

Hon Kris Faafoi

Minister for Broadcasting and Media

AIDE MEMOIRE: For lodgement: ANZPM Cabinet Legislation Committee paper and bill

Date:	1 June 2022	Priority:	High
Security classification:	In Confidence	Reference:	AM2022/268
Contact	Liz Stewart, Director, Strong Public Media Programme, s9(2)(a) [REDACTED]		

Purpose

- 1 You have agreed to lodge the final version of the LEG paper and draft bill for Cabinet, subject to a small number of changes to reflect decisions you have made on several outstanding issues [BR2022-255 refers].
- 2 This aide memoire provides you with the final Aotearoa New Zealand Public Media (ANZPM) Cabinet paper for lodgement with the Cabinet Office prior to 10am on 2 June 2022 and subsequent discussion at the Cabinet Legislation Committee (LEG) on 9 June 2022 (**Appendix One**).
- 3 A copy of the draft bill is also attached for your reference (**Appendix Two**). The Parliamentary Counsel Office will provide a copy of the draft bill directly to the Cabinet office, to be uploaded as an attachment to the paper.

Key updates

Editorial independence

- 4 As discussed with you, clause 15 has been amended to ensure that the current provisions relating to Ministerial direction/removal of Board members in the Radio New Zealand (RNZ) and Television New Zealand (TVNZ) Acts are clearly provided for in the bill.
- 5 The clause now includes a broad statement that the Minister cannot direct the entity, nor remove Board members for any reasons relating to editorial matters (sub-clauses 15 (3) and -(5)). This is to ensure that any area that could be considered an editorial matter cannot be directed on – rather than trying to list all potential areas (and possibly missing some).
- 6 However, to avoid any perception that the wording would result in fewer protections than RNZ and TVNZ currently have, sub-clauses 15 (4) and -15 (6) provide examples of the type of editorial matters that ANZPM cannot be directed on, and board members cannot be removed for, based on the existing provisions in the TVNZ and RNZ Acts. Both subclauses have been worded to ensure the examples are not an exhaustive list.

This is to avoid unintentionally limiting the type of matter that could be considered editorial in the future.

- 7 As previously noted, the editorial independence of ANZPM is further bolstered through:
- i. the protections afforded to the entity as an autonomous Crown entity under the Crown Entities Act
 - ii. the bill deeming the charter to be an independent statutory function, meaning that the entity cannot be directed by the responsible Minister on any aspect of how it delivers the charter
 - iii. the provision in the charter that the entity must demonstrate editorial independence, impartiality, and balance, particularly when broadcasting news and current affairs.

Free access to content

- 8 You have agreed to an approach to address concerns raised by the Establishment Board about the impact of requiring the entity to provide content free of charge to New Zealanders when it is first published.
- 9 Following your feedback, we have updated the LEG paper to seek agreement for the removal of this requirement.
- 10 However, as agreed with you, PCO has added a sub-clause to clause 13 (ANZPM's operating principles) to require the entity to ensure some or all of its content is broadcast free of charge.
- 11 This approach means the entity will have to provide content that is free of charge, however, it does not prevent it from charging for content or services. This approach is similar to the current TVNZ Act that requires TVNZ to *include the provision of channels that are free of charge and available to audiences throughout New Zealand* - but does not prevent it from charging for content or services.

Definition of broadcasting

- 12 We would also like to draw your attention to the definition of "broadcasting" provided in clause 4. The clause defines broadcasting as;
- i. *Transmitting or making available content, whether or not encrypted by radio waves or other means of telecommunication for reception by the New Zealand public by means of receiving apparatus*
- 13 We believe this definition reflects feedback received through departmental consultation. However, as it (deliberately) differs from the definition in the Broadcasting Act 1989, it could attract attention during the select committee process.
- 14 We are comfortable that the approach:
- i. provides clarity for ANZPM that making content available through on-demand services would constitute broadcasting for the purposes of fulfilling its charter obligations
 - ii. does not redefine broadcasting for any other purpose, or in any other legislation.

Minor changes

15 The LEG paper has also been updated to:

- i. indicate your preference for the bill to be referred to the Economic Development, Science, and Innovation Committee
- ii. amend the commencement date for ANZPM from 28 February 2023 to 1 March 2023.

Next steps

16 Following instruction from your office we will upload the draft paper to CabNet ahead of lodgement.

Liz Stewart
Director, Strong Public Media Programme

**Noted by Hon Kris Faafoi
Minister for Broadcasting
and Media**

Date:

Note: Appendices 1 & 2 are withheld under s9(2)(g)(i). Final versions of papers are available on the Ministry's website at: <https://mch.govt.nz/strong-public-media>.