

**Hon Kris Faafoi**  
**Minister for Broadcasting and Media**  
**Further amendments to ANZPM bill**

<b>Date:</b>	2 June 2022	<b>Priority:</b>	Urgent
<b>Security classification:</b>	In Confidence	<b>Reference:</b>	BR2022/278

Minister	Action Sought	Deadline
<b>Hon Kris Faafoi</b> Minister for Broadcasting and Media	<p><b>Agree</b> to the approach proposed to provide for free of charge content</p> <p><b>Agree</b> to maintain an exemption to s165 of the Crown Entities Act in the ANZPM bill</p>	3 June 2022

Contacts			
Name	Position	Contact	1 <sup>st</sup> Contact
Liz Stewart	Director, Strong Public Media Programme	9(2)(a) [REDACTED]	✓
Elisa Eckford	Principal Policy Advisor	9(2)(a) [REDACTED]	

- 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 Withdrawn           |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

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- 1 This briefing seeks your agreement to two further changes to the Aotearoa New Zealand Public Media (ANZPM) bill.

## Recommendations

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- 2 Manatū Taonga recommends that you:
  - 1 **agree** to PCO's recommended redrafting of clause 13(1)(e) set out in Appendix 1 **YES / NO**
  - 2 **note** that, if timing permits, we propose that PCO reflects this amendment in the version of the bill to be considered by LEG on 9 June **NOTED**
  - 3 **note** that we will provide you with an updated recommendation 9.4 to table in LEG, reflecting this drafting **NOTED**
  - 4 **note** that the Treasury's view is that ANZPM should not be exempt from section of 165 of the Crown Entities Act **NOTED**
  - 5 **agree** that ANZPM's exemption from section 165 of the Crown Entities Act is retained for the time being, and reviewed once work on the financial model has been progressed **YES / NO**

Liz Stewart  
Director, Strong Public Media

Hon Kris Faafoi  
Minister for Broadcasting and Media

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## Background

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3 On 1 June:

- you provided feedback on current sub-clause 13(1)(e) relating to strengthening the requirement that some or all content be broadcast free of charge
- the Treasury raised concerns about the exemption that is currently proposed for ANZPM in relation to section 165 of the Crown Entities Act, which allows the Minister of Finance to require the entity to pay a surplus to the Crown.

## Requirement to provide content free of charge

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- 4 In the current draft of the bill, one of the operating principles of the entity is to ensure that some or all of its content is broadcast free of charge (clause 13(1)(e)).
- 5 You have sought for this provision to be strengthened to reflect an expectation that providing content free of charge should be a priority for the entity – while also permitting the entity to charge for some content and services.
- 6 To reflect this, PCO proposes redrafting the clause as: *ensuring its content is broadcast predominantly free of charge*. This would provide a strong expectation that ANZPM's 'default' position should be to provide content free of charge, but charging for some content would still be permitted. The whole clause is attached as **Appendix 1**.
- 7 Note that clause 12(1) requires ANZPM to *broadcast (and select, commission, or produce) freely available, accessible, and high-quality content across all genres*. This also establishes a strong expectation in relation to the availability and accessibility of content (including for those who cannot afford to pay for content).
- 8 If you are comfortable with this amendment, and can confirm this by the morning of Friday 3 June, it can be made in the version of the bill that is submitted to Cabinet.
- 9 We will also provide you with an amended recommendation 9.4 to table in Cabinet Committee (given that the LEG paper has already been lodged with Cabinet Office).

## Application of section 165 of the Crown Entities Act

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- 10 Section 165 of the Crown Entities Act enables the Minister of Finance to issue a requirement to certain statutory Crown entities and Crown entity companies to return surpluses to the Crown.
- 11 Both RNZ and TVNZ are currently exempt from section 165. The bill for the new entity carries across these exemptions, and as a result the Minister of Finance will not be able to require ANZPM to return surpluses to the Crown.
- 12 Treasury has expressed a view that ANZPM's exemption from section 165 is not appropriate, noting that this exemption is only in place for RNZ/TVNZ because they

can return surpluses to the Crown through dividends. As an autonomous Crown entity, rather than a Crown entity company, ANZPM will not be able to return dividends.

13 Treasury's recommended approach would have the benefit of ensuring a clear legislative mechanism for the return of surpluses, while not necessarily requiring that surpluses be returned. As such, it would provide maximum flexibility to consider how surpluses will be dealt with through the financial model.

14 However, Manatū Taonga recommends that the exemption to section 165 is retained in this version of the bill because:

- it is more clearly aligned with the position agreed by Cabinet that ANZPM would be expected to seek commercial revenue to supplement its core baseline funding and to re-invest in public media outcomes (recommendation 19)
- it manages a perception that future Ministers of Finance could exercise this requirement in a way that compromises the entity's funding sustainability and/or its ability to reinvest in public media outcomes
- there will be the opportunity to revisit the exemption as part of the select committee process, once the financial model has been developed and we have clearer agreement on how surpluses will be managed.

15 If you did choose to retain the exemption, there are other options for requesting (although not requiring) the return of surpluses that can be explored through the development of the financial model. We can provide further advice on this in due course.

## **Next steps**

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16 Once we have received your feedback, we will update the bill accordingly, and provide you with an updated recommendation 9.4. to table at LEG on 9 June.

## **Appendices**

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Appendix 1: ANZPM Bill, updated clause 13

## **Appendix 1: ANZPM Bill updated clause 13**

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Appendix 1 has been withheld under s9(2)(g)(i). the final version of the ANZPM Bill is available at: <https://www.legislation.govt.nz/bill/government/2022/0146/latest/LMS647920.html#d610079e2>.

PROACTIVELY RELEASED