the technologies employed by news media have expanded to the point where text, photography, video and audio are routinely employed by all of them.

The Advertising Standards Authority has managed transitions to encompass all modes of advertising and – to use the old adage ‘If it ain’t broke, don’t fix it’ – can be left to function as it does at present. The other entities, however, should be replaced.

In 2013 the Law Commission published a report *The News Media Meet New Media*<sup>44</sup> which proposed a new regulatory body. The project leader was Canterbury University Law School’s Professor John Burrows. The report found there were “gaps and inconsistencies in the standards and accountabilities which apply to news content in a converged media environment”. A decade later those gaps remain.

The Law Commission’s recommendations were not adopted at that time, but many appeared to address issues that remain outstanding. Koi Tū asked (now Emeritus) Professor Burrows to re-examine his report to determine whether, with updating for technological change, the report might still be fit for purpose and, thus, avoid the need for a new review.

In a preamble to his assessment, Professor Burrows acknowledges changes to the media environment that have occurred in the decade since the report was written. He notes the rise of misinformation and disinformation, increases in the type and effectiveness of communication (notably social media), changes to people’s cognitive processes, technological advances including artificial intelligence, the jurisdictional difficulties of dealing with transnational entities, and the perennial issue of trust.

Nonetheless, he believes the core elements of the Law Commission report remain fit for purpose.

## **The Burrows re-assessment**

*You have asked me just one main question: whether I could re-evaluate the Law Commission’s 2013 report on media regulation, and consider whether the model it recommends remains viable in 2024 against the present- day background I have described in the previous two pages.*

*I think the model still has value, although some aspects of it may give more pause for thought than they did 11 years ago. The basic rationale for the model is very simple, and is that which has for generations existed in countries which value good journalism. In a society where there is a multitude of sources of information, and where inaccurate information can cause real harm, it is vital for the public to have a trustworthy source they can turn to for accurate information and balanced commentary. In other words there must be an information source they can have confidence in, and which they can trust. That is even more important now, in an increasingly chaotic communications environment, than it was in 2013.*

*The model we chose is the familiar one of a body whose member organisations are bound by a code of ethics, and are subject to sanctions imposed by the body if they infringe against that code. There can be little argument with that basic proposition. There can be argument, however, about the detail of the model the Law Commission laid out, and whether that detail holds up in this worrying modern world.*

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44 NZLC R128 *The News Media Meets New Media* 2013.

*I shall discuss the features of the model which are likely to cause debate.*

*(1) A single regulator*

*When we were preparing the 2013 Report there were two media regulators: the Broadcasting Standards Authority (BSA) which dealt with broadcasters as that term was narrowly defined in the Broadcasting Act 1989, and the Press Council (PC) which dealt with the written word – hard copy newspapers and magazines. As the result of expanding technology there had developed a huge gap in the coverage of those two bodies. Online news was covered by no one. This was one of the considerations that led us to recommend as we did.*

*But that gap was quickly filled by a new industry body, the Online Media Standards Authority (OMSA). The functions of that body were later merged into an expanded Press Council which changed its name to the NZ Media Council (NZMC). This body now covers a much wider range of platforms than just print journalism. Among them are newspaper and broadcaster online news content; purely digital news sources such as the NBR, The Spinoff and Newsroom; and some blogs, such as Kiwiblog. It even deals with the classification of online video on demand, and has Amazon Prime and Netflix as members.*

*In my opinion both the BSA and the NZMC do a very good job. So the question arises whether the dual regulator system we now have could continue. That is a possibility, particularly if a revised Broadcasting Act led to a more rational division of subject matter between them. But given the convergence which already exists where the same material is published on multiple platforms, and given the relentless movement of television to digital mode, I still think that efficiency and consistency of standards argues for a single combined regulator. There is not much sense in the same news item being dealt with under different codes and by different adjudicators with different sanctions available to them. So I still favour the single regulator model. I note however that some other countries continue with the dual model – see for example Britain with its Press Council and Ofcom.*

*(2) Voluntary or compulsory?*

*This issue caused much debate during the preparation of our report in 2012-2013. It is likely to cause even more now. Does one go for the Media Council model where membership of publishers is voluntary, or the BSA model where it is state mandated, all broadcasters having to belong whether they be large or small?*

*I continue to favour the voluntary model, where publishers join because they see advantages in doing so. They will be regarded as members of the responsible media. That will attract statutory privileges such as the right to attend court hearings when the public are excluded and exemption from the privacy principles in the Privacy Act. They will be more likely to be given non-statutory privileges too, such as membership of the Parliamentary Press Gallery and access to police and emergency services briefings. More than that, membership of the regulatory system simply gives the public notice that they can be trusted. It is a “badge” of responsibility. If a new media advocacy organisation is set up they will receive the support of that as well. Being in a supportive community is better than going it alone.*

*The experience of the Media Council is encouraging: the mainstream newspapers and online news services have joined because they believe it is to their advantage to do so, not because they have to.*

*However, there will almost certainly be pushback against such a voluntary system. At a time when dangerous misinformation is being peddled there will be those (some of them at a fairly high level) who will say that it is a nonsense that only those who belong to the regulatory system get sanctioned when those who have opted out get away with far worse conduct. This point of view is understandable, but*

it misses the point that the “good guys” are good precisely because they have voluntarily opted to be regulated in the interests of a trustworthy media. One can draw one’s own conclusions about those who opt out. Moreover it is difficult to know how far really egregious conduct, particularly if it emanates from abroad, can be effectively controlled by a domestic regulator.

But let us assume that we did wish to implement a compulsory system. After all the BSA is such a body. Broadcasters are used to it. But there would be significant problems. Newspapers have a long and unbroken history of voluntary regulation and freedom from Government constraints.

Secondly, compulsion could only be effectively introduced by Act of Parliament. Not only the media, but also many members of the public, would see this as a form of Government control, or at least an unhealthy alignment of media and Government. Independence is a critical component of media freedom. Moreover once a proposal for legislative change is introduced and goes through a public consultation process one never knows what will emerge at the other end. That is entirely in the hands of the Parliamentarians.

Thirdly, if we opted for compulsion there would be formidable difficulties in deciding who should be compelled. Where would the line be drawn? In the realm of broadcasting what about student radio? In the land of print what about airline magazines? Would all internet news sites be included? Would one include bloggers? (Some of the best commentary on news of the day comes from blogs). If so, all bloggers or only some? And if the latter by whom and on what criteria would that be decided? I do not think such an exercise can be sensibly undertaken.

So for all the above reasons I would still argue for a voluntary system. But I am sure some people, including some in power, will not like letting those who most need to be reined in, opt out.

### (3) Sanctions

The 2013 Report does not recommend that the regulator should award monetary sanctions. It is confined to such remedies as requiring that decisions adverse to a media organisation be published; orders that corrections and apologies be published; directions to take down online material; and a decision that that an organisation be censured. Serious failure to comply could result in an organisation being expelled from the regulatory system - not much of a sanction, some might say, if it is then free to do as it likes.

There are those who would say these sanctions are not enough. After all the BSA has much tougher powers now- to order the payment of money, to ban advertising for a set period, and even to take a broadcaster off the air for a while. It only rarely exercises these powers, but in serious cases it can do so.

So, some will advocate for harsher powers in the regulator we propose. Perhaps that might be worth thinking about in a communications age as fraught as ours now is. A power to fine or order other monetary payments may be worth consideration. It would have to be provided for in the contract of membership.

### (4) Cost

Who is going to pay for all this? Do the media have the resources themselves? I still like the Law Commission Report’s idea of a Government subsidy, although one which is confined to the funding of research and public surveys. But I don’t think that will wash at this point in time. The recent well-intentioned Public Interest Journalism Fund gave rise to too much controversy. There will be allegations that the regulator is in the Government’s pocket or is being “bribed” by it. Even in 2012-

*2013 many in the media were vigorously opposed to this idea. I lost count of the times I heard “He who pays the piper calls the tune.” A good ringing soundbite, but nonsense all the same. So I am afraid I can’t answer this question.*

#### *Conclusion on the Regulator*

*So, overall I think the 2013 proposals are still fit for purpose, but I think that some aspects of them will be more difficult to get across the line than they were at that time. In the present context of a multiplicity of news sources of varying quality and a growing climate of mistrust, some people are going to say that the proposals are not tough enough: that there should be no opting out and that stronger sanctions are needed. Others may say that the present dual system of BSA and Media Council works, so there is no need for change. Yet another variant which may be put forward by someone is that the present Media Council could be expanded to take in broadcasters as well. That would be a single regulator, but would save the time and resource involved in setting up a new structure. However some harbour the view that the Council is an industry body and thus not truly independent. I think that view is entirely misplaced and unfair, but it exists, whether as strongly now as it once did I am not quite sure.*

Professor Burrows’ re-assessment highlights the difficulties of regulation in an era of low trust and high levels of disinformation. Central to any change must be the need for demonstrable independence. For any new regulator to enjoy the public’s confidence it would need to be seen to be independent of both government and the regulated.

His acknowledgement of the difficulties presented by “a multiplicity of media” also presents challenges. Not only are there definitional issues of eligibility, but also practical matters of governance and operational structures, together with the impact of digital platforms (currently under consideration in the Digital Fair Bargaining Bill).

The Koi Tū workshop decided that regulatory (complaints) systems would benefit from the introduction of tikanga – concepts such as duality and reciprocity – to their standards and processes. These are not reflected in current frameworks.<sup>45</sup>

The regulatory solution may lie in a hybrid approach discussed later in the paper.

Beyond the direct regulatory environment are areas of law that should be within the Government’s sights. The first relates to the rights of the individual, and the second to mechanisms that currently stand in the way of material structural changes to media business models. The third is a thorny conglomeration involving multinationals, generative AI, and data sovereignty.<sup>46</sup> The latter embraces matters in which the media have a stake but are not the only stakeholders.

The Koi Tū workshop for media leaders drew attention to the need to re-assess the manner in which individuals may seek protection and redress on matters of reputation and privacy.

Current law relating to defamation presents expensive, drawn-out civil proceedings that are often driven by the ability to pay potential damages and costs. As a result, news media organisations face a possible liability that does not currently constrain many individuals committing more egregious assaults on reputation via social media. In the age of X (formerly Twitter), Facebook and TikTok there is a real question to be asked over whether monetary damages represent the best way of protecting reputation.

Although there is a media exemption in the Privacy Act designed to protect newsgathering functions, media companies are nonetheless impacted by it. Civil torts have been the principal means by which this law has been advanced in a changing media environment but the Act itself does not strike an appropriate balance

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<sup>45</sup> The concepts are well articulated by Hirini Moko Mead in his book *Tikanga Māori Huia*, 2003.

<sup>46</sup> Data sovereignty is a matter of particular concern to Māori media, who feel a special responsibility for the preservation of te reo and other aspects of Te ao Māori. The position is set out in a statement by the Māori Radio Network Te Whakaruruhau o Ngā Reo Irirangi Māori <https://iwi.radio>

between privacy and the public's right to know in the public interest. The Privacy Commissioner's Briefing for the Incoming Minister highlights the need for substantive changes to the Act and the legitimate needs of journalists in pursuit of public interest stories should not be lost in any review.<sup>47</sup>

Hate speech was the subject of extensive enquiry by the previous government, arising in part out of the Royal Commission on the Christchurch terrorist attacks, and the resolution of the many issues raised is yet to be seen.

There is a balance to be achieved in each of these areas of law between the rights of individuals or identified groups and the right to free expression. We would argue that the balance must also take into account the need to protect the ability of journalists to pursue and publish matters in which personal rights are transcended by the public's right to information that affects their ability to function in a democratic society.

Similarly, those Acts governing access to official information need to be independently reviewed. The Ministry of Justice's current (limited) consultation on the Official Information Act has been strongly criticised by the Council for Civil Liberties.<sup>48</sup> It is vital, in the interests of restoring public trust in government, that the public's interests be seen to be served in a review of legislation that is so vital to a functioning democracy.

Indeed, none of these Acts should be reviewed in isolation, nor should solutions necessarily be sought merely by amending existing legislation. There are common threads running through all of them that call for common goals, consistency of approach, and ongoing fitness for purpose.

When Kōi Tū turned its attention to the structural and financial issues facing media organisations it was confronted time and again by the statement that "the business model is broken". While such a fatalistic approach does not meet with universal acceptance – and there are commercial operators determined to make it work – there can be no doubt that the model has fundamental weaknesses that, for some, could be the difference between survival and extinction.

Both in New Zealand and internationally there are efforts to find alternative structure that will provide for sustainable operations that support the kind of journalism that society needs.<sup>49</sup> The approaches involve both alternative sources of funding and organisational structure. The latter may range from investor commercial models, public interest companies, non-profits, and trusts.<sup>50</sup>

While there are entities in New Zealand that operate through a range of funding models and structures, our commercial and tax laws/regulations do not recognise journalism per se as a public good. The Pacific Media Network, for example, is operated by a trust but that body exists for the wider purpose of the betterment of Pacific peoples and the words 'news' and 'journalism' do not appear in its trust deed. The Better Public Media Trust enjoys charitable status as a media advocacy group<sup>51</sup> but the public interest news digital start-up Newsroom (funded by a range of altruistic donors) does not. Philanthropists are not incentivised by tax deductibility to donate directly to news media organisations.

In the United States, the United Kingdom and India there are company structures that enjoys tax-free benefits because the entities established under them perform a public good and generate limited returns to their operators. In the United States these entities are known as Low-profit limited liability companies or L3Cs. No such structure is available for media in this country.

Direct funding of private sector news media by government has been blighted by a widely disseminated disinformation campaign that claimed media organisations were bribed by the Public Interest Journalism

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47 <https://privacy.org.nz/assets/New-order/Resources-/Publications/Reports-to-Parliament-and-Government-/BIMs/BIM.pdf>

48 <https://nzcccl.org.nz/media-release-bizarre-government-secrecy-keeps-public-in-the-dark-about-law-changes-affecting-the-oia/>

49 <https://www.cogitatiopress.com/mediaandcommunication/issue/viewIssue/398/350>

50 Gavin Ellis, *Trust Ownership and the Future of News*. Palgrave, 2014.

51 <https://www.simpsongrierson.com/insights-news/legal-updates/advocacy-focused-charities-public-media-advocacy-confirmed-as-charitable>

Fund. There are indirect and far less controversial ways of assisting the sustainability of democratically significant journalism, but our laws and regulations do not currently provide adequately for the range of ways and means that government can help media to find their own way to a more certain future.

## Cultural identity

Tangata whenua have guaranteed access to the airwaves and government support for both television and radio services. The journalists serving the needs of Māori have aspirations for the services they wish to continue to provide.

A comprehensive study, *Mātauranga Māori in the Media*, reported in August 2023 and its findings should inform discussion on the way forward for not only media directly serving the needs of Māori but for the media sector in general.<sup>52</sup>

Representatives of Māori media at the Koi Tū workshop impressed attendees with their explanations of mātauranga Māori and *kia tika, kia pono* – truth and integrity, or values-based journalism.

Following the workshop, Koi Tū asked a representative of Whakaata Māori (Māori Television) to articulate the ways in which aspirations are currently met. We were told these aspirations were also reflected in iwi radio.

*Whakaata Māori is a legacy entrusted to us to protect, to nurture and to advance te reo me ngā tikanga Māori for future generations. Established as a result of many years of battle by Māori leaders to assert Māori rights to fair and equitable recognition under Te Tiriti o Waitangi to protect and promote te reo Māori in broadcasting. Māori leaders understood that broadcasting is a powerful tool to aid language revitalisation, with Whakaata Māori:*

- *Being a repository for Māori stories and language resources.*
- *Providing platforms for the Māori language to be seen, heard and used.*
- *Providing diverse voices – shining light on issues that matter through Te Ao Māori News and elevating Māori voices and perspectives.*
- *Broadcasting cultural events of national significance to share and celebrate.*
- *Information dissemination – connecting into homes and communities, highlighted during Covid-19 with demonstrable increased viewership and engagement with hard to reach audiences.*

*The world has changed a lot since we launched. Changes in the media industry, technology and audience expectations have transformed our operating environment. The Māori Media sector review concluded in 2022, found that Whakaata Māori remains relevant and continues to hold an important role with language revitalisation and nationhood to achieve the sector vision of “a collaborative and capable Māori Media community that promotes and demonstrates the use of te reo Māori me ngā tikanga, promotes te ao Māori, and tells Māori stories in Māori ways”. The review presents the sector with new and significant workstreams to progress.*

*Whakaata Māori plays a unique and central role in supporting both the Crown’s national te reo Māori revitalisation strategy, Maihi Karauna and Maihi Māori to realise the joint vision ‘kia mauri ora te reo’. Our outcomes link and contribute to each Maihi, and we deliver content that reflects the unique identity of New Zealand and creates the environment that supports our audience to value and use te reo me ngā tikanga Māori in their daily lives.*

*Whakaata Māori tells stories that inspire and connect people to te reo me ngā tikanga Māori. We recognise that for te reo Māori to survive and thrive, it must be spoken, by Māori and non-Māori. It*

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52 *Mātauranga Māori in the Media: A Report to Te Mana Whanonga Kaipāho | Broadcasting Standards Authority, Te Puni Kōkiri | Ministry of Māori Development, and Manatū Taonga Ministry for Culture and Heritage.* <https://www.bsa.govt.nz/assets/Matauranga-Maori-in-the-Media-Final-Aug22.pdf>



*must also inhabit new spaces, including digital. Whakaata Māori like media organisations worldwide, has managed the need to adapt to major changes in the shape of new technologies, shifting audience behaviours and changing business models and has evolved from a television broadcaster to a multimedia operation broadcasting free-to-air and digital content for our audiences to access anywhere, any time and on any device.*

*Notwithstanding the necessary evolution, Whakaata Māori funding has not kept pace with these advancements and was effectively frozen at 2008 levels. Driving technology and innovation is critical to achieve our role and to continue to connect with audiences in the ways they desire.*

*At Whakaata Māori, we strive to be the most respected provider of Māori news. Our mission is to deliver independent, impartial, and accurate news reporting that fosters an understanding of te ao Māori while ensuring transparency and accountability.*

*Our data indicates that our audience's preferred method of consuming news is shifting from linear platforms to digital platforms such as video on demand, news websites, apps, and social media. We are focused on transforming our approach to provide an audience-centred, outcome-driven experience that serves to elevate Māori and other indigenous voices, cultures, and issues in the digital era.*

*The core role of Whakaata Māori remains as important and relevant as when it was founded. The stories we tell today hold immense power as they shape and inspire the perspectives of an entire nation, influencing the way our children and future generations perceive themselves and how the world perceives them.*

*Our dedication to this mission is reflected in our collaborations with independent producers, the wider media sector, whānau, hapū, iwi, and communities, all united in our goal to uplift and amplify the voices and perspectives of our people. We foster positive relationships with our partners and practice whanaungatanga and manaakitanga, which promote mutual respect, hospitality, and inclusivity.*

*We are committed to a strong, pluralistic media sector that fosters a healthy democracy for all New Zealanders because this is the environment that allows our kaupapa to thrive. A weakening of that environment creates an ecosystem where misinformation can flourish in the absence of quality journalism. Māori are best served when the ecosystem enables opportunities for a full, frank and fair understanding of the world they inhabit, powered by healthy debate, cultural respect and an unbridled ambition for their future potential.*

However, Whakaata Māori says it is “headed for a fiscal cliff”. Already battling static funding, it has now been faced with a call to cut \$1 million from its budget. The broadcaster says it has been struggling to keep pace and build on the aims articulated above.

It says it has been a “super lean operation”. It has been asked to “get leaner” when it regards itself already being at a credible minimum. At a time when its mainstream television counterparts are struggling, it lacks the ability to replace government funding through advertising. Nor does it have the mechanisms or potential for alternative funding.

It is a predicament also faced by other ethnic news media. While some receive Crown funding,<sup>53</sup> advertising is a vital revenue source in this sector. However, advertising potential is limited – particularly for those entities that appeal to more socially and economically deprived sectors of the community.

Organisations such as Whakaata Māori and Pacific Media Network (PMN) have received limited funding through arrangements with Google but the amounts are very small and do not add significantly to operating capability.

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53 Including Whakaata Māori, iwi radio, and the Pacific Media Network.

And meeting the needs of tangata whenua and other ethnic communities has dimensions that mainstream organisations do not face. Each of these providers offers services in the languages of target audiences and are faced with the cost of employing native-speakers and translators. PMN, for example, offers services in 10 Pacific languages.

Although ethnic media are directed first and foremost at targeted communities, they do not exist in a bubble. While they do inform their own communities about activities within them, they also reflect New Zealand society in ways that are relevant to their audiences. Those audiences are significant: more than 15 per cent of our population is Asian (but that catch-all masks a multiplicity of cultures and ethnicities) and the fastest growing section of our population is among Pacific peoples. Hence media directed at these communities have vital roles to play in social cohesion and democratic engagement. Through broader access, they also play vital roles in reflecting their communities to others, thus fostering better understanding. Yet, beyond recognition of te tiriti o Waitangi rights and obligations, there is limited cognisance in law/regulation/policy of their roles/values and few guarantees for the survival of ethnic media entities.

## Civil society and news media

There is an assumption in this report and in intellectual discussions about the role of news media that it plays a crucial role in defending democracy. It is a claim or an ambition that reverberates through discussion with leaders in civil society – from the judiciary to the social sector, business, and local government.

Across civil society actors there is a sense that media resources devoted to reporting on topics critical to democracy – from the courts to local bodies and to explaining the true state of social and economic challenges that face New Zealand – have shrunk. While there was probably never a golden age of reporting, interviewees see a shift towards commentary from facts and cuts in reporting as having been detrimental.

In some cases, especially court and local affairs reporting, recent attempts at public funding have improved the level of coverage in ways visible to the judiciary and local government experts who now fear that support to report on issues central to a common sense of democracy may be at risk.

There is also a sense that media organisations may need to rethink their own obligations to fostering an informed democracy by representing multiple viewpoints, genuinely explaining events and trends, and at times being more positive rather than relentlessly negative which risks deepening polarisation and cynicism.

“The worst meme in the world is ‘explaining is losing,’” says former Auckland local government politician Penny Hulse, “I’ve watched that be so damaging to politicians, so damaging to good outcomes...the kind of journalism which is ‘we just want a yes or no’. I think we all just need to take a breath and start to respect our community a bit more. Our communities can cope with the grey they can cope with the slightly more detailed explanation. And they deserve it.”

Some participants talk of negativity and groupthink in news media, representing, they suggest, the small population, perhaps shrinking numbers of media organisations, and relatively low pay leading to a younger media workforce.

Yet overall, the interviewees for this section are signed up to the idea that media plays a critical role in creating the conditions for a sustainable democracy where citizens can gain a common understanding of major topics, the stories of Aotearoa New Zealand, and see their leaders held to account in constructive ways.

### Judiciary and media – an uneasy but vital connection

The judiciary sees the media as vital to the public transparency of court proceedings and explanation of complex judgments and laws. The fact that justice is *seen to be done*, and that the process of law is conveyed to the general public, is as important as the process itself.

Justice Simon Moore, the former chair of the Media and Courts Committee (now chaired by Justice Tracey Walker), says reporting of the courts is critical to the health of democracy: “Journalists are not denied access to our courts except in the rarest of cases. I cannot over-emphasise how important the media is in terms of reporting the working of the courts.”

“It is incredibly important that what happens in your courts is not only accessible to the public through the media but that the media actually is there to access it and report on it...The media are the eyes and ears of the public. It’s hard to imagine that phrase having greater application in my view than the courts.”

Trust is central to the relationship between the judiciary and the media. At its most basic this means the presence in court of journalists whom the judge, lawyers and court officials know will understand the terms and conditions of reporting as well as such restrictions as the court sitting “in camera”.

Judges report an improvement in the presence and quality of reporters in the courtroom since 2021 – a shift after a long period of decline as resources were cut and, when they did appear to cover cases, reporters were often inexperienced. Mistakes were made, some serious.

Justice Moore credited investments through the Open Justice project, an initiative which had seen dedicated resource allocated to reporting the courts, funded through NZ On Air, for part of the recent improvement – something he said colleagues across the country had noted, perhaps especially in smaller, regional, courts.

“The deterioration reached its climax two or three years ago. Things have improved...Two years ago, before we got the Open Justice initiative and better funding, my answer would have been most certainly that coverage had declined. I have the sense that that position has improved significantly in our courts and the circuit courts – Whangarei, Hamilton, Rotorua,” Justice Moore said in an interview for this report. He also sees a role for the media in the judiciary’s wish to better educate the public about the workings and machinery of justice.

## **Local democracy needs local journalism**

Local news is arguably the area most hit by cuts in media staffing over the past two decades. Experts in local government and democracy see damage rippling through communities that lose a common understanding of what is happening and why.

Penny Hulse, a former deputy mayor of Waitakere and deputy mayor of Auckland City, sees the loss of local media coverage of council decisions and the life of the community as adding to polarisation, local misinformation, and disdain for politicians.

Hulse, who is an advocate for local democratic participation and accountability through citizens assemblies and other innovations, has watched publications cover less and less local news and once-vital local news sources dwindle. She uses the example of *The Western Leader* which has served West Auckland for decades.

“*The Western Leader* just embodied absolutely the local government sort of media relationship,” she said. “In the old Waitakere days, we didn’t even make it into *The Herald* but oh man *The Western Leader*, we read every bit and they were substantial.

The journalists came to the meetings and there were letters to the editor, and we would pore over it and it really meant something.”

Hulse says that while the relationship between journalists and local or city politicians can be fraught it is vital to understand each other and their motivations. She says the commitment to hold politicians to account too often becomes aggressive attacks that serve only to increase public cynicism and deters people from entering politics.

“For me, the local newspapers helped build knowledge about issues across a whole community. Pre the madness of social media, people got their information from papers like the *Western Leader*, whether we liked it or not... The whole of West Auckland was reading some quite well researched material, all reading the same material, from a really independent perspective...The *Western Leader* was a single point of truth but that single point of truth was moderated by good journalism.”

She is only too aware of the decline of local journalism in West Auckland and Auckland more broadly as even major publishers reduce coverage of local councils, council meetings, local initiatives, and seek stories about conflict and failure.

“It’s the fact that every story about council is a negative one,” she said. “It’s all ‘the council is broke’ and ‘the mayor is a wanker’. That stops people wanting to engage and it stops them looking for more information. The big gap is where is the information? Do you go to *Our Auckland* which is seen as the council’s propaganda rag, or do you go to council commentators? Council has become so ridiculed, it’s the worst combination of ridicule and being boring at the same time.”

## Business wants to be understood and appreciated

The business sector sees itself as a vital generator of jobs and economic growth yet senses that it is misunderstood, frequently misrepresented, and certainly underreported relative to its importance to the life and growth of New Zealand.

Simon Bridges, chief executive officer of the Auckland Business Chamber, has had a long and often testy relationship with media in his prior career as a National Party politician and the party leader. He also led a well-regarded Epidemic Response select committee at the start of the Covid pandemic, which canvassed the role of media and many of the issues over competition, threats from major technology companies, and the place of media in New Zealand society, that are within this report from Koi Tū.

In his present role, Bridges concludes business is too often covered in a shallow way and that a small market and relatively low pay leads to a liberal bias among journalists more generally, denying New Zealanders alternative voices and perspectives.

“I think the truth is, if you take just Australia, but certainly the United Kingdom and the United States, there is a broad spectrum of perspectives. Even New Zealand business news can often be better than it is in New Zealand at the likes of the *Australian Financial Review* and *The Australian*, for example,” Bridges said.

In his view, New Zealand journalism is relatively low paid and draws younger staff from a rather narrow pool in terms of their education and political views, not necessarily representative of wider society. He believes he has seen a decline in the breadth and depth of coverage since he has been in public life and that there is a “pack mentality” in media where outlets and reporters chase each other rather than seek to differentiate between perspectives.

“Once one or two journalists give their view everyone follows that view...that’s a small society with a small media class... that’s increasingly narrow. That’s my basic thesis,” he said.

While in politics he opposed the merger of RNZ and TVNZ believing it risked narrowing the range of voices and giving a publicly owned outlet too much influence: “One of the strong arguments for me against the RNZ/TVNZ merger was that we were decreasing the voices. We were creating a very powerful monolithic media home. The truth is RNZ and TVNZ have different cultures and report in slightly different ways and we want/need that. We need more.”

There is a political edge to his perspective on the publicly funded media: “The usual line is that they are there to ‘tell our stories’ which is true but it’s also pretty banal. I think the perception of the right [wing] in New Zealand is that RNZ is a Wellington centre-left, possibly left-of-centre, institution that the right is better to steer clear of. That’s just the reality of it. I’m not making a judgment. I think TVNZ has become infotainment with a very strong emphasis on the ‘tainment’. Their breakfast shows cannot in any meaningful way be classified as serious news channels. So, pick your poison: that is what public funding is putting out.”

However, he still sees value in public funding but would like to see it directed through an organisation not dissimilar to NZ On Air so that more types of voices are funded: “To me, the model that has some traction when we think about these things is some form of a turbo-charged NZ On Air-type scenario that ensures that there is a multiplicity of media outlets and journalists being funded to provide that range of views that is so important for democracy.”

As a business leader he is also conscious of the economic state of media we now see manifested in the proposal to shut down Newshub and cut jobs and programmes at TVNZ: “Whether the media is in ‘crisis’ is obviously up for debate. But if it is, it’s been a slow-moving one to date,” he said in an interview before the announcement that Newshub was being eliminated and of cutbacks at TVNZ. “I think the New Zealand media possibly has always suffered from our size as a country, but I think it’s getting worse, a very narrow pool of outlets and of journalists.”

## Journalism for and of all communities

There is a trope in American journalism that the purpose of journalism is to “comfort the afflicted and afflict the comfortable”. It is rooted in the idea that the powerful always have a voice and that journalists are there to shed light on the lives of others.

It has to be a worthy aim and there are examples where journalism can make a difference by tackling difficult stories that challenge people of privilege and power: historic investigations into the conduct of medics; recent investigations into Oranga Tamariki or exposés of abuse in mental health institutions.

Gael Surgenor, a member of the panel that reviewed local government in New Zealand and an adjunct fellow of Griffin University, has spent her career at the intersection between people who may be the poor, the marginalised, or with mental and physical health problems that are poorly understood and frequently poorly reported. She has also contributed to inquiries into local government and local democracy.

She has experience of running programmes to help train journalists about the circumstances of people with complex needs who face real difficulties. She sees great progress in the way mental health is reported with relative sensitivity and understanding, or where investigative reporters expose injustice.

“The less robust media is or the more dumbed down it is, the more risk there is that the really important issues that need to be portrayed accurately will be missing (and) people will be misinformed and stereotypes and discriminatory attitudes and things like that will be fostered,” she said.

She sees a crucial connection between providers of services or campaigners for marginalised or troubled groups and the media. It sometimes starts with conflict between different world views but a constructive approach can help a process of education that spreads from reporters to their readers – changing perspectives.

A good example well known in media was the demystification and explanation of HIV/AIDS in which over a long period of self-education and some nudging from experts and campaigners, the media grew to understand and better represent those most affected by HIV/AIDS and to shift the tone of coverage.

Surgenor recalls a mental health job in London in the 1990s where the agency she worked for stopped complaining about the way mental health was covered and instead created an award for genuinely positive coverage of mental health.

“One of the things that we learned there...was that it was difficult for journalists to take the time to cover stories so that they tended to pick short cuts...So one of the things that we did was make it easier for journalists to cover stories about mental health in more balanced ways with training and an award,” she recalls.

In New Zealand she followed that up with a campaign “It’s not OK” about family violence which included advice to journalists about how to report on the subject and avoid tropes and stereotypes about victims and perpetrators.

“In my experience, both in mental health and in family violence, [media] coverage of these issues shifted from discriminatory to more accurate, and in line with people’s lived experience. It made the issues more able to be tackled or prevented or responded to, with community efforts instead of perpetuating negative stereotypes.”

She understands the time and space that journalists need to tell accurate stories and sees some element of public funding as critical to that.

“Journalists [need] the time and the opportunity to go deep on the stories and actually cover it in a more balanced and more accurate and more constructive way. I think the local democracy reporters that have been supported [latterly] through the public interest journalism fund has been amazing. I mean, we’ve seen much more local politics covered by journalists and as a result of that local stories, things that matter to communities. I think it’s been an incredibly positive thing.”

While she welcomes the way many politicians have seized on social media to reach local audiences directly, it is no substitute for local journalism: “That’s great if politicians are accessible to people and talk to them directly. But that doesn’t necessarily ensure that the hard questions are asked. It’s difficult to craft a good question, and that’s the journalists’ art.”

## The AI challenge

The owner of *Stuff*, Sinead Boucher, in a presentation to the International News Media Association, described generative AI as “an extractive industry” that mines content to create value for tech companies. In the same speech she acknowledges the many benefits that news media could derive from innovative use of artificial intelligence.<sup>54</sup>

Her address encapsulated the dilemma that AI presents: how can its benefits be exploited while simultaneously placing constraints on others who would seek to achieve the same end?

Media organisations around the world are individually and collectively investigating the ways in which their resource-depleted industry can use artificial intelligence to achieve everything from automating transcription and translation to data mining and to automating production. Every week produces new potential uses for the technology.

There is wide support for back-end news automation but many editors are ambivalent about its use for content creation.<sup>55</sup> It is used for some story creation in New Zealand – *BusinessDesk* has been nominated for an international award in its use of AI to process releases from the New Zealand Stock Exchange<sup>56</sup> – but media companies are moving cautiously.

The direction in which positive uses of AI take journalism may be left largely to the industry itself, although there is a need for a set of clear ethical guidelines that should be adopted across the industry. In February 2024 UNESCO launched the Global AI Ethics and Governance Observatory. Its work would be instructive in producing guidelines.<sup>57</sup> There would be even more immediate utility in the framework for new technologies released in April 2024 by the International Science Council. Its report *A guide for policy-makers: Evaluating rapidly developing technologies including AI, large language models and beyond*, the principal authors of which were Kōi Tū’s director Sir Peter Gluckman and its strategic advisor Hema Sridhar, is expected to inform the multiple global and national discussions taking place related to AI<sup>58</sup>.

The negative impact of artificial intelligence falls into two distinct fields. The first is what media organisations see as the breaching of their intellectual property rights through data scraping in the creation of Large Language Models and enhanced search engines. The second is the ability to harness Gen AI in the creation of plausible, hard to detect disinformation. This is a problem faced not only by news media. Even the scientific community is not immune.<sup>59</sup>

Litigation is already underway in other jurisdictions over the scraping of data. The New York Times was the first major American media company to sue Microsoft and OpenAI over copyright issues related to its written works. Writers, computer coders and other groups have also filed copyright suits against companies that build generative AI. Copyright questions around generative AI remain unresolved, with a mounting number of actions.

There are wider issues that may have impacts similar to the dominance of transnational search and social platforms. The U.S. Federal Trade Commission has opened an enquiry into Microsoft’s investment in OpenAI, (the owner of ChatGPT) while, in Britain, the Competition and Markets Authority is reviewing whether the investment amounted to a merger that fell under its purview. If so, the CMA would investigate whether it represents a threat to competition. The European Commission is also examining whether its antitrust laws could apply.

54 <https://www.inma.org/blogs/conference/post.cfm/media-mistakes-of-the-past-should-not-be-repeated-with-ai>

55 <https://reutersinstitute.politics.ox.ac.uk/journalism-media-and-technology-trends-and-predictions-2024>

56 <https://businessdesk.co.nz/article/self-promotion/bd-ai-businessdesks-nzx-robot-reporter-nominated-for-global-news-award>

57 In 2021 UNESCO member states adopted an international standard: *Recommendation on the Ethics of Artificial Intelligence* <https://unesdoc.unesco.org/ark:/48223/pf0000381137>

58 <https://council.science/publications/policy-makers-guide-framework-digital-technologies/>

59 <https://www.economist.com/science-and-technology/2024/02/01/ai-could-accelerate-scientific-fraud-as-well-as-progress>



In New Zealand the concerns extend beyond the news. Large Language Models are a live issue for New Zealand's Māori and Pacifica communities that claim sovereignty over their language and customs. Māori and Pacifica media are primary repositories of that material. Te Whakaruruhau o Ngā Reo Irirangi Māori, for example, has a strong position on data sovereignty, particularly as iwi radio stations move progressively into digital environments. It has expressed concerns about unauthorised and inexpert access to its lingual and cultural taonga.<sup>60</sup> Our creative industries are equally vulnerable.

Ursula Cheer in *Media Law in New Zealand* states: "The subject of copyright law is not an easy one, and it has not been rendered any easier by the fact that it has been extended by the court to protect inventions and industrial designs, something for which its framers probably never intended it."<sup>61</sup> Cheer notes that the phrase "there is no copyright in news" is substantially correct. It follows from the notion that copyright resides in the mode of expression and not content. The premise has been seen as a necessary condition for the transmission of news by various means and outlets.

Nevertheless, there is a clear need to protect the intellectual property rights in the country's collections of news and current affairs material – its news archives – and in the languages and cultures preserved by Māori and Pacifica media. Recognition of news and cultural archives under the Copyright Act may be an interim form of protection, if only by providing grounds for litigation. Admittedly, that is not an attractive option when one considers the deep pockets of huge multinational corporations

Given the transnational nature of the creators of Large Language Models, the most effective responses will be through international conventions such as the Berne Union and the Universal Copyright Convention. New Zealand is party to both.

In the meantime, the rapid rise of GenAI has made it difficult, but not impossible, for lawmakers to keep pace. The European Union is arguably at the forefront with its AI Act now in force.<sup>62</sup> However, it adopts what is effectively a risk-based approach that guards against potential harms while facilitating the benefits of AI development.

Such an approach may well be required in New Zealand to counter the second danger facing not only media but the nation as a whole – the use of AI to produce and propagate sophisticated disinformation. Yet, again, the international nature of the creation, distribution, and repetition of much disinformation renders domestic legislative solutions either limited in their application or ineffectual. New Zealand may need to rely on international conventions or takedown rules that have limited scope.<sup>63</sup> Koi Tū academics have already been at the global forefront of exploring the broader issues of how and what to regulate with such a rapidly developing technology.<sup>64</sup>

This is not the place to discuss the profound effects of AI. It will suffice to quote Mustafa Suleyman, co-founder of one of the largest AI companies, DeepMind, on how we should perceive the technology.

*The coming wave is defined by two core technologies: artificial intelligence and synthetic biology. Together they will usher in a new dawn for humanity, creating wealth and surplus unlike anything ever seen. And yet their rapid proliferation also threatens to empower a diverse array of bad actors to unleash disruption, instability, and even catastrophe on an unimaginable scale. This wave creates an immense challenge that will define the twenty-first century: our future both depends on these technologies and is imperilled by them.*<sup>65</sup>

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60 Iwi radio whakapapa <https://iwi.radio>

61 Ursula Cheer, *Media Law in New Zealand 8th edition* LexisNexis 2021.

62 <https://digital-strategy.ec.europa.eu/en/policies/regulatory-framework-ai>

63 The Classifications Office ruled the livestream of the Christchurch mosque attacks as offensive material and prohibited its distribution. It could still be found on foreign web platforms.

64 <https://council.science/publications/framework-digital-technologies/>

65 Mustafa Suleyman *The Coming Wave*. The Bodley Head 2023.

News media will be part of the revolution and must be counted among the parties consulted on Government responses to AI. They also have a vital role to play in countering the bad actors who misuse the technology.

It has always been easier to create disinformation than to disprove it, but journalists must find ways of countering it. Artificial intelligence and forensic digital skills will play their part in identifying fabrications, but once they are in the marketplace they gain ground in popular feedback loops that amplify the damage by mixing falsehood and convenient fact. Regulatory moves to implant metadata denoting origin may not be identified until after the fact – when it is in the public space and has been consumed.

The battle against disseminated disinformation will be fought by a combination of counter-attack and education. There is no fool-proof formation for counter-attack but the process outlined by Berkeley linguist George Lakoff is one that journalists might embrace. His 'Truth Sandwich' calls for squeezing disinformation between slices of fact. It involves informing the public why the subject matters, providing accurate information on it, warning about inclusion of the disinformation and explain how it misleads, and finally reinforcing the truth by explaining the accurate information.

Lakoff's approach speaks to the need for journalists to introduce clearer processes and explanation into their work. It constructs stories in a way that contributes to trust in journalism.

We must have sources of verified facts in which the public can confidently place their trust. The need has never been greater but the latest statistics on trust show how far media must go in order to be seen as those 'safe spaces'.

## PART 2: OPTIONS

News media in New Zealand (in common with their overseas counterparts) are in the midst of a perfect storm due in no small measure to collective failures to deal effectively with the greatest techno-economic paradigm shift since the invention of the motor car.<sup>66</sup>

The failures lie at the feet of both media organisations and successive governments. So, too, do potential ways in which to ensure that democratically significant journalism survives in a meaningful way within ongoing Schumpeterian creative destruction.

In times of adversity, we hear the phrase Too Big To Fail (TBTF) and it is invariably applied to banking and finance. Perhaps it is time to re-purpose the theory for sectors that are Too Vital To Fail. If failure of major financial institutions is deemed to have unacceptable effects on the greater economic system of a nation, the same can be said of sectors whose failure would have an unacceptable effect on the country's social and political structures.

We suggest that the stakes are too high to allow our news media sector to fail. However, it will not survive without substantial change.

The Koi Tū workshop identified five areas in which change can have a material beneficial impact:

1. The value of the media sector to democracy and social cohesion
2. A level playing field
3. Technology
4. Media law and regulation
5. Financially sustaining democratically significant journalism.

This part of the paper will address each area in turn and lay out a range of policy options. It is important, however, that none of these options be seen in isolation. It is clear that decisions made on one aspect of the media landscape has resultant impacts elsewhere and that actions need to be coordinated across sectors of the media industry and across Government ministries.

### Democracy & social cohesion

Change in this area lies principally with the media themselves. Trust is at the core of journalists' ability to serve the democratic needs of society and that cannot be achieved by legislation. The disastrous levels of trust revealed in 2024 surveys must act as a wake-up call.

The publisher of *The New York Times*, A.G. Sulzberger, ended the 2024 Reuters Memorial lecture at the University of Oxford as follows:

*As independent journalists, we empower our fellow citizens with the information they need to make decisions for themselves. That is a profound act of trust, of confidence. I remain clear eyed about the ways misinformation and polarisation conspire to block the shared reality society needs to come together. But I believe that the answer to those scourges can be found not in an advocate's crusading righteousness, but in a journalist's humbler mission: to seek the truth and help people understand the world.*

To succeed in that "humbler mission" and to restore confidence in it, journalists must adhere to – and in some cases return to – basic tenets of good journalism and ethical standards. Their professional standards must be obvious to the audience and that will mean being more transparent:

- Prioritising democratically significant journalism
- Explaining the significance of stories to their audience

<sup>66</sup> Carlota Perez, 'Technological revolutions and techno-economic paradigms'. *Cambridge Journal of Economics* 2010.

- Revealing why and how stories are created and published
- Making codes of practice more accessible to readers and explaining their significance
- Treating audiences with respect

Over many years the industry has tended to take for granted the public's perception of its value to democracy and social cohesion. It now recognises that a more proactive attitude is required. Hence the widely held view in the Koi Tū workshop of the need for a clear statement of the social and democratic value of their role.

The statement set out at the beginning of Part 1 is designed to fill that need. It bears repeating here:

*“Support for democracy sits within the DNA of New Zealand media, which have shared goals of reporting news, current affairs, and information across the broad spectrum of interests in which the people of this country collectively have a stake. Trained news media professionals, working within recognised standards and ethics, are the only group capable of carrying out the functions and responsibilities that have been carved out for them by a heritage stretching back 300 years. They must be capable of holding the powerful to account, articulating many different voices in the community, providing meeting grounds for debate, and reflecting New Zealanders to themselves in ways that contribute to social cohesion. They have a duty to freedom of expression, independence from influence, fairness and balance, and the pursuit of truth.”*

There is power in common purpose. It encapsulates what Koi Tū has heard from many journalists and is a concept that has been endorsed by publishers and broadcasters including the News Publishers Association and Radio Broadcasters Association. It would gain additional force were it to receive government and cross-party recognition.

Low levels of media literacy suggest a lack of public knowledge on the civic role of journalism, and of the ways in which media should be assessed to filter out misinformation and disinformation. There needs to be improvement around media literacy both among the public and within our education system. In education, this should be the precursor to a broader initiative to improve civics education, as recommended by Koi Tū in its June 2023 paper *Addressing the challenges to social cohesion*. However, disinformation disseminated with the aim of undermining democratic processes is a real and immediate threat.<sup>67</sup> Therefore, Government and the media have a joint responsibility to counter such actions. They can each work to improve media literacy and government can facilitate media access to security services and other relevant state agencies in countering disinformation.

Most media organisations in New Zealand have their own codes of editorial practice. In addition, the Broadcasting Standards Authority and Media Council each have their own codes. While all have similar core purposes, the public perception is of a multiplicity of standards. If the Advertising Standards Authority has been able to develop over time comprehensive codes governing various media, it should not be beyond the editorial representatives of the same organisations to adopt a universal code of editorial practice. Such an industry-wide set of standards would need to be recognised in law as it would replace a number of existing statutory obligations – for example section 4 of the Broadcasting Act – and would also need to be part of any restructuring of the media regulatory environment.

It is vital that these standards be generated from within the industry. Any attempt by government to impose a binding set of standards across news media would not only be strenuously resisted by traditionally self-regulating organisations, but would erode the public perceptions of independence that are vital in improving public trust.

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67 GCSB/NZSIS Briefing to Incoming Minister 2023

## **Preferred options**

- **Individual media should review their editorial practices in light of current trust surveys and rising news avoidance, including:**
  - **News values, story selection and presentation**
  - **Journalistic transparency**
  - **Relevance to audience**
- **Collectively, media should adopt a common code of ethics and practice, and develop campaigns to explain the role and significance of democratic/social professional journalism to the public.**
- **Government policy development should recognise the need to ensure New Zealand has professionally responsible – and sustainable – media to advance democratic society and improve social cohesion.**
- **Both media and Government should act to improve media literacy and awareness of disinformation. When required, they should work together to counter disinformation, including facilitating media access to security services and other agencies.**
- **Both media and Government should prioritise media literacy in education and among the public and, in the longer term, integrate media literacy into new civic education programmes.**

## Playing fields

There is a widely held belief within the media industry that intervention by government is the only way to begin to redress the enormous imbalance in the operating environment caused by unregulated transnational digital platforms.

Parliament is currently considering the Fair Digital News Bargaining Bill, introduced to the House with the aim of facilitating bargaining between New Zealand media companies and the platforms. The Bill has yet to be reported back to the House by the Economic Development, Science and Innovation Committee. However, since its introduction, Meta (owner of Facebook and Instagram) has walked away from renewing arrangements made with Australian media under similar legislation enacted in 2022 by the Australian Parliament.

There are fears that, should Canberra force Meta to the negotiating table (as it is able to do under the legislation), the transnational will respond as it has already done in Canada. In response to that country passing such a law in mid 2023, Meta pulled news from its Canadian platform, with the result that Facebook there is now dominated by misleading viral clickbait.<sup>68</sup>

While Google has been prepared to enter bargaining in Australia and Canada, the amount of money passed to news media has been minimal relative to the revenue produced in both jurisdictions. In short, large news companies bargain from a position of relative weakness while lesser entities – such as regional outlets, digital news operations, ethnic media and magazines – may receive token sums or be left outside the door. Added to these bargaining strategies is the fact that the world search and social media environment is dynamic. Today's dominant corporations may be replaced by others, particularly as generative AI strategies take effect. Bargaining in such circumstances becomes an ongoing issue with no guarantees newly dominant platforms will be willing to engage.

As stated in Part 1, these platforms (principally Google and Meta) are able to use tax minimising methods that make the amount of tax paid in this country risible when compared with their New Zealand revenue. A levy on their revenue within New Zealand would serve the dual purpose of creating a more equitable tax position, and avoiding the uncertainties of direct bargaining. The Fair Digital News Bargaining Bill could be reconfigured to that end.

A more workable alternative may be an amendment to the Digital Services Tax Bill which already seeks to impose a levy on the platforms. An amendment could allow for a ring-fenced levy (either within the proposed 3 per cent or in addition to it) to compensate news media for direct or indirect use of content. It would ameliorate the detrimental effects of the platforms' operations in this country and would be sufficiently flexible to allow for change, given the dynamic nature of search and social usage.

A ring-fenced levy, provided it generates sufficient revenue, could provide a pool within which to create an equitable alternative to direct subsidy to private sector commercial media from the Consolidated Fund (that became problematic under the Public Interest Journalism Fund). The equity would lie in the fact that the money was compensation for content appropriated (in the past and in the future) from the news media the levy now supports. In effect, the State would not be a funder but, rather, a conduit through which payment for goods and services has been made.

Whatever the means, news media will need an on-going pool of money that can be used to sustain the provision of democratically significant journalism. The need runs across all sectors of the media from national news providers and digital news start-ups to niche magazines and local news outlets. An equitable system for the distribution of funds would need to be established in parallel with the creation of a fund. A vehicle for such distribution is suggested in the final part of the paper.

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68 <https://www.theguardian.com/technology/2024/mar/06/misleading-clickbait-is-prevalent-on-facebook-and-instagram-in-canada-after-metas-news-ban-could-it-happen-in-australia>

Drawing international platforms into statutory regulatory environments has been notoriously difficult, although some jurisdictions have recently moved to do so. The European Union's Digital Services Act came into force in August 2023 and the United Kingdom's Online Safety Bill was passed a month later. Both are designed to control issues such as hate speech and disinformation and place considerable compliance responsibility on the platforms. In contrast, New Zealand's Harmful Digital Communications Act absolves platforms from responsibility (s.24), effectively conferring common carrier status in spite of the platforms' ability to algorithmically manipulate content. Although this is an example of the unlevel playing field, it is a matter that needs to be addressed in the wider context of regulatory reform.

Not least of the issues confronting New Zealand media is the arbitrary alteration to inaccessible algorithms on search and social media that alter the priority given to news – and political – content on those platforms and the ability of users to be directed to the originating site. Platforms have a history of manipulating algorithms to change the priority given to news. Last year both Facebook and Google made changes that resulted in significant reductions in news traffic. As Merja Myllylahti stated in her recent book: “While news companies can in some ways shape their audiences even as their audiences shape them, they are powerless in face of platform algorithms over which they have no control.”<sup>69</sup> It is unlikely that this situation will change. Indeed, at the end of March 2024 Meta also began limiting political content on two of its platforms.<sup>70</sup>

However, the playing field is unequal in other ways. It could be further levelled by changes to central, local, and ethnic advertising policies. Approximately five per cent of the total advertising spend in New Zealand is by the government sector.<sup>71</sup> While this may seem a small percentage overall, it does not reflect the reliance that some media have had on this source.

The government sector has followed other advertisers into search and social platform programmatic advertising which, with the growth of ad blockers, may have mixed results. There is scope for redirecting a portion of the spend, along with that of SOEs, to domestic sources where those sources can demonstrate an ability to reach a target audience. The current state of domestic commercial media suggests that any overall reduction in government spending on advertising – signalled by the government – should not impact the domestic sector but be directed at offshore entities (where the largest proportion of recent spend was placed). The expiry of the current All-of-Government Advertising Services Procurement arrangement in June 2024 may provide an opportunity to revisit this issue.

Just as government advertising spend materially affects domestic media so, too, do subscriptions to domestic media services. Their inclusion in current cost-cutting decisions could have disproportionate consequences. The purchase and retention of subscriptions to New Zealand media should be seen as a necessary public good.

There will always be tension between public and private sector media competing for a limited audience in a small nation like New Zealand. Adding to the tension is the perception within the commercial sector that they are fighting for survival while Radio New Zealand, in particular, has a 'guaranteed' source of income – the state. This perception was exacerbated by the previous governments decision in 2023 to provide an extra \$25.7 million a year to RNZ over four years.

To its credit, RNZ has committed some of those funds to keep the Local Democracy Reporting scheme (previously funded under the Public Interest Journalism Fund) operating for a further year. It has contributed half the operating costs with NZ On Air providing the remainder. The scheme predated the PIJF and was established in 2019 by the News Publishers' Association (NPA), RNZ and NZ On Air as a way to boost reporting of local authorities, which had fallen victim to newsroom cuts.

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69 Merja Myllylahti, *From Paper to Platform: How tech giants are redefining news and democracy*. BWB Texts 2023.

70 <https://www.npr.org/2024/03/26/1240737627/meta-limit-political-content-instagram-facebook-opt-out>

71 Statista Market Insights – New Zealand (March 2024) <https://www.statista.com/outlook/amo/advertising/new-zealand#ad-spending>

RNZ has also boosted its copy sharing arrangements under which it allows 60 other outlets to use its content free of charge. The public broadcaster has also been asked by the Culture and Heritage Ministry to investigate potential cost-cutting options as part of the Government's overall cost reduction strategy.

Nevertheless, a healthy democracy requires a pluralistic media system in which there is a balance between forms of ownership and, most importantly, no dominance by state-owned, state-funded and potentially state-directed media. This is a matter of principle and should not be seen as suggesting RNZ's editorial decision-making is compromised. Nor does it suggest past or present governments have exercised such control. It is directed at governments we may be yet to see and against which we must have systemic safeguards.

The greatest safeguard lies in ensuring that government policy does not privilege state-owned media over the private sector or allow it to become dominant through private sector attrition. It may also lie in not measuring state-funded media success by similar metrics to those that drive commercial media but in giving more weight to ways in which they are differentiated.

However, the importance of the state's contribution to our media system cannot be understated. It is vital that a sustainable level of funding of public service media through NZ On Air and Te Māngai Pāho be maintained. Neither RNZ, Whakaata Māori, iwi radio and Māori news services, nor Pacifika media would survive without it. The loss of any of these entities would be highly detrimental to the communities at which they are directed. Both Māori and Pacifika media have told Kōi Tū they are already adversely affected by static funding.

## **Preferred options**

### **(a) Transnational platforms**

**Although 'fair bargaining' could continue with media negotiating on an ad hoc basis or pursuant to the original intent of the Fair Digital News Bargaining Bill, recent events in Australia and Canada, situations suggest it is, at the very least, problematic. A better option would be to impose a levy on the transnational platforms. This could be achieved by either:**

- **Repurposing the Fair Digital News Bargaining Bill to allow for levying of platforms.**
- **Amending the Digital Services Tax Bill to allow for a ring-fenced levy.**

**We believe the second option may be preferable as it utilises proposed legislation drafted for a parallel purpose. Either option would require the establishment of a system for equitable distribution of funds to New Zealand media entities. One criterion should be that the entity makes material contributions to democratically significant journalism.**

**It has proven notoriously difficult to impose meaningful regulation on transnational platforms with a multitude of hubs and national subsidiaries. Nevertheless, market distorting policies, manipulative algorithms, and limited responsibility for content have led to a situation where domestic media are significantly disadvantaged. Government should consider the following options:**

- **Removing 'common carrier' status from search and social platforms to make them more responsible for monitoring and removal of content.**
- **Consider adopting international legislative models, particularly in relation to harmful content, and the impact of algorithmic manipulation.**

### **(b) State sector advertising strategy.**

**There would be a rapid injection of funds if Government requires an increased proportion of advertising spend to be directed to domestic media. We think it should do so. Similarly, it could encourage or require local government entities to direct an increased proportion of advertising spend to local media in their respective areas.**



**(c) State-funded media**

**Government should ensure that its policy setting do not create imbalance between state-funded and commercial media by supporting the former but not the latter. At the same time, in recognition of the taxpayers' contribution, state-funded media should be required to pursue democratically significant but non-partisan journalism to avoid perceptions of government influence.**

**We believe there is a pressing need to review the adequacy of Māori and other ethnic media funding.**

## Technology

Transitioning from old technologies and the impacts of the new present both inter-related and starkly different policy issues.

Two matters will require urgent attention from the Government and, like the children's parlour game, they are coming ready-or-not.

The first is the evolution from radio frequency transmission to broadband digital delivery. The second is the impact of artificial intelligence. Within lies a multiplicity of threats and opportunities.

### Delivery

The issues facing traditional broadcasters set out in Part 1 represent immediate issues of which Government has no doubt already been made aware. They take on added urgency, however, with the public release of information by the Ministry for Culture and Heritage that Warner Bros Discovery plans to quit DTT transmission altogether by the middle of next year and may, in fact, withdraw entirely from New Zealand.

There are a number of ways in which Government might approach the looming problem of operating transmission systems whose life may now be even more limited than the newspaper press.

DTT policy development cannot sensibly avoid parallel decisions on the Broadcasting Act, and TVNZ's future purposes as both a commercial and public media entity. The TVNZ Act 2003 states at 12(3) that TVNZ "...must include the provision of channels that are *free-of-charge* and *available to audiences throughout New Zealand*." (Our emphasis.) Universality of access is a long-standing principle of publicly funded broadcasting services. We need to ask if that will still be the case after DTT switch-off. If not, the Act will need to change to reflect Government expectations.

### Policy Considerations

Without a shared and transparent government and DTT broadcaster agreement on the process and timetable for a DTT end date or phase down, sector profitability and public and investment uncertainty will continue. Government and DTT broadcasters need to reach an agreement that allows for the timing and process of DTT switch-off, and consideration of the future of broadcast radio transmission.

An extensive public information campaign would need to be prepared, carried out and paid for to avoid a reputational burden on DTT broadcasters and on the Government itself. Given the New Zealand electoral timetable early and bi-partisan political decisions would increase public and sector confidence.

One option for Government is to align a DTT switch off date with the end of current Kordia and JDA contracts, which we have assumed to be at the end of 2030. Under the current contracts, the broadcasters would have to so advise Kordia by July 2028.

We suggest that this approach is too slow. Clauses 7 and 13 of the SOE Act suggest that Government can compensate Kordia for any losses that it transparently demonstrated were related to an earlier termination of its DTT contracts. When considering this Treasury would no doubt take account of the revenue benefits from the auction of the 5G spectrum thus released to the telco market.

A further option is to do nothing. Government has acknowledged the benefits of faster digital uptake by the public and by all media, but it has emphasised both commercial and publicly funded media need to lead with their own innovation and create incentives for their audiences and advertisers to switch.

This option suggests a Government relaxed about Warner Bros Discovery (and perhaps Sky/Open) abandoning their linear DTT services at a date of their own choosing. They could retain – but not use – the Government frequency leases for which they have already paid. (They would still have to pay Kordia transmission fees.) The telecommunications sector would be an eager, competitive, and substantial bidder for long-term Government leases for spectrum no longer wanted by Warner Bros Discovery, TVNZ, and others.

The longer it takes government and the DTT broadcaster to reach consensus, the more likely it is for TVNZ, at least, to be required to ‘pace’ its final transition to full digital delivery until its Kordia transmission leases and contracts end. The financial impact on TVNZ would not be insubstantial. Similarly, a radio industry battling uncertainty over the impact on its transmission systems would be left in limbo.

It is therefore reasonable to ask how, and to what extent, Government would financially compensate those who, by ending DTT linear television services early and on an agreed basis, facilitated a multi-million-dollar future-proofed windfall for Treasury.

Radio transmission is similarly affected by changing audience patterns and cost structures. However, while there may be an inevitability about retirement of the AM Radio network (and, in time, the FM Radio network), Cyclone Gabrielle provided a reality check on closing AM.

Radio New Zealand stated in its annual report: “Mobile phone and data services were knocked out and in some areas FM was also lost, but RNZ’s nationwide AM network (which also carries iwi and community radio broadcasts) was still available – an essential source of information for the thousands of people left marooned by the cyclone.” In spite of that acknowledgement, the public broadcaster has set a deadline of 2026 – within the term of the present Government – for a decision to be made on the future of the AM Network. Some iwi stations have already begun to plan their transition to digital delivery.

The AM Network has proven to be more resilient in natural disasters than either the FM or cellular networks. A robust emergency communication system is vital and an alternative to AM – such as the Starlink satellite-based mobile phone network – will need to be fully proven before the switch off. Starlink has yet to fully roll out in this country and within the other five operators internationally who are involved in the initial project. Mobile provider one.nz plans to introduce a text service later this year and voice services next year. If there is any delay in that programme, there may be timing issues with RNZ’s 2026 deadline.

With the transition to digital by broadcast television and by those radio stations that broadcast only on the AM network – and that includes some iwi radio – there is a risk of adding to an existing digital divide.

A report to the United Kingdom House of Lords last year warned of the consequences of failing to address the issue of depriving services to those who either could not understand or could not afford digital services.<sup>72</sup> The Digital Equity Coalition Aotearoa estimates that 10 per cent of people in New Zealand are already digitally excluded and a further 20 per cent struggle with access. The cessation of free-to-user services like broadcasting risks exacerbating that gap.<sup>73</sup>

Some countries have enacted ‘must carry’ laws to ensure that certain programming is available free of charge on non-broadcast platforms. Primarily these relate to significant sporting activities but in November 2023 Australia moved to amend its (admittedly imperfect) anti-siphoning law to require prominent carriage of free-to-air television broadcasting services. It did so to ensure local news, current affairs, emergency broadcasting, sport, entertainment and events of public significance were not subsumed by larger international services operating there.

Although New Zealand may have to contemplate life without broadcast television in the near future, the country will continue to have video and audio news and current affairs. Public media entities should be required by charter to produce such material. In order to ensure such programming is freely available, New Zealand could consider a version of Australia’s Communications Legislation Amendment (Prominence and Anti-siphoning) Bill 2023<sup>74</sup> which requires device manufacturers and providers to embed the capability for designated material to be freely viewed.

Technological advance, consumer preferences and social change, and financial and business imperatives mean that the distribution future of all media entities—not just broadcasters—demands improved access to all systems of digital distribution.

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72 *House of Lords Communications and Digital Committee Digital Exclusion* 29 June 2023 <https://publications.parliament.uk/pa/ld5803/ldselect/ldcomm/219/219.pdf>

73 <https://www.digitalequity.nz>

74 Second reading debate 25 March 2024.

The introduction of DTT in the first place was led by a consistent and coherent and unified approach by broadcasters including (and particularly) by TVNZ as a state-owned entity. They took the initiative with practical and timetabled proposals to Government, and the detail of these were almost completely accepted. The same approach to resolving the distribution needs of all media entities would, we believe, likely bring timely success.

As we have noted in this paper, the timetable is short. Unlike when DTT was introduced, the Government faces the need for major changes to the Broadcasting, TVNZ and RNZ Acts. The cross-portfolio matters then, as now, included frequency allocations and the financial benefits to Government of frequency release (Treasury and MBIE) and implications for telecommunications sector (the Telecommunications Commissioner and the Commerce Act). They were dealt with decisively at the time, and it is reasonable to expect that the Government can apply the same urgency again.

Critically, the Government must be clear that DTT will not be switched off/phased out by default, that all aspects of media access to all forms of digital distribution are 'on the table,' and that it will engage with the media industry once it has presented its options and proposals before finalising any policy.

## **Preferred options**

**The inevitable withdrawal from DTT by television networks has been given urgency by indications that Warner Bros Discovery is moving in that direction faster than predicted. We believe Government should facilitate the setting up of a broadcasting Industry working group to prepare practical, timetabled options for DTT switch off or phase down. This would require:**

- **Committed resources able to work quickly and cooperatively.**
- **An undertaking from Government that for the purpose of their participation RNZ, TVNZ and MTS are not constrained by Government policies or expectations.**
- **Commercially sensitive data would need to be aggregated through a professional independent party.**
- **Kordia and other communications technology and distribution gatekeepers are recognised only as suppliers to customers and participate by invitation.**

## Media law & regulation

The Government is already reviewing the Broadcasting Act 1989, and alongside it the empowering legislation for both Television New Zealand and Radio New Zealand. None of that legislation remains fully fit for purpose. However, as stated in Part 1, there are numerous other Acts and regulations which impact on the New Zealand media sector that need review or replacement.

It would be a mistake to embark on ad hoc change in the absence of an over-arching vision for the future of media in this country. That vision must be predicated on a healthy, sustainable, pluralistic<sup>75</sup> system that provides democratically significant journalism and promotes social cohesion across the breadth of society. From that vision should flow a series of inter-related legislative/regulatory changes that represent those areas where Government can make material differences to the sector's future. The first – overcoming the market-destabilising and distorting effect of transnational digital platform operations in New Zealand – has been addressed above. The four priorities set out below are no less pressing but will be academic for some current news operations if additional funding is not found.

1. Address systemic effects of medium-specific law and regulation on structures and functions, including the oversight of content standards.
2. Change commercial and taxation law to facilitate innovative and sustainable media ownership structures [see next section]
3. Enact laws that protect against detrimental effects of artificial intelligence while promoting its benefits.
4. Redress the imbalance, for practical purposes, in legal liability between news media and social media in relation to reputation, privacy, and harmful content.

It would equally be a mistake to task individual ministries with addressing one of these issues. There is a vital need for coordination and coherence that would be best met by a single agency having a mandate to recommend to Government a comprehensive suite of legislative changes that will reset the media landscape for the 21st century. A suggested agency forms the basis of Part 3 of this paper.

Irrespective of whose hands in which the tasks are put, the following represent options that must be considered. The Government's view that the Broadcasting Act needs attention is well-founded but it must not be considered in isolation from a fundamental review of content regulation across media and regulatory bodies.

### Preferred options:

**Government should initiate a comprehensive, coordinated review of legislation governing regulation of both state-owned and private sector media. Although the Broadcasting Act may form the kernel from which wider legislative change can flow, it should not be seen in isolation from other necessary legislative reforms.**

**For that reason, only the immediate need for platform neutrality in the Television New Zealand and Radio New Zealand Acts, and the consequences of changes to distribution formats should be considered in advance of addressing the following:**

- **Opening discussions with media operators with a view to creating a new independent regulator, based on (suitably updated) Law Commission recommendations, which adopts existing standards pending agreement on unified terms and standards.**
- **Scoping the merger of the activities of the Classifications Office into the single media regulatory body.**

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<sup>75</sup> Pluralistic media not only speak to a range of communities but, in their structures, ensure a balance between private sector and state-funded organisations and functions. The terms also denotes a system in which national, regional, and local entities co-exist.

Following those discussions we consider the best option for coordinating regulatory and other media-related functions is through the entity discussed in Part 3. We believe the future status of the Advertising Standards Authority should be left to a later stage, when other reforms have been completed.

There are other areas that require expedient review.

#### *Artificial intelligence*

Media organisations seek urgent protection against the use of their content to ‘fuel’ generative AI. Government should consider investigating amendment to the Copyright Act as an interim form of protection of intellectual property rights relating to news media content (including archives) that may be subject to Large Language Model scraping.

The legal implications of AI also need urgent study to:

- Ensure news media intellectual property is protected.
- Ensure mātauranga Māori, te ao Māori, and the cultural treasures (including language) of Pacifica peoples are protected.
- Avoid the unintended consequence of hindering legitimate news media innovation using AI.

#### *Reputation, privacy, and harmful content*

Government should undertake comprehensive review of laws relating to reputation, privacy, and harmful content to determine:

- Individual and collective fitness for purpose, including:
  - Impact of common law
  - Social media liability
  - Appropriate forms of redress
  - Their ability to accommodate rapidly changing technologies.

## Financial sustainability of the news

The public good derived from the type of journalism recognised in this paper suggests that it is in the public interest for the State to support the financial viability of the sector. This support may take three forms:

- Direct government funding (e.g. Radio New Zealand)
- Contestable government funding (e.g. NZ On Air programmes)
- Structural support (e.g. infrastructure and tax relief)

Each of these forms of support have a place but current policy settings do not fully accommodate the needs of the sector. Certainly, they are inadequate to deal with a looming existential threat.

Government is faced with a range of financial challenges and policy imperatives that affect its budgetary decision-making. It must also navigate its way through the impact of disinformation campaigns around the funding of media. These are realities that need to be factored in to any consideration of State support for the media sector.

Nevertheless, failure to recognise the intrinsic value of journalism – and respond to need – will have consequences that extend beyond the current climate and the current term of Government. As this paper has outlined, some of the consequences would be irrevocably damaging.

There are, however, ways of supporting the sector that reduce impacts on current budgetary expectations. Some, however, must remain a direct burden on Government.

### Direct government funding

There are tangible benefits in maintaining what, in the pre-digital age, was called a non-commercial public service broadcaster. In New Zealand that role is filled primarily by Radio New Zealand, although its methods of delivery now rightly extend beyond radio broadcasting. Its charter requires it to fulfil a comprehensive range of public service roles that are increasingly difficult for commercial media to maintain.<sup>76</sup>

Along with other state-funded entities, RNZ has been asked to find savings. Although it received a funding boost from the previous government, a portion of that money was used to sustain legacy public interest journalism projects in the private sector that had (with hindsight, perhaps unwisely) been absorbed into the discontinued Public Interest Journalism Fund (PIJF). Most notable was the Local Democracy Reporting programme. It would be counterproductive to require cuts that reduced or removed public interest functions both within RNZ and without.

In the meantime, RNZ's funding may be regarded as adequate. However, there is a need to maintain oversight of the relative strength of RNZ and private sector media to ensure that the former's stable funding source and the latter's unstable sources do not create an imbalance.

Organisations set up to meet the needs of tangata whenua and other ethnic communities are less advantaged. Whakaata Māori, iwi radio, and Pacific Media Network stations carry advertising, yet they are reliant on government funding for continued viability. The levels of funding are now a cause of concern.

While the adequacy of the direct funding of these entities should be kept under review, there should be no change to the source of state funding. In other words, it should remain a specifically dedicated amount directed from the Consolidated Account through appropriate funding agencies to maintain arm's-length relationships.

### Indirect government funding

The commercial sector, however, is more complex.

A significant amount of contestable programme-based funding has been made available for years (through NZ On Air since 1989) and this support has been largely uncontroversial. The funding extends across the

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<sup>76</sup> <https://www.rnz.co.nz/about/charter>

spectrum of programme-making. While a move away from broadcast to streaming services will necessarily lead to a re-appraisal of how NZ On Air supports the spectrum of programme-making, such support will be necessary to ensure that (a) certain types of programme continue to be made and (b) the creative industries in New Zealand remain viable.

Funding of news and current affairs projects by the previous government under the Public Interest Journalism Fund came under attack from a number of quarters. Therefore, the political realities around funding of journalism cannot be overlooked. The PIJF funded projects and personnel that produced journalism that fell squarely into the area of public good.<sup>77</sup> Nonetheless, criticism of state funding of private sector journalism has led to a serious erosion of public trust in the concept. Consequently, there needs to be a re-appraisal of how Government can support private sector news organisations in the interests of democracy and social cohesion.

Although the PIJF was administered by NZ On Air through independent assessors, there is a sense that 'government money is tainted'. Hence, Koi Tū believes funding of the sector beyond those areas that already receive funds needs to engender a different public perception.

Our recommendation of a ring-fenced levy on the turnover of transnational digital platforms has the potential to create a fund that should be characterised not as 'tax revenue' but as compensation to news media in which the Crown is merely the collection agency.

The option of changing the Digital News Fair Bargaining Bill from facilitated direct bargaining by media entities to a levy system remains a possibility. However, amendment to the Digital Services Tax Bill may be a more effective option.

The current proposal of a 3 per cent levy under the Digital Services Tax Bill is considered 'low' relative to proposals in some of OECD countries that are part of the same initiative. A further two per cent 'media levy' would create an annual fund capable of making a significant contribution to sustaining New Zealand journalism (estimated to be approximately \$35 million a year).<sup>78</sup>

While we favour the use of the Copyright Act as a short-term form of IP protection against AI scraping, the exponential growth of Gen AI may require an across-the-board levy approach to avoid overly complex and potentially unworkable alternatives. Should that be pursued, a portion of that levy could go to the fund to compensate media.

Any fund that is created should be independently administered and the funds dispensed on a basis determined after consultation with all sector of the media. It is vital that a funding distribution model is not limited to large media organisations or those producing daily news. It must provide for meaningful support of all types and levels of media providing content that meets the democratic and social objectives that the community expects of them.

None of the money should be available to substitute for funding already provided by the Crown. It would be, and should remain, as recognition for currently uncompensated appropriation of content. It might also be seen as compensation for the harm caused by social media. So characterised, it will avoid the taint that came to surround the PIJF.

There is a precedent for a compensatory levy. Since 1978 a levy has been imposed on alcohol to undertake activities to reduce alcohol-related harm. An independent review of the levy commissioned by the Ministry of Health recommended that it continue at its current level pending a scheduled Parliamentary review.<sup>79</sup>

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77 One of the authors of this paper, Dr Gavin Ellis, conducted an independent review of the two programmes funded under the PIJF for NZ On Air. His report can be found here: [https://d3r9t6niqlb7tz.cloudfront.net/media/documents/LDR\\_OJ\\_Review\\_August\\_2023.pdf](https://d3r9t6niqlb7tz.cloudfront.net/media/documents/LDR_OJ_Review_August_2023.pdf)

78 The 3 per cent DST proposed in the Bill is estimated to raise \$222 million over four years.

79 [https://www.health.govt.nz/system/files/documents/publications/independent\\_review\\_of\\_the\\_alcohol\\_levy\\_stage\\_1\\_rapid\\_review.pdf](https://www.health.govt.nz/system/files/documents/publications/independent_review_of_the_alcohol_levy_stage_1_rapid_review.pdf)



## Structural support

The normative role of journalism in a cohesive democratic society is recognised as a public good. It does not translate well, however, when it comes to structures and processes. There is less acknowledgement of – and support for – the financial cost of that indispensable role.

Journalism is not recognised as a charitable purpose. It receives no tax benefits for its social and civic contributions. There are no dedicated business structures in which the hybrid nature of their operations – both public good and commercial gain – can comfortably co-exist.

Yet each is a means by which governments can contribute to the survival and sustainability of journalism in ways that have minimal impact on the state but potentially major impact on struggling news organisations.

The key to enacting measures in this area lies in recognition of journalism under proscribed conditions as a charitable purpose, and the creation of suitable structures in which eligible entities be placed.

Some of our news enterprises sit comfortably as listed or private companies, operating in the same environment as any other commercial enterprise. They should continue to do so.

Those structures are not suitable, however, for those struggling to serve the public but subsisting near the edge of closure, or for those dependent on the generosity of people willing to forego any tax benefits from their donations.

There are structures in other jurisdictions that could accommodate such news entities and provide a basis for the creating of charitable status for defined forms of journalism.

The United States has yet to define journalism as a charitable activity but the Internal Revenue Service is prepared to consider certain journalistic endeavours as forms of education. That is far from ideal – charitable designation would be game-changing – but, in combination with a structure used in some states to recognise public good functions, there is now a legal status under which at-risk news organisations have become sustainable.

Low-profit-limited liability companies or L3Cs operate within the disciplines of commercial operations, are allowed to make modest profits, but enjoy tax-free status by virtue of the public services they provide. They were conceived as legal vehicles for rest homes.

Now, in conjunction with charitable trusts, the vehicle is being used to rescue local news operations in danger of closure. The National Trust for News<sup>80</sup>, a tax-exempt non-profit trust was established in 2021. It is supported by a range of institutional and individual donors, and has bought or entered partnerships to save community news outlets across the United States. Last year it took over the majority of local newspapers in Maine – five daily and 17 weekly titles. Masthead Maine is the largest media group in the state and operates on commercial lines as an L3C.

The National Trust for News and its operating entities could serve as a model for a new approach to endangered news outlets in this country. It is instructive on two levels: its charitable status, and the worth of the L3C structure in states where it exists.

## Preferred options

**Some direct funding options and structures have been discussed already in addressing the levelling of the playing field. However, changing circumstances will also necessitate a reappraisal of the ways in which the sector receives indirect forms of financial support.**

**That reappraisal will necessarily include the ways in which NZ On Air operates, including changes to its funding models. This should be considered at part of the restructuring we propose in Part 3.**

**We also see real merit in providing structures that reflect the public good contributions that some forms of news media struggle to maintain.**

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80 <https://www.nationaltrustforlocalnews.org>

**We urge Government to consider:**

- **Recognising certain forms of journalism as a charitable purpose, and enabling trusts to nominate journalism as their primary purpose.**
- **Investigating the creation of tax-free business entities modelled on the U.S. Low Profit Limited Liability Company but with direct eligibility for news media.**

## PART 3: STRUCTURE

Some of the best inventions are born out of crisis. Conversely, some things created in crisis lose their utility once it is over. Both eventualities are possible in confronting the issues facing the media sector in 2024.

This paper has canvassed a broad range of complex issues that have equally complex inter-relationships. That speaks to both an urgent need for widespread change, and a level of coordination that is best met by a unitary approach.

The problem with unitary authority is that it can represent an unacceptable accrual of power. In a democracy predicated on centuries of press freedom, such a level of control would rightly be deemed unacceptable.

Nonetheless, there is an indisputable need for co-ordination between the numerous actions that must be taken if New Zealand is to have a sustainable system of responsible, democratically-significant media.

And there is an equal need to reform anachronistic systems that have led to multiple bodies responsible for content oversight and adjudication, administrative responsibilities spread through multiple agencies of government, and Cabinet portfolio allocations that overlap and are an imperfect match with ministries.

At the same time, low levels of public trust in both media and government cast a pall over the present and the future. Solutions to the existential threats facing journalism in New Zealand will fail if the public does not have faith in the process and the results.

Fixing the ways in which media are regulated, held to account, and encouraged to act for the public good is fundamental to redressing the causes and effects of two-thirds of the New Zealand public not trusting the news. So, too, is finding ways of ensuring we have a sustainable, transparent, equitable, and manifestly independent media sector.

The metrics on trust tell us the solution does not lie in continuing to do what we do, but doing it better: the solution lies in change.

Change cannot be incremental. The issues laid out in this paper show we have gone beyond that point. New Zealand needs a body that is unencumbered by the baggage of the past and which the public recognises as both their guardian and their advocate.

However, the creation of an entirely new body or bodies in a time of fiscal restraint is always problematic. Therefore Koi Tū has addressed the matter from a somewhat different direction: How can existing bodies be consolidated and reformed to meet present and future needs?

A partial solution would be to reach agreement with media operators to merge the Broadcasting Standards Authority and the Media Council under a single structure such as that recommended by the Law Commission. The new complaints authority would need to be demonstrably free of government influence or the potential for political coercion for it to be acceptable to media currently subject to self-regulation, and to gain the public's trust.

That would solve one problem – the anachronistic split in adjudication – but by no means all. A broader solution needs to be found.

Our analysis of this complex environment suggests that Government consider a single organisation that would become the administrative and coordinating body within which would sit a number of entities, each with the autonomy to independently discharge its given function. Its purpose would extend beyond the confines of journalism and news media.

The functional roles that would sit within it include:

- Media accountability (standards and complaints procedures)
- Funding allocation (direct and contestable, including creative production)

- Promotion and funding of Māori culture and language.
- Content classification (ratings/classification of film, books, video gaming etc)
- Review of media-related legislation and regulation, and monitoring of common law development.
- Research and advocacy (related civic, cultural, creative issues).

Each of these functions is currently carried out by an existing body. These include:

- Broadcasting Standards Authority
- Media Council
- NZ On Air
- Te Māngai Pāho
- Classifications Office

Each body is a product of history and a media-specific answer to a problem, yet there are essentially identical functions of oversight and funding dispersal. In addition to functional roles, each has its own administrative structure.

They operate under legislation that is administered by different ministries and, hence, split ministerial responsibility. The BSA, and NZ On Air come under the Broadcasting Act, which is administered by the Ministry for Culture and Heritage. However, Te Māngai Pāho – also established under the Broadcasting Act – is responsible to the Minister for Māori Development. NZ On Air administers the Game Development Sector Rebate scheme (GDSR) and reports on that to the Ministry of Business Innovation and Employment. The Classifications Office falls under the Films, Videos, and Publications Classification Act 1993, administered by the Department of Internal Affairs. Meanwhile, the Media Council is a self-regulating non-governmental body supported by media.

In a converged media environment there is no logical reason for this multiplicity of separate agencies. Nor are there good grounds for splitting ministerial responsibilities, beyond the need for Māori and Pacific peoples to maintain direct oversight of those areas related to their language and culture.

An administrative umbrella under which all of the necessary functions could sit already exists – at least in fundamental legal form. Part 4 of the Broadcasting Act established the Broadcasting Commission, the public face of which is NZ On Air.

The Broadcasting Commission – which would become, say, the Information Commission to reflect a changed role – could be repurposed. Indeed, most of the functions set out in S.36 of the Act would remain intact but, necessarily, would be augmented.

It could become the coordinating body under which a series of functionally autonomous units would sit. NZ On Air, in its current role, would form one of these functional units.

Information Commission		
Oversight	Funding	Research & advocacy
News media standards and content adjudication	NZ On Air	Audience
Media content classification	Te Māngai Pāho	Funding outcomes
Advertising standards [longer term]	Platform levy	Law and regulation
		Media civics and literacy
		Technology impacts

Figure2: Proposed structure of an Information Commission.

Each element of oversight would need to operate independent of each other. The news media standards and content adjudication role would need to be undertaken by an independently constituted body with a majority of public members, as recommended under the Law Commission’s proposed News Media Standards Authority. Media members should include digital start-ups and magazines.

Media content classification has a different – and wider – brief than news media complaints adjudication but there are cross-overs in the area of online harm. There should be formal lines of information-sharing between those entities.

We see the integration of the Advertising Standards Authority into this structure as a longer term prospect, principally because it is already platform neutral (for the past 50 years) and operates efficiently in its current form. Secondly, while programme content (particularly news) is unique to each company and the first line of complaint is to the publisher/broadcaster, advertising runs simultaneously across platforms and requires a different response. Thirdly the range of laws that apply to advertising is extensive and may complicate any integration process.<sup>81</sup>

Funding models have to change. It is not only desirable but necessary. Circumstances such as Warner Bros Discovery (after withdrawing from news production) moving from DTT to streaming services, and the inevitability that others will follow, changes the basis on which contestable funding is allocated. It is the right time to also review the funding structures to ensure they remain fit for purpose. It should be possible to bring NZ On Air and Te Māngai Pāho together to achieve operating efficiencies while maintaining strong Māori advocacy and purpose. If a media levy is imposed on digital services as recommended, there will be an added function to distribute that funding according to agreed criteria.

Research and advocacy should be a function of the umbrella commission and not the autonomous units. There are efficiencies to be gained by bringing together what has previously been undertaken by individual government agencies. Overlapping responsibilities within those agencies has increased the likelihood of duplication.

The umbrella commission would also provide administrative services to the elements within it, reducing ‘back office’ costs that are currently duplicated. Staffing at all levels of the commission’s activities could be drawn from existing staff in the agencies (government and self-regulatory) currently responsible for selected activities.

The proposal also offers the opportunity for responsibility to be vested in a single ministry – and minister.

## **Preferred options**

**The following preferred options are predicated on agreement being reached with private sector media – principally but not limited to those currently members of the Media Council – for the formation of a single independent content regulatory body as recommended by the New Zealand Law Commission.**

**We believe strongly that the fragmented and often anachronistic state of New Zealand news media will only be fully remedied by a unified approach under a single umbrella. For that reason we urge Government to consider reconstituting the Broadcasting Commission as a commission responsible for the administration of the following autonomous, independent functions:**

- **Content standards and complaint adjudication**
- **Content classification**
- **Funding allocation**

**Research and advocacy would be a responsibility of the commission.**

**As it appears to function effectively and remains fit-for-purpose, we believe it would be preferable to maintain the Advertising Standards Authority as a stand-alone self-regulator until all other stages of reform are completed, at which point negotiations should begin with affected parties with a view to integration.**

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<sup>81</sup> Acts affecting advertising include, but are not limited to, Fair Trading, Smokefree Environments, Sale of Alcohol, Gambling, Medicines, Human Rights, Bill of Rights, Prostitution Reform, Electoral, and Financial Markets.



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