

Hon Kris Faafoi

Minister for Broadcasting and Media

Approval for lodgement: ANZPM Cabinet Legislation Committee paper and bill

Date:	27 May 2022	Priority:	High
Security classification:	In Confidence	Reference:	BR2022/255

Minister	Action Sought	Deadline
Hon Kris Faafoi Minister for Broadcasting and Media	Note the attached Aotearoa New Zealand Public Media Bill and associated LEG paper Note the outstanding issues outlined in this paper Agree to a revised commencement date for the new entity of 1 March 2023 Agree to lodge the bill and associated LEG paper 1 June 2022, subject to any further changes, with the Cabinet Office for consideration at LEG on 9 June 2022	31 May 2022

Contacts			
Name	Position	Contact	1 st Contact
Liz Stewart	Director, Strong Public Media Programme	s9(2)(a)	✓
Elisa Eckford	Principal Policy Advisor		

Minister's office to complete	<input type="checkbox"/> Approved	<input type="checkbox"/> Declined
	<input type="checkbox"/> Noted	<input type="checkbox"/> Needs change
	<input type="checkbox"/> Seen	<input type="checkbox"/> Overtaken by events
	<input type="checkbox"/> See Minister's notes	<input type="checkbox"/> Withdrawn
Comments:		

Purpose

- 1 This paper provides you with updated drafts of the Aotearoa New Zealand Public Media Bill (the bill) and accompanying LEG paper, which are due for lodgement with the Cabinet Office on 1 June 2022, and subsequent discussion at the Cabinet Legislation Committee (LEG) on 9 June 2022.
- 2 This paper also summarises the few remaining outstanding issues, including your preferred approach to free access to content, which select committee you would like the Bill to be lodged with and a proposed change to the commencement date.

Key messages

- 3 The LEG paper (**Appendix 1**) and bill (**Appendix 2**) reflect all policy decisions made to date.
- 4 We are awaiting your decision on:
 - a. whether you wish to make changes to address concerns about provisions requiring content to be provided free at first transmission, while enshrining free to air access in legislation
 - b. your preference between the Economic Development, Science and Innovation Committee and Social Services and Community Committee for referral [BR2022-250-refers].
- 5 You may wish to closely review clauses 15(1), (3) and (4) of the bill, which capture Cabinet's decision to protect the editorial independence of the new entity given that these clauses have been subject to ongoing discussions between Manatū Taonga and PCO, and the drafting has only just been finalised. The approach taken is to clearly state Cabinet's intent that the entity cannot be directed, or board members removed, in relation to editorial matters - rather than replicating existing clauses in the legislation which, in our view are out-dated and unclear.
- 6 We also propose changing the commencement date for the new entity from 28 February 2023 to 1 March 2023. This change will remove the need to provide a Statement of Performance expectations to 30 June 2023 as soon as practicable. It allows the new entity to complete one Statement of Performance Expectations covering the period from 1 March 2023 to 30 June 2024 rather than two.
- 7 We note that we have not yet received any feedback from Ministerial consultation to consider for reflection in the bill/LEG paper. If any such feedback is received, we will endeavour to reflect any changes in a final version of the LEG paper and bill early next week.

Recommendations

8 Manatū Taonga recommends that you:

- 1 **provide** any further feedback on the attached final drafts Aotearoa New Zealand Public Media Bill and associated LEG paper **YES/NO**
- 2 **note** that we are awaiting direction on whether you would like changes to clause 16, and which select committee you would like the bill to be referred to **NOTED**
- 3 **note** the proposed approach in the bill to ensuring the entity cannot be directed, or Board members removed, for editorial matters **NOTED**
- 4 **agree** to a revised commencement date for the new entity of 1 March 2023 **YES / NO**
- 5 **agree** to lodge the bill and associated LEG paper with the Cabinet Office by 1 June 2022, subject to any further changes, for consideration at LEG on 9 June 2022 **YES / NO**

Liz Stewart
**Director, Strong Public Media
Programme**

Hon Kris Faafoi
Minister for Broadcasting and Media

_____ / _____ / 2022

ANZPM Bill and LEG paper

- 9 The most up-to-date version of the LEG paper (**Appendix 1**) and bill (**Appendix 2**) are attached for your final review in advance of their lodgement with Cabinet Office on 1 June.
- 10 The LEG paper has not changed significantly since the draft we provided you with on 25 May. However, this version of the bill has now been updated from the 25 May version to reflect departmental feedback we received, as outlined in BR2002/250 *Update on draft ANZPM Legislation Cabinet paper and bill*.
- 11 Speaking notes will be provided to your office shortly to support your discussion of the bill at Cabinet LEG Committee.

Outstanding issues and issues for your attention

Free access to content

- 12 As you are aware, we have previously proposed an approach to address concerns about provisions requiring content to be provided free at first transmission, while enshrining free-to-air access in legislation [BR2022-250 refers].
- 13 If you wish to proceed with this approach, the LEG paper can be updated to seek agreement to the policy change, and we will provide drafting instructions to PCO to update the bill.
- 14 Conversely, if you would prefer to leave the provision as is, and discuss this issue at Cabinet LEG Committee, speaking notes will be provided to support this.

Referral to select committee

- 15 We are awaiting your decision on your preferred select committee for referral, so this can be provided for in the LEG paper. The options are the Economic Development, Science and Innovation Committee or the Social Services and Community Committee.

General Policy Statement

- 16 The version of the General Policy Statement at the front of the attached draft bill has not yet been updated to the version sent out for departmental consultation. PCO will update this on Monday, and incorporate any further changes required.

Editorial independence

- 17 Clauses 15(1), (3) and (4) capture Cabinet's decision to protect the editorial independence of the new entity by requiring the responsible Minister to exercise their powers and functions consistently with the entity's editorial independence, preventing them from giving directions to the entity relating to editorial matters and preventing them from removing board members for reasons relating to editorial matters (recommendation 6 of CAB-22-SUB-0034 refers). These clauses have

been subject to ongoing discussions between Manatū Taonga and PCO, and the drafting has only just been finalised.

18 These clauses do not replicate existing clauses from the RNZ/TVNZ Acts as, in our view, those clauses:

- are out-dated and unclear as to their application/effect
- reflect the fact that both the RNZ and TVNZ Acts pre-date the Crown Entities Act, which contains overarching provisions limiting Ministers' powers to direct entities and to remove board members – and so duplicate some of these provisions
- in the case of the RNZ Act, potentially limit the ability of the Minister to remove board members for justifiable reasons not related to editorial independence.

19 Instead, the new provisions clearly capture Cabinet's intent in relation to how the responsible Minister's powers of direction and in relation to removal of Board members should be restricted to avoid any influence on editorial matters.

20 s9(2)(h)

Manatū Taonga's view is that these clauses provide very clear protections for the entity in line with Cabinet's decision, and that this is reinforced by other provisions in the bill/elsewhere including:

- the protections afforded to the entity as an autonomous Crown entity under the Crown Entities Act
- the bill deeming the charter to be an independent statutory function, meaning that the entity can not be directed by the Responsible Minister on any aspect of how it delivers the charter
- the provision in the charter that the entity must demonstrate editorial independence, impartiality and balance, particularly when broadcasting news and current affairs.

21 In Manatū Taonga's view, it will be helpful to have these provisions tested at Select Committee to ensure they meet Cabinet's intent of giving the entity strong protection from any undue Ministerial influence.

Commencement date

22 The current proposed commencement date for the new entity is 28 February 2023. As this date is more than four months before the start of the financial year, the new entity would be required to complete a Statement of Performance Expectations as soon as practicable. In addition, the new entity would have to provide a draft Statement of Performance Expectations for 1 July 2023 to 30 June 2024 by the start of May 2023.

23 If the commencement date is moved to 1 March 2023, it sits within four months of the start of the financial year and the entity would only be required to complete one Statement of Performance Expectations to 30 June 2024 .

24 We seek your agreement to move the commencement date to 1 March 2023 to provide the new entity with as much time as possible to complete the Statement of Performance Expectations, given the other pressures likely to be on it.

Changes arising from ministerial consultation

25 We are yet to receive any feedback on the LEG paper and bill from your ministerial colleagues. If any feedback is received, we will endeavour to make any resulting changes in the final versions of the paper and bill early next week – noting that both are due to be lodged by 1 June.

Next steps

26 Subject to your approval, the bill and associated LEG paper will be lodged with the Cabinet Office by 1 June 2022.

27 Cabinet LEG Committee will consider the bill and associated LEG paper on 9 June 2022.

Appendices

Appendix 1: *ANZPM Cabinet Legislation Committee Paper*

Appendix 2: *ANZPM bill*

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>.