

Reference: 20220299

2 September 2022



Dear 

Thank you for your Official Information Act (OIA) request, received on 5 August 2022. You requested the following:

"I wish to receive a copy of the Treasury advice referred to in this NBR article:

<https://www.nbr.co.nz/business/treasury-wanted-stronger-commercial-disciplines-for-merged-rnztvnz/>

relating to recommendations around the structure of the merged RNZ/TVNZ entity (with legislation now in train under the Aotearoa New Zealand Public Media Bill.

I(am hoping that referring you to this earlier OIA request by NBR will make the documents relatively straightforward to locate!)

Separately, I note that the prospect of a bespoke role for the Finance Minister was canvassed with Treasury advising such legislation required "detailed legal consideration" - I also request a copy of any advice that was provided on the form of the legislation, if it exists.

Stuff is currently formulating its submissions for the Select Committee - if it is possible to expedite this request so that we have time to digest in advance of the 8 September deadline I'd be very grateful."

Information being released

Please find enclosed the following document:

Item	Date	Document Description	Decision
1.	8 June 2022	RE: Aotearoa New Zealand Public Media Bill	Release in part

I have decided to release the document listed above, subject to information being withheld under one or more of the following sections of the OIA, as applicable:

- section 9(2)(g)(ii) – to maintain the effective conduct of public affairs through protecting Ministers, members of government organisations, officers and employees from improper pressure or harassment, and
- section 9(2)(k) – to prevent the disclosure of information for improper gain or improper advantage. Direct dial phone numbers of officials have been redacted under section 9(2)(k) in order to reduce the possibility of staff being exposed to phishing and other scams. This is because information released under the OIA may end up in the public domain, for example, on websites, including the Treasury’s website.

Information publicly available

The following documents contain information that is relevant to your request, and are publicly available on the Treasury’s website:

Item	Date	Document Description	Website Address
2.	Various	Advice supplied by Treasury in the preparation of the Cabinet Paper titled 'Establishment of a new public media entity' (OIA-20220130)	https://www.treasury.govt.nz/publications/oia-response/advice-supplied-treasury-preparation-cabinet-paper-titled-establishment-new-public-media-entity-oia-20220130
3.	Various	Information on New Public Media Entity and Public Interest Journalism Fund (OIA-20220093)	https://www.treasury.govt.nz/publications/oia-response/information-new-public-media-entity-and-public-interest-journalism-fund-oia-20220093

Accordingly, I have refused your request for this information under section 18(d) of the OIA – the information requested is or will soon be publicly available.

Some relevant information has been removed from documents listed in the above table and should continue to be withheld under the OIA, on the grounds described in the documents.

In making my decision, I have considered the public interest considerations in section 9(1) of the OIA.

Please note that this letter (with your personal details removed) and enclosed documents may be published on the Treasury’s website.

This reply addresses the information you requested. You have the right to ask the Ombudsman to investigate and review my decision.

Yours sincerely

A handwritten signature in black ink, appearing to read "Ann Webster", is enclosed within a hand-drawn oval shape.

Ann Webster
Manager, Commercial and Institutional Performance

20220299 TOIA Binder

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1.	RE Aotearoa New Zealand Public Media Bill
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From: Mitchell Spence [TSY]
Sent: Wednesday, 8 June 2022 2:24 pm
To: Aaron Gill [TSY]; ^Parliament: Laura Berntsen
Cc: Eva Parker [TSY]; Ann Webster [TSY]; Carolin Marotzke [TSY]; Timothy Roper [TSY]
Subject: RE: Aotearoa New Zealand Public Media Bill

Thanks Aaron

Sorry for the delayed response, I was just in a meeting. Aaron is correct that, at present, legislation would be required to exempt the entity from s 165. However I've also just noticed that there is currently a Statutes Amendment Bill before Parliament which would provide for the ability to exempt an entity through an Order in Council. I'm not sure when that SAB will be passed.

Kind regards
Mitchell

From: Aaron Gill [TSY] <Aaron.Gill@treasury.govt.nz>
Sent: Wednesday, 8 June 2022 2:14 pm
To: ^Parliament: Laura Berntsen <laura.berntsen@parliament.govt.nz>
Cc: Eva Parker [TSY] <Eva.Parker@treasury.govt.nz>; Ann Webster [TSY] <Ann.Webster@treasury.govt.nz>; Carolin Marotzke [TSY] <Carolin.Marotzke@treasury.govt.nz>; Timothy Roper [TSY] <Timothy.Roper@treasury.govt.nz>; Mitchell Spence [TSY] <Mitchell.Spence@treasury.govt.nz>
Subject: RE: Aotearoa New Zealand Public Media Bill

Thanks Laura

We think an exemption to s165 could be introduced at some point in the future if that was what was desired. Our understanding is that this would need to be through an Act of Parliament as opposed to regulations or a Ministerial approval.

In saying that, we would like to reiterate that s165 provides Ministers Finance with an option ("may") require a distribution from the entity if the entity does not do this itself. If the entity was no longer expected to return surpluses to the Crown then a request would simply not be made.

Aaron

From: Laura Berntsen <Laura.Berntsen@parliament.govt.nz>
Sent: Wednesday, 8 June 2022 12:32 pm
To: Aaron Gill [TSY] <Aaron.Gill@treasury.govt.nz>
Cc: Eva Parker [TSY] <Eva.Parker@treasury.govt.nz>; Ann Webster [TSY] <Ann.Webster@treasury.govt.nz>; Carolin Marotzke [TSY] <Carolin.Marotzke@treasury.govt.nz>; Timothy Roper [TSY] <Timothy.Roper@treasury.govt.nz>; Mitchell Spence [TSY] <Mitchell.Spence@treasury.govt.nz>
Subject: RE: Aotearoa New Zealand Public Media Bill

Kia ora Aaron,

Thanks for passing this along. Is there a possible option to begin applying the exemption at some point in the future once the entity is no longer expected to return significant surpluses? Or is the long-term business model sufficiently different from that of RNZ and TVNZ that the parallel exemption shouldn't apply over the long-term either?

Sorry – not super familiar with this policy area still, so these may be silly questions! In any case, I will flag this for advisors to take up with Min Faafoi's office if they think necessary.

I appreciate the email.

Laura

From: Aaron Gill [TSY] [<mailto:Aaron.Gill@treasury.govt.nz>]

Sent: Wednesday, 8 June 2022 12:05 PM

To: Laura Berntsen <Laura.Berntsen@parliament.govt.nz>

Cc: Eva Parker [TSY] <Eva.Parker@treasury.govt.nz>; Ann Webster [TSY] <Ann.Webster@treasury.govt.nz>; Carolin Marotzke [TSY] <Carolin.Marotzke@treasury.govt.nz>; Timothy Roper [TSY] <Timothy.Roper@treasury.govt.nz>; Mitchell Spence [TSY] <Mitchell.Spence@treasury.govt.nz>

Subject: Aotearoa New Zealand Public Media Bill

Hi Laura

We understand the Minister for Broadcasting and Media is taking a paper to LEG on Thursday 9 June 2022, titled Aotearoa New Zealand Public Media Bill: Approval for Introduction. We wanted to advise that there is an outstanding matter in the draft bill that we are discussing with the Ministry for Culture and Heritage (MCH).

The draft bill currently proposes the new entity be exempt from s165 (at the end of the email) of the Crown Entities Act 2004 (the Act). The proposal appears to be based on the desire to take forward similar provisions to what RNZ and TVNZ currently have into the new entity's arrangements. Both RNZ and TVNZ are exempt from s165 of the Act, and therefore the Minister of Finance cannot require the companies to return some or all of any net surplus produced to the Crown. However, RNZ and TVNZ are Crown entity companies and therefore subject to the Companies Act 1993 and expected to return surplus funds (either as a result of strong financial performance or sale of an asset or other windfall gains) by way of a dividend determined by its board.

Budget 22 established a Crown appropriation for the Strong Public Media (SPM). It established an appropriation which is larger than is expected to be required in the entity's early years. This is to ensure its long-term sustainability if the entity's commercial revenues decline in future. Which was the assumption in the business case forecasts. However, Budget 22 also forecast the new entity to return surpluses from \$100.6m in 2023/24 declining to \$8.6m in 2028/29.

Appropriation Changes

	Sm - increase/(decrease)								
	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	2029/30 & Outyears
Operating Balance Impact*	-	23.700	119.600	112.400	114.400	112.400	112.400	112.400	110.000
Net Core Crown Debt Impact Only	-	-	(101.600)	(100.000)	(51.100)	(32.400)	(12.400)	(8.600)	-
No Impact	-	-	-	-	-	-	-	-	-
Total	-	23.700	18.000	12.400	63.300	80.000	100.000	103.800	110.000

* Unless non-cash, will also impact net core Crown debt.

Providing the entity an exemption to s165 of the Act risks the new entity holding a large cash balance on its balance sheet, rather than returning the cash surplus as forecast, without a there being mechanism for its return. Simply having s165 available could provide sufficient incentivise for the entity to produce a surplus and return funds to the Crown – these incentives are important, as otherwise the entity could spend its Crown appropriation and

commercial revenues in early years and have limited capacity to manage any potential loss of commercial revenues in future, i.e. therefore, not providing the long term sustainability intended by the Business Case.

Some of the legislative history of s165 of the Act (which was previously s16 of the PFA) is also instructive here. When the power to exempt an entity from the surplus return requirement was first introduced, it was intended that this would apply in limited circumstances. For instance, a select committee report on the amending legislation which introduced the exemption making power proposed that there should be criteria indicating that the provision was intended to be applied only to bodies:

- funded substantially or wholly by dedicated levy or user charges;
- funded substantially from profits of NZ lotteries;
- where any profit is likely to represent funding generated by the local community;
- in which there are non-Crown minority shareholdings;
- where an adequate power for the Crown to take profits already exists in the legislation relating to the particular body; or
- which are themselves trusts.

Given none of the above will apply in the case of the new entity, it is not clear that exemption under s165 would be appropriate.

The current structure, whereby an entity needs an Act of Parliament to exempt it from s 165 (as opposed to regulations or a Ministerial approval) reinforces that a higher degree of scrutiny of an exemption from the surplus return requirement was envisaged.

For these reasons, we recommend the entity is not provided an exemption from s165 of the Act. We note s165 of the Act provides a number of protections, such as the requirement for the Minister of Finance to consult with the responsible Minister (see s165(3)(a)) and with the entity (see s165(3)(b)). We also note other broadcasting Crown entities (Māori Broadcasting Funding Agency and Broadcasting Commission) do not have the exemption.

MCH has advised the Minister for Broadcasting and Media's strong view is that the entity should be provided an exemption from s165 of the Act, and that, if through the development of the entity's financial model, it is identified that this exemption is not required, then MCH can address that through its departmental report. However, we think removing the exemption at a later stage would be less than ideal. We will continue to discuss this matter with MCH, and advise the Minister of Finance accordingly, as ultimately, this impacts his role in the entity and the fiscal risk to the Crown.

165 Net surplus payable by certain statutory entities and Crown entity companies

- (1) Unless an exemption is granted in [Schedule 1](#) or [Schedule 2](#), the Minister of Finance may, in writing, require a statutory entity or Crown entity company to pay to the Crown a sum equal to the whole or any part of the net surplus of the statutory entity or Crown entity company, or its Crown entity group, as determined in accordance with accepted accounting practice or any other basis that may be agreed between that Minister and the entity.
- (2) In this section, **net surplus** includes both an annual profit and an accumulated surplus.
- (3) Before the Minister of Finance issues a requirement under this section,—
 - (a) the Minister of Finance must consult with each responsible Minister; and
 - (b) a responsible Minister must consult with the Crown entity.
- (4) This section does not limit any provision for the payment of an annual distribution or similar payment under the entity's Act.
- (5) This section does not limit the need for a Crown entity company to comply also with the provisions of [Act 1993](#) (or its constitution, if relevant) relating to distributions.

Aaron Gill | Senior Advisor | Te Tai Ōhanga – The Treasury

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