

Hon Willie Jackson

Minister of Broadcasting, Communications and Digital Media

Proactive Release of Cabinet Material: Proposed amendments to the Aotearoa
New Zealand Public Media Bill

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Title: Proposed amendments to the Aotearoa New Zealand Public Media Bill

Author: Ministry for Culture and Heritage

These documents have been proactively released by the Minister. This package includes the Cabinet paper and other key decision papers, as listed below.

Title: Aotearoa New Zealand Public Media Bill Proposed Amendments Cabinet Paper

Title: Annex 1 Draft Departmental Report Aotearoa New Zealand Public Media Bill

Title: DEV-22-MIN-0255 Cabinet Economic Development Committee Minute of Decision

Title: CAB-22-MIN-0497 Report of the Cabinet Economic Development Committee Minute

The Departmental Report Aotearoa New Zealand Public Media Bill (Annex 1) will be submitted by the Economic Development, Science and Innovation Committee as authors.

[In Confidence]

Office of the Minister for Broadcasting and Media
Cabinet Economic Development Committee

Proposed amendments to the Aotearoa New Zealand Public Media Bill

Proposal

- 1 This paper seeks your agreement to recommend amendments to the Aotearoa New Zealand Public Media Bill, which is currently being considered by the Economic Development Science and Innovation Committee.

Relation to government priorities

- 2 The proposal to establish a new public media entity Aotearoa New Zealand Public Media (ANZPM) progresses a key element of the Labour Party Manifesto 2020 commitment to strengthen the role of public media and Māori media in Aotearoa New Zealand, and ensure public media assets are fit for the future and able to thrive amid the changing media landscape.

Executive summary

- 3 The Aotearoa New Zealand Public Media Bill was introduced to the House on 23 June 2022 and seeks to strengthen the delivery of public media services to ensure that all New Zealanders can access relevant and trusted public media content across the platforms they use.
- 4 The select committee submissions process has identified some areas where, in my view, changes would help ensure the bill gives effect to the Government's intent, and improve the clarity and workability of the bill.
- 5 Subject to Cabinet's agreement, these changes will be included in the Departmental Report, which will be provided to the Select Committee on Tuesday 15 November 2022 for its consideration on Thursday 17 November 2022. A draft of the report is attached as Annex 1. I note that all proposed changes are subject to Parliamentary Counsel Office's (PCO) drafting advice.
- 6 The Select Committee received 920 written submissions on the Bill, and heard 86 oral submissions. Submissions came from a wide range of individuals and organisations, including media sector experts, advocacy and community groups, and community and commercial media organisations.
- 7 Most of the submissions agreed that some change to current institutional arrangements was needed in the face of increased competition from international content providers, declining audiences and revenue shares for linear platforms, and changes in how New Zealanders access and consume media.
- 8 However, submitters raised concerns about the bill or suggested changes in some key areas.

- 9 To address some of these changes and concerns I am seeking Cabinet’s agreement to recommend changes to the bill to:
- 9.1 strengthen editorial independence
 - 9.2 better provide for a focus on public media outcomes
 - 9.3 clarify when content should be made available free of charge
 - 9.4 ensure the charter is sufficiently clear and inclusive
 - 9.5 ensure that disabled people are specifically provided for
 - 9.6 rethink the use of the term ‘broadcasting’
 - 9.7 clarify provisions relating to market impacts
 - 9.8 clarify how ANZPM should collaborate within the media ecosystem
 - 9.9 clarify what pre-existing services remain commercial free
 - 9.10 clarify and improve provision for transitional arrangements.
- 10 I do not propose recommending changes to the entity form or the provisions for governance, monitoring or ongoing reporting requirements for ANZPM. The Crown Entities framework that underpins this bill includes a well-tested set of mechanisms to enable entities to be set up at arm’s length from government and protect their statutory independence where needed, while still providing appropriate governance and accountability arrangements to ensure delivery of their statutory objectives and other responsibilities.
- 11 In addition, I do not propose recommending changes in relation to the provision for the Crown’s Treaty of Waitangi obligations in the bill. The intent is that ANZPM will be expected to operate in a way that improves outcomes for Māori and respects the Crown’s responsibility to give effect to the principles of the Treaty of Waitangi. The bill provides specific expectations for ANZPM to ensure it can be held to account, without placing unnecessarily onerous or unclear obligations on it.

Background

- 12 The Aotearoa New Zealand Public Media Bill was introduced to the House on 23 June 2022, and was referred to the Economic Development Science and Innovation Committee.
- 13 The bill seeks to strengthen the delivery of public media services to ensure that all New Zealanders can access relevant and trusted public media content across the platforms they use.
- 14 It is intended to address issues identified in the Strong Public Media business case that concluded that current institutional arrangements will significantly hamper achievement of the Government’s objectives for public media, even with substantial increases in public funding [CAB-22-SUB-0034]. The business case also concluded

that, if the inflexibility, inefficiency, and disjointed nature of current institutional arrangements are not addressed, and a sustainable funding model put in place, New Zealand's public media will struggle to maintain even current levels of public media provision.

- 15 The bill seeks to address these issues by establishing a new public media entity, ANZPM, that is intended to continue to provide for RNZ and TVNZ's current audiences, while also enabling:
- 15.1 better alignment and more efficiency of government investment across platforms
 - 15.2 increased flexibility for the new entity to respond to current and future demographic and technological change
 - 15.3 a more sustainable long-term funding model
 - 15.4 a greater focus on currently under-served and under-represented audiences.
- 16 The bill:
- 16.1 creates a new autonomous Crown entity, with RNZ and TVNZ initially becoming Crown entity subsidiaries of the new entity (with the intention that they are ultimately disestablished)
 - 16.2 repeals the Radio New Zealand Act 1995 and Television New Zealand Act 2003
 - 16.3 makes consequential changes to other legislation including the Broadcasting Act 1989.
- 17 The commencement date of the bill is 1 March 2023.
- 18 The submissions process has identified areas where, in my view, amendments would help ensure the bill gives effect to the Government's intent and improve the clarity and workability of the bill.
- 19 Subject to Cabinet's agreement, these changes will be included in the Departmental Report, which is due to be provided to the Select Committee on Tuesday 15 November 2022 for its consideration on Thursday 17 November. A draft of the report is attached as **Annex 1**, for your reference. I note that all proposed changes are subject to PCO's drafting advice.
- 20 The Select Committee is due to report back to the House by 26 January 2023.

Overview of submissions

- 21 The Select Committee received 920 written submissions on the Bill, and heard 86 oral submissions.
- 22 Submissions came from a wide range of individuals and organisations, including public, community and commercial media organisations, advocacy and interest

groups, and media sector commentators and experts. Both Television New Zealand (TVNZ) and Radio New Zealand (RNZ) made written and oral submissions.

- 23 Most submissions agreed that some change to current institutional arrangements was needed in the face of increased competition from international content providers, declining audiences and revenue shares for linear platforms, and changes in how New Zealanders access and consume media.
- 24 However, submitters raised concerns about the bill or suggested changes in a number of key areas:
- 24.1 Most submitters were concerned about the editorial independence of ANZPM, including how this would be affected by the proposed autonomous Crown entity (ACE) form, and by the proposed governance, monitoring and funding arrangements.
- 24.2 Commercial media organisations and some other submitters raised issues about ANZPM's market impact because of ANZPM's perceived scale and market power, as well as the effects on competitive neutrality due to ANZPM's proposed mixed funding model.
- 24.3 The independent production sector and community media organisations also raised concerns about ANZPM's impact on their organisations, including concerns about ANZPM duplicating or cutting across services they currently provide.
- 24.4 Related to the above, media organisations and others wanted to see more clarity about the requirement on ANZPM to collaborate, and what that would look like in practice.
- 24.5 Many submitters, particularly those from public media advocacy groups, were concerned about ensuring that ANZPM focused on its public media outcomes, rather than on earning commercial revenue. Most of these submitters wanted more clarity about what ANZPM must provide commercial-free versus what it may provide on a commercial basis. Other submitters, generally commercial media providers, wanted ANZPM to focus only on what the commercial sector could not provide. A smaller number of submitters, including the advertising sector, wanted more focus on the requirement for ANZPM to earn commercial revenue.
- 24.6 A number of submitters acknowledged the importance of a public media entity incorporating tikanga and te ao Māori at all levels of the organisation. Some submitters wanted the bill to go further in this regard – for instance in specifying quotas for Māori language or Māori content, or making specific provision for co-governance. Other submitters disagreed with recognition of the Treaty of Waitangi, tikanga, te reo Māori or Māori representation in the legislation, generally because they didn't think one culture should be singled out, or they did not personally want to engage with te reo Māori content.
- 24.7 Submitters from a range of groups wanted to see more specific or strengthened provision made in the charter, and/or specific representation on the board, in

relation to a wide variety of communities, groups, and interests such as consumers, disabled people, the arts, music and culture sectors, children and young people, Pacific people, Asian communities, the Deaf community, regional audiences, ANZPM staff, elected representatives (including parliamentary opposition parties), New Zealanders living overseas, and media groups and organisations (including the local content and production sector).

- 24.8 More specifically, a number of submitters raised issues about how the bill provides for disabled people, including no specific provision for accessibility services such as captioning and audio description, no explicit provision in the charter for the needs of disabled people and disabled audiences, and a lack of clarity around the term 'accessibility'.
- 24.9 While both TVNZ and RNZ supported the proposal to establish ANZPM:
- 24.9.1 TVNZ wanted RNZ and TVNZ to be amalgamated into a Crown entity company with a stronger focus on commercial objectives - largely due to its concerns about editorial independence and its views about the importance of a commercial imperative
- 24.9.2 RNZ wanted changes made to the legislation to emphasise ANZPM's public media focus and strengthen its editorial independence.
- 24.10 Many of the submissions raised issues outside the scope of the bill including in relation to government's ownership of RNZ and TVNZ and its involvement in the provision of public media services along with the proposed funding, monitoring, and oversight arrangements.

Key areas where changes to the bill are proposed

Strengthen editorial independence

- 25 The intent is that ANZPM should have strong protections and expectations in relation to editorial independence. That includes editorial independence from the government of the day as well as from commercial and other influences.
- 26 My view is that the current provisions in the bill already give ANZPM very strong protections and expectations in relation to its editorial independence.
- 27 In addition, the Crown entities framework itself provides a longstanding, well-tested set of mechanisms to enable entities to operate at arm's length from government, while still ensuring the availability of clear, transparent levers to hold those entities accountable for delivery of their statutory objectives and other responsibilities. Many of the submissions did not reference or reflect, or misinterpreted the protections afforded by the Crown Entities Act 2004 in relation to how it strongly regulates Ministers' and departments' interactions with Crown entities.
- 28 Most submitters also wanted ANZPM to be able to be held to account if it didn't deliver on its statutory objectives or funding, or did not behave in accordance with its statutory operating principles - but did not acknowledge the key role accountability

levers in the Crown Entities Act play in this - even where Crown entities have a high degree of statutory independence from Ministers.

- 29 However, I agree with submitters that some clarification and further strengthening of the relevant provisions in the bill are warranted to ensure that ANZPM's editorial independence is as strong as possible (without removing key accountability levers) and to help reassure the many submitters who raised concerns. The changes I propose be recommended to the Select Committee, in line with submitters' suggestions, are to:
- 29.1 make further provision in the bill highlighting the editorial independence of ANZPM and indicating the key clauses in the bill that protect ANZPM's editorial independence
 - 29.2 amend subclause 15(1) to provide that the Responsible Minister must exercise or perform their powers, duties and functions in a manner that is consistent with ANZPM's *editorial independence* rather than ANZPM's *charter*. This will more clearly give effect to the policy intent to limit the Minister's ability to use any of their powers, duties and functions to seek to influence ANZPM
 - 29.3 replace the wording in subclauses 15(3) and 15(5) relating to *broadcasting, selecting, commissioning or producing particular content* with a general and well-understood blanket term such as *editorial matters* to ensure the clauses do not inadvertently exclude some ways in which Ministers could seek to influence ANZPM's editorial independence
 - 29.4 include reference to contractors in subclause 15(3) alongside members, subsidiaries and employees as a group that Ministers may not give a direction to in relation to editorial matters
 - 29.5 broaden subclauses 15(3) and 15(6) to prevent direction by any Ministers in relation to editorial independence to help clarify that editorial decision-making is a statutorily-independent function under the Crown Entities Act and can never be subject to a direction under any section of the Crown Entities Act
 - 29.6 remove the ability of Ministers to add new functions to ANZPM under clause 15(2) of the bill, to help address concerns about its use and to remove any lack of clarity relating to the charter's status as a statutorily independent function. While this clause was largely intended to be used to direct ANZPM to continue to provide a radio service to the Pacific, the removal of this clause is unlikely to have any effect on its continued provision, since there is specific funding allocated to the RNZ Pacific service within Vote Arts, Culture and Heritage and an existing agreement between Manatū Taonga and RNZ for delivery of the service that will transfer to ANZPM
 - 29.7 remove ANZPM's objective to 'counter misinformation' which was seen by some submitters as acting to stifle diversity of thought or opinion, and instead amend clause 13(1)(a) to require that ANZPM should demonstrate editorial independence, impartiality, *accuracy* and balance.

Better provide for a focus on public media outcomes

- 30 The intent is that ANZPM will be primarily focused on delivering public media outcomes, not generating commercial revenue. While ANZPM is expected to earn commercial revenue, this is to support the entity's ability to provide public media content in fulfilment of its charter obligations and its financial sustainability.
- 31 In this context, I agree with submitters that the legislation could usefully clarify that ANZPM's public media mandate is its primary purpose, consistent with the policy intent.
- 32 I therefore recommend a change be proposed to the Select Committee that this primary purpose is added to the bill to reduce any ambiguity as to the relative priority of ANZPM's public media and commercial objectives. Such a provision should also help to address concerns about the potential competition and market impacts ANZPM's ongoing activities could have on the broader media ecosystem.
- 33 I do not, however, propose that ANZPM should be limited to only provide what commercial media does not, nor be limited in what audiences it can deliver to. The intent is that, while there should be a focus on under-served and under-represented audiences, all New Zealanders should be able to benefit from the services provided by ANZPM.

Clarify requirements for provision of content commercial-free

- 34 It is important that ANZPM is not unduly limited in terms of the commercial opportunities available to it, or what platforms it can put its public media content on, so it has sufficient flexibility to deliver its charter.
- 35 I note that the preference of many submitters was for more content to be provided advertising-free compared to what TVNZ currently provides – but this has to be balanced against ANZPM's ability to be able to fund the provision of this content in the first place.
- 36 My view is that placing specific restrictions in the bill in relation to what content should be delivered free of advertising or sponsorship, or what content should be allowed to carry advertising or sponsorship, would unduly limit ANZPM's ability to identify and take advantage of current and future commercial opportunities, make the legislation far less flexible and enduring, and potentially create unintentional consequences over time.
- 37 However, in line with submitters' feedback, I agree that it would be helpful to add an operating principle to the charter that ANZPM will provide some of its content advertising and sponsorship-free on an ongoing basis. This would help to address a point made by submitters that, without such an expectation, a much higher proportion of ANZPM's services may carry advertising over time if ANZPM shifts away from delivering RNZ's legacy services (which the bill provides will be delivered commercial-free for as long as ANZPM chooses to deliver them).
- 38 Such a provision in my view would help address some of the concerns of submitters, while not locking ANZPM into providing specific services or content advertising-free.

- 39 In relation to charging for content, the intent is that all New Zealanders can easily access public media content across the genres and platforms of their choice. New Zealanders should not be prevented from accessing ANZPM content that they want to see, hear or read because they do not have the ability to pay for it. More specifically, the intent is that:
- 39.1 there will be no charge to access the majority of content that ANZPM provides at any time, including new content
- 39.2 all content that ANZPM produces will be able to be accessed free of charge – either when it is first provided, or subsequently.
- 40 In my view, the current provisions in the bill¹ provide strong direction to ANZPM to ensure that *all* content it provides is *ultimately* provided free of charge and *the majority of* content is *always* provided free of charge – while not overly restricting its ability to charge for some content.
- 41 However, I think that a further clarification would be helpful in relation to clause 13(1)(e) to avoid an interpretation that the requirement to make content predominantly free of charge could be fulfilled by charging for all content initially and subsequently making it free of charge. This could be done by clarifying that the intent of 13(1)(e) is that content should be provided predominantly free of charge, *including when it is first provided*.

Ensure the charter is sufficiently clear and inclusive

- 42 The charter sets out ANZPM's objectives, functions and operating principles in relation to the public media outcomes that ANZPM is expected to contribute to. The intent is to provide enough specificity in the charter to ensure ANZPM can be held to account for achieving its objectives and delivering its functions consistent with its operating principles, while still allowing a high degree of flexibility in how ANZPM provides content and services.
- 43 In addition, the intent is for the charter to be broad and inclusive, ensuring that all New Zealanders can see themselves in it. However, it also makes specific reference to groups where provision of public media is particularly important – namely Māori as Treaty partner; children and young people in reflection of their particular needs and vulnerabilities; and Pacific people in reflection of the important role New Zealand plays in the Pacific.
- 44 As noted earlier, many submitters wanted specific provision for other groups and interests in the charter. The concern is that, in specifically referencing each of these groups or interests, the charter becomes unworkable, and some groups or interests are inadvertently excluded. I therefore do not recommend making significant additional provision in relation to most of these groups or interests, or in relation to specific services or types of content.

¹ The key provisions in the bill are to: provide freely-available content across all genres in cl.12(1); ensure content is broadcast predominantly free of charge in cl. 13(1)(e); and subsequently broadcast free of charge any content for which there is a charge on first broadcast in cl. 16.

45 However, there are areas where I think more recognition is needed of particular interests or needs. I therefore propose that changes be recommended to the charter to:

- 45.1 include provision for content that *stimulates, supports, and reflects the diversity of artistic and cultural expression in New Zealand*. This approach would more explicitly recognise the important role a range of artistic and cultural (including music) content can have in creating an inclusive, enriched and connected society - and so contributing to ANZPM's objectives
- 45.2 incorporate specific reference to children and young people (rather than just referring to *New Zealanders of all ages*) within the functions and operating principles, in line with the objective set out in clause 12(1)(h), to more clearly make provision for this key group
- 45.3 add a reference to *factual programming* within clause 13(1)(a) as an area where ANZPM should demonstrate editorial independence, impartiality and balance alongside news and current affairs.

46 In addition, a number of submitters found the structure of the charter provisions in the bill made it unclear which clauses comprise ANZPM's charter. I propose recommending to the Select Committee that changes are made to the bill to clarify this.

Ensure that disabled people are specifically provided for

47 The intent is that ANZPM should have particular obligations to ensure that disabled people are provided for. Based on feedback from submitters, it is clear to me that the current charter provisions referring to *New Zealanders of all abilities* do not clearly provide for these obligations.

48 I therefore propose that changes be recommended to provide for *disabled people* rather than *New Zealanders of all abilities*. This will help ensure that disabled people are explicitly, rather than implicitly, provided for in the charter.

49 The Government is committed to increasing access to captioning and audio description in New Zealand including by making funding available via NZ On Air to Able. Able is a not-for-profit organisation that provides captioning services, subtitling and audio description to media organisations for free-to-air media content.

50 However, I do not recommend that the bill sets particular obligations for ANZPM in relation to the provision of specific accessibility services, including captioning or audio-description (CAD), or the use of New Zealand Sign Language. This is consistent with the current approach that any regulatory change relating to the provision of CAD services should be cross-sector and align with broader reforms to the current media content regulation regime.

51 On this basis, Manatū Taonga is leading work on CAD that will be progressed in parallel with the proposed broader review of the Broadcasting Act 1989, and other work on content regulation being led by the Department of Internal Affairs.

Rethink the use of the term 'broadcasting'

- 52 The current use of ‘broadcasting’ in the bill is intended to reflect that ANZPM will be operating within the broader context of the Broadcasting Act. On that basis, the definition of broadcasting and associated definitions have been aligned with the current Broadcasting Act definition as far as possible, while being amended slightly to ensure coverage of digital platforms and future platforms (including the removal of the current explicit exclusion of ‘on-demand’ content from the definition).
- 53 However, some submitters were concerned that the term ‘broadcasting’ is largely associated with linear platform delivery and does not sufficiently provide for current or new ways of delivering content.
- 54 I agree with this concern, and propose that PCO is asked to consider replacing the term ‘broadcasting’ with a plain English term such as ‘provide’ to avoid requiring a definition to be given in the bill. In my view, this approach would better achieve the intent of creating a modern, future-proofed legislative framework for ANZPM. It would also alleviate concerns that ANZPM would be unable to engage in multi-dimensional content provision.
- 55 It is not my intent that this change should impact on the ongoing application of the Broadcasting Act to ANZPM. The Broadcasting Act does not name specific entities as being broadcasters, nor does it require establishing legislation to designate an entity a broadcaster. Therefore, as is currently the case with RNZ and TVNZ, content provided by ANZPM via traditional linear television or radio services will be regulated under the Broadcasting Act (and content streamed by ANZPM via the internet will not).
- 56 I also note that I have commissioned Manatū Taonga to start initial work on reviewing the Broadcasting Act 1989. Consideration of the use of the term ‘broadcasting’ as it applies across the sector is likely to be within scope of this work.

Clarify provisions relating to market impacts

- 57 I acknowledge the concerns raised by commercial media entities and other submitters in relation to market impacts and agree that it is important the legislation clarifies as far as practicable how ANZPM will operate in relation to other media entities and the broader sector, without being overly prescriptive or restrictive.
- 58 Government’s overall objective is a diverse, capable and sustainable media ecosystem. This includes a strong commercial media sector, as well as a strong public media sector, acknowledging that public media content is provided by a wide variety of organisations, even if it is publicly funded. There is no intent that a strong public media sector should come at the expense of a strong private media sector, or vice versa.
- 59 This proposal is therefore focused on strengthening public media provision, but doing so in a way that doesn’t create significant market impacts.
- 60 Manatū Taonga has received legal advice that there is unlikely to be a substantial lessening of competition resulting from combining the two entities’ current operations. In addition, it is important to note that ANZPM will not be a predominantly commercially-focused entity like TVNZ currently is, but focused on

public media outcomes, with the generation of commercial revenue not a primary purpose of the entity. My proposal to further strengthen ANZPM's primary focus on public media outcomes, discussed above, should help to clarify this expectation in the bill.

- 61 At the same time, ANZPM is required to earn commercial revenue to support its core baseline funding and ensure it can deliver on those public media outcomes. That will mean it will sometimes need to compete with commercial media providers for revenue (just as TVNZ currently does), and audiences and talent (just as TVNZ and RNZ currently do). It is important to ANZPM's success that its ability to earn commercial revenue is not unduly restricted. However, this does raise issues in relation to competitive neutrality – because ANZPM may be able to use its public funding to give it an advantage relative to commercial media entities.
- 62 The bill places a number of expectations on the way ANZPM will operate, which will help to ensure ANZPM does not focus on commercial success at the expense of its public media outcomes, and will likely have the effect of reducing its ability to compete:
- 62.1 its ACE form (as opposed to a Crown entity company form operating under the Companies Act, focusing on generation of returns to shareholders)
 - 62.2 its charter, with a focus on delivery to under-served and under-represented audiences
 - 62.3 the requirement to collaborate with other media organisations
 - 62.4 limitations on ANZPM's ability to charge for content
 - 62.5 a proposed new operating principle in the charter for ANZPM to provide some of its content advertising and sponsorship-free on an ongoing basis (see above).
- 63 ANZPM will also have to:
- 63.1 operate in accordance with the Commerce Act – in particular, provisions preventing entities engaging in anti-competitive behaviour
 - 63.2 have regard to the funding policies of NZ on Air and Te Māngai Pāho, which will help ensure a consistent approach across government funding of content, and prevent inefficient use of funding
 - 63.3 be monitored on how well it is fulfilling its public media mandate and collaborating with other media entities.
- 64 In this context, I do not agree that there is a need for provisions specifying when or how ANZPM should be allowed to compete, further limiting its ability to compete, requiring it to avoid adverse effects of competition, or limiting how much revenue it can earn or how it can earn it. Such provisions would significantly reduce the flexibility ANZPM will need to respond to the ongoing challenges faced by all media organisations in the context of increasing competition from global digital platforms.

- 65 Nor do I agree that ANZPM’s commercial and non-commercial operations or its public and commercial revenues should be separated, or that ANZPM should be subject to specific oversight by the Commerce Commission or another independent body. In my view, these changes would place extremely onerous obligations on an entity that is primarily focused on the delivery of public media outcomes, and where commercial revenues are projected to decline significantly over time. I note that overseas examples cited by submitters (including the ABC and BBC) often have much larger commercial operations covering many more types of commercial activities (e.g. the sale of content and merchandising).
- 66 However, I believe it would be helpful to provide a clearer expectation that ANZPM will consider the effect of its activities on other media providers, and on the health of the broader media eco-system. I therefore propose recommending to the Select Committee that ANZPM’s board be given a collective duty to ensure that ANZPM takes account of services provided elsewhere in the broader media ecosystem to support the capability, capacity and sustainability of that ecosystem. Such a provision could be based on and expand the provision in the current RNZ charter. Framing this requirement as a collective duty of the Board would provide clear accountability on the part of the Board to ensure ANZPM is considering the impacts of its activities on the broader sector – including community providers as well as commercial media entities.
- 67 I also agree with concerns raised by the Radio Broadcasters Association that it would be unfair for ANZPM to be able to advertise its commercial services on RNZ’s non-commercial platforms, where ANZPM continues to provide these. I therefore recommend Schedule 1, clause 8 is clarified to ensure ANZPM cannot promote content delivered on a commercial basis on the ongoing RNZ services provided for in this clause.

Impacts of transferring funding from NZ On Air

- 68 Although funding is not in scope of the bill, I note that there has been some confusion about the impact of establishing ANZPM on the role NZ on Air plays, including some inaccurate commentary about NZ On Air’s loss of funding. I note that:
- 68.1 the bill makes no changes to the roles of NZ On Air or Te Māngai Pāho. Both will be expected to continue to fulfil their statutory mandates
- 68.2 the bill acknowledges that coordination of funding and commissioning policies between NZ On Air, Te Māngai Pāho and ANZPM will be important to maximise the efficiency of public content funding. It therefore provides a statutory obligation for each of those entities to have regard to the funding/commissioning policies of the other
- 68.3 in total, \$42.2 million of annual funding that other platforms have, in the past, been eligible to apply for will move from NZ On Air’s contestable funding pool directly to ANZPM. This amount is significantly less than the NZ On Air funding that RNZ and TVNZ have benefitted from through a combination of platform funding and as commissioning platforms in recent years.² Therefore, this reallocation of funding does not effectively reduce the amount of funding

² For instance, this figure was \$97.4 million in 2021/2022 and \$93.3 million in 2019/2020

available to other platforms - as this is less than the level of funding that would have likely have benefitted TVNZ or RNZ anyway

- 68.4 in terms of content producers, the intent is that there will be significantly more content funding available than ever before, given new funding of \$109 million per year for three years for ANZPM, as well as \$40 million for Māori media through Budget 2022.

Clarify how ANZPM should collaborate within the media ecosystem

- 69 The requirement for ANZPM to collaborate with other media entities reflects the intent that ANZPM have a positive influence on the capability, capacity and sustainability of the broader sector. This requirement is intended to:
- 69.1 help address concerns about the potential impacts of a large public media entity, funded partly by commercial revenue, on the viability and sustainability of other media entities
- 69.2 acknowledge that public media content is also created and provided by community and private sector media organisations, and these organisations make a valuable contribution to public media outcomes by reaching specific audiences and providing a wider range of views and perspectives.
- 70 Given this, I do not agree that this provision should be broadened to cover groups beyond other media entities, as that is not the intent of the provision.
- 71 Nor do I agree that a requirement to collaborate should become part of ANZPM's charter. Instead, it should remain subordinate to ANZPM's delivery of its charter to ensure that ANZPM is not required to collaborate in ways that undermine its sustainability or its ability to deliver on its charter, or that ANZPM is not prevented from generating sufficient revenue to deliver its charter.
- 72 However, after considering submitters' feedback I propose to recommend to the Select Committee that the provision better capture the original objective that ANZPM should be required to collaborate in a way that positively influences the capability, capacity and sustainability of the broader ecosystem - rather than simply requiring it to collaborate with other media entities with no stated objective.
- 73 In addition, to enhance ANZPM's accountability for the collaboration provision, I recommend that the provision becomes an operating principle rather than a standalone duty, and that the Board has a collective duty to ensure ANZPM operates in accordance with it when carrying out its functions, where this is consistent with ANZPM's delivery of its charter and with section 51 of the Crown Entities Act.
- 74 I also recommend the bill clarifies that the direction to collaborate is not an exemption from the Commerce Act under section 43 - which provides that the Commerce Act does not apply to anything specifically authorised by other legislation. This approach will ensure it is clear that ANZPM must not breach the Commerce Act when determining what collaboration activities to undertake.

Clarify what pre-existing services remain commercial-free

- 75 Clause 8 of Schedule 1 of the bill is intended to ensure that, where ANZPM continues to provide the specific services that are currently provided on a commercial-free manner by RNZ, it must maintain their commercial-free status. However, the clause does not require ANZPM to continue to provide these services.
- 76 It was clear from submissions that there was some confusion about what is covered under this provision. I therefore propose recommending to the Select Committee that the specific services this provision relates to are clarified as being:
- 76.1 the current RNZ National, Concert and Pacific radio services
- 76.2 the current www.rnz.co.nz website.
- 77 I do not recommend that the clause commit ANZPM to continue providing RNZ's current services indefinitely – it is important that ANZPM has the ability to make choices about its future services in line with its editorial independence, and its need to earn commercial revenue to support delivery of these services. As some submitters pointed out, it is also important that a range of audiences benefit from commercial-free provision, not just the ones currently who benefit from RNZ's current services.

Clarify and improve provision for transitional arrangements

- 78 The intention is that the transition from RNZ and TVNZ to ANZPM be as efficient as possible, while providing certainty for employees and the broader media sector, providing continuity of service for audiences, and giving ANZPM adequate time and flexibility to resolve more complex contractual issues.
- 79 The transitional arrangements in the bill are intended to reflect that the Crown remains the ultimate owner. The transfer of staff, assets and functions to the new entity should have no impact on ANZPM's overall financial position relative to RNZ/TVNZ. In addition, the bill intends that there is no impact on TVNZ and RNZ staff entitlements or continuity of service (with the exception of both Chief Executives).
- 80 There are a small number of minor changes I want to propose to the Select Committee in line with this intent. These changes arise from points made by submitters and issues identified through the establishment work:
- 80.1 adding a "sunset clause" of 30 June 2026 to Schedule 1, clause 14 to provide certainty in the first instance of restructuring, without creating an ongoing mechanism for ANZPM to be able to limit its obligation to pay redundancy
- 80.2 amending the use of "new position" in Schedule 1 clause 12 to avoid a suggestion that TVNZ and RNZ staff's employment is not continuous when they transfer to ANZPM
- 80.3 clarifying in the bill that, where any employment agreement refers to the employee being employed at a particular tier, the employee will still be considered to be employed on the same terms and conditions if they are moved to a position at a lower tier on establishment of ANZPM – this provides for flexibility in relation to interim transitional structures

- 80.4 clarifying final reporting requirements for TVNZ and RNZ to ensure appropriate transparency as at 28 February 2023, without creating unnecessary compliance costs
- 80.5 clarifying that the intent of Schedule 1, clause 4(1) is not that all Freeview shares transfer to ANZPM, only the ones held by RNZ and TVNZ – to clarify that the intent is not to transfer the shares of other media organisations to ANZPM
- 80.6 treating RNZ and TVNZ as the “same person” as ANZPM for the purposes of all Inland Revenue Acts to the bill and amending the bill to ensure that the transfer of shares proposed in the Bill is ignored for the purposes of the continuity provisions in the Income Tax Act to ensure that the reform is carried out in a tax-neutral manner without any tax costs (or benefits) arising solely from any restructuring.

Minor and technical changes

- 81 I also intend to propose a small number of minor or technical changes that do not require substantive policy changes.

Key areas where changes to the bill are not proposed

Entity form

- 82 I do not agree that ANZPM should take a different form than an ACE, despite many submissions wanting it changed to an independent Crown entity (ICE) form or a Crown entity company form:
 - 82.1 An ICE form is inappropriate for this entity. ICEs generally have quasi-judicial or regulatory functions, have a formal role assessing or criticising the actions of government, do not deliver services and do not earn commercial revenues.
 - 82.2 A Crown entity company is not well-suited to an entity with a primary focus on public media outcomes and a requirement to earn commercial revenue to support delivery of those outcomes. The Crown entity company form is best suited to entities where there is a predominantly commercial focus. Crown entity companies are subject to the Companies Act 1993 which imposes a duty to act in the best interests of the company. Moreover, a Crown entity company form could result in an emphasis on the commercial aspects of ANZPM and the predominant focus on public media outcomes could be lost over time. While RNZ is currently a Crown entity company, it is required to provide its services in a commercial-free manner, and therefore does not have to strike a balance between delivering public media outcomes and earning commercial revenue as ANZPM will have to.
- 83 Many submitters were concerned about a perception that the ACE form is not sufficiently at arms-length from government. This seems to arise from a misperception that the Responsible Minister’s ability to direct an ACE under section

104 of the Crown Entities Act means that the minister can simply tell an ACE that it has to have regard to government policy in general. However, any such direction

83.1 has to be in regard to a specific policy that relates to the entity's functions and objectives, not just general government policy

83.2 cannot be given in relation to a statutorily independent function

83.3 requires the Minister to follow a formal process under section 115 of the Crown Entities Act that includes consulting with the entity and tabling the direction in Parliament

83.4 only requires the entity to *have regard* to it – which means that it can choose not to implement it if it considers that it is inconsistent with its statutory objectives or independence.

84 In ANZPM's case, it will not be able to be directed in relation to editorial matters as defined in subclauses 15(3) and 15(5), or in relation to its delivery of its charter (which contains the majority of ANZPM's objectives and functions that they could be directed on). The Minister's power to direct will therefore be very limited and cannot relate to editorial decision-making or on how ANZPM delivers its charter.

85 My view therefore remains that the bill should establish ANZPM as an ACE to enable a focus on delivery of its public media outcomes, while being able to be held to account for its statutory objectives and functions. The provisions for editorial independence (including the recommended changes above) should provide sufficient reassurance that ANZPM will have strong editorial independence.

Treaty of Waitangi provisions

86 The intent is that ANZPM will be expected to operate in a way that improves outcomes for Māori and helps ensure the Crown meets its obligations under the Treaty of Waitangi. The bill aims to provide specific expectations for ANZPM to ensure it can be held to account, without placing very onerous or unclear obligations on it.

87 I do not recommend any changes to remove reference to the Treaty of Waitangi, tikanga, te reo Māori or engagement with Māori. These provisions recognise the important role of the Treaty for New Zealand and supports the entity to deliver on the specific obligations and roles it has in promoting Māori interests, culture and protecting te reo Māori as a taonga.

88 Nor do I support adding further obligations into the bill. ANZPM should have the flexibility to determine how it achieves the relevant objectives and obligations in the bill.

ANZPM's board

89 The intent is that the composition of ANZPM's board should balance efficiency of decision-making while allowing room for the board make-up to reflect a range of competencies, diversity, and sector representation.

- 90 Some submitters raised concerns about the diversity of board appointments, or that specific skills and experience were not explicitly provided for.
- 91 However, the requirements of the Crown Entities Act and associated guidance set a clear expectation that ANZPM's board will have the appropriate knowledge and experience, as well as diversity. I therefore do not recommend additional provisions are added to provide for the appointment of particular interests or groups to the board, beyond what is currently provided for.
- 92 In terms of the appointment process, the Crown Entities Act provides a comprehensive framework for the process of appointing members to Crown entity boards in New Zealand. The process that will apply in ANZPM's case is well-tested across a range of Crown entities, and very similar to the current processes for appointment to the boards of TVNZ and RNZ. I therefore do not recommend any changes to them in relation to ANZPM.

Monitoring and reporting

- 93 ANZPM will be subject to the standard planning and reporting arrangements for Crown Entities, as well as some specific provisions relating to ANZPM's functions and responsibilities.
- 94 Some submitters wanted to see specific measures or additional requirements included in the bill.
- 95 The standard Crown entity planning and reporting mechanisms will provide a well-established basis for transparently holding ANZPM to account for its performance. They also provide flexibility for the development, reporting and monitoring of a range of measures sitting outside legislation that can provide a picture of an entity's performance over time while being able to adjust to reflect changing expectations in the light of technological, demographic and other changes.
- 96 I therefore do not agree that any further provision is needed in the bill.
- 97 The establishment of an independent oversight mechanism such as an ANZPM Guardian or Public Media Commission as some submitters suggested is outside the scope of this legislation. In any case, my view is that any such mechanism would be better considered in the context of broader regulation of all public media entities, or of the broader media eco-system.

Financial implications

- 98 There are no financial implications resulting from the changes to the bill proposed in this paper.

Legislative implications

- 99 The bill, as previously agreed by Cabinet, will repeal the Radio New Zealand Act 1995 and the Television New Zealand Act 2003, and make small consequential changes to the Broadcasting Act 1989 and others, as set out in Schedule 3 to the bill. These changes will be progressed through the bill that is currently before Select Committee.

100 The bill will be binding upon the Crown on commencement.

Impact analysis

101 Based on information provided by Manatū Taonga, the Treasury's Regulatory Impact Analysis team has determined that the changes being proposed to the Select Committee considering the Aotearoa New Zealand Public Media Bill are exempt from the requirement to provide a Regulatory Impact Statement. The exemption is on the basis that the Strong Public Media business case covers the proposals in this Cabinet paper, and that the proposals have no or only minor impacts in the context of the existing Bill.

Population implications

102 A key objective of this proposal is to establish a public media entity that delivers content to and engages diverse population groups across New Zealand, and supports the social connectedness and wellbeing of New Zealand audiences. Specific audience groups identified in this paper as currently under-served or under-represented by existing public media include Māori, Pacific peoples, young people, disabled people, and other ethnic communities.

Human rights

103 This paper makes no proposals that are inconsistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. A strong public media entity plays an important role in supporting and enhancing the rights set out in these Acts, in particular the democratic and civil rights set out in the Bill of Rights Act 1990.

Consultation

104 The following departments were consulted on this paper: The Treasury, Te Puni Kōkiri, Te Kawa Mataaho Public Service Commission, Ministry for Pacific Peoples, Office for Disability Issues in Whaikaha - Ministry of Disabled People, Ministry of Business, Innovation and Employment, Ministry for Youth Development, Ministry for Ethnic Communities, Ministry of Foreign Affairs and Trade, Te Arawhiti, Department of Internal Affairs, the Office for Seniors, Ministry for Women, and the National Emergency Management Agency. The Department of Prime Minister and Cabinet was informed.

Proactive release

105 I intend to release this paper proactively once the Select Committee has reported back to the House. This proactive release would be subject to redaction as if the release were based on a request to which the Official Information Act 1982 applied.

Recommendations

106 The Minister for Broadcasting and Media recommends that the Committee:

1 **note** that the Aotearoa New Zealand Public Media Bill was introduced to the House on 23 June 2022, and referred to the Economic Development, Science and Innovation Committee

- 2 **note** that the submissions process has identified a number of areas where changes would help ensure the bill gives effect to the Government’s intent, and improve the clarity and workability of the bill
- 3 **agree** to the following changes being recommended to the Select Committee through the Departmental Report:
- 3.1 amending the bill to highlight the editorial independence of ANZPM, and indicating the key clauses in the bill that protect ANZPM’s editorial independence
 - 3.2 amending subclause 15(1) to provide that the Responsible Minister must exercise or perform their powers, duties and functions in a manner that is consistent with ANZPM’s editorial independence
 - 3.3 replacing the phrase "broadcasting, selecting, commissioning or producing particular content" as it appears in subclauses 15(3) and 15(5) with a general and well-understood blanket term such as *editorial matters*
 - 3.4 include reference to contractors in subclause 15(3) alongside members, subsidiaries and employees as a group that Ministers may not give a direction to in relation to editorial matters
 - 3.5 clarifying that no Minister can direct ANZPM in relation to editorial matters
 - 3.6 removing clause 15(2) allowing the Responsible Minister to add functions to ANZPM
 - 3.7 removing the phrase ‘counter misinformation’ from clause 11(2)(k) and amending the relevant operating principle at 13(1)(a) to ‘demonstrating editorial independence, impartiality, accuracy and balance’
 - 3.8 amending the bill to clarify that ANZPM’s public media mandate is its primary purpose
 - 3.9 adding an operating principle to the charter that ANZPM will provide some of its content advertising and sponsorship-free on an ongoing basis
 - 3.10 clarifying that the intent of clause 13(1)(e) is that content will be provided predominantly free of charge, including when it is first provided
 - 3.11 amending the charter to:
 - 3.11.1 ensure it is clear that it comprises clauses 11, 12 and 13 of the bill
 - 3.11.2 include a provision requiring ANZPM to provide content that stimulates, supports, and reflects the diversity of artistic and cultural expression in New Zealand
 - 3.11.3 incorporate specific reference to “children and young people” within its functions and operating principles

- 3.11.4 include specific reference to factual programming as an area where ANZPM should demonstrate editorial independence, impartiality and balance
- 3.11.5 reference “disabled people”, rather than “New Zealanders of all abilities”
- 3.12 requesting PCO considers replacing the term “broadcasting” with another plain English term such as “provide” to avoid requiring a definition to be given in the bill
- 3.13 replacing references to ANZPM as a public “broadcaster” with a “public media entity” or something similar
- 3.14 giving ANZPM’s board a collective duty to ensure that ANZPM takes account of services provided elsewhere in the broader media ecosystem to support the capability, capacity and sustainability of that ecosystem
- 3.15 clarifying in the bill that the Commerce Act applies to ANZPM’s ongoing operations
- 3.16 replacing clause 17 with a collective duty for ANZPM’s board to ensure ANZPM collaborates with media entities in a way that positively influences the capability, capacity and sustainability of the broader ecosystem, where this is consistent with ANZPM’s delivery of its charter and with section 51 of the Crown Entities Act
- 3.17 clarifying in the bill that the requirement to collaborate is not an exemption under section 43 of the Commerce Act
- 3.18 clarifying in Schedule 1, clause 8 to:
 - 3.18.1 specify the RNZ services that must be provided commercial free, for as long as ANZPM continues providing them
 - 3.18.2 clarify that these services cannot carry advertising for ANZPM’s commercial services
- 3.19 adding a “sunset clause” of 30 June 2026 to Schedule 1, clause 14
- 3.20 amending the use of “new position” in schedule 1 clause 12 to make it clear that this is intended to be the same role as would previously have been held at RNZ/TVNZ
- 3.21 clarifying in the bill that where any employment agreement refers to the employee being employed at a particular tier, the employee will still be considered to be employed on the same terms and conditions if they are moved to a position at a lower tier on establishment of ANZPM
- 3.22 clarifying final reporting requirements for TVNZ and RNZ

IN CONFIDENCE

- 3.23 clarifying that the intent of schedule 1, 4(1) is not that all Freeview shares transfer to ANZPM, only the ones held by RNZ and TVNZ
- 3.24 clarifying that RNZ and TVNZ are to be treated as the “same person” as ANZPM for the purpose of all Inland Revenue Acts
- 3.25 ensuring that the transfer of shares proposed in the Bill is ignored for the purposes of the continuity provisions in the Income Tax Act
- 4 **note** that a number of minor and technical changes that do not require substantive policy decisions will also be proposed
- 5 **note** that I do not recommend proposing any changes to the entity form; provisions for governance, monitoring or ongoing reporting requirements for ANZPM; or provisions relating to the Crown’s Treaty of Waitangi obligations in the bill
- 6 **note** that, subject to your agreement, these changes will be included in the Departmental Report, which is due to be provided to the Select Committee on Tuesday 15 November 2022 for its consideration on Thursday 17 November
- 7 **note** that all proposed changes are subject to PCO’s drafting advice
- 8 **note** that a draft of the report is attached as Annex 1, for your reference
- 9 **note** that the Select Committee is due to report back to the House by 26 January 2023.

Authorised for lodgement

Hon Willie Jackson

Minister for Broadcasting and Media

AOTEAROA NEW ZEALAND PUBLIC MEDIA BILL

DEPARTMENTAL REPORT TO THE ECONOMIC
DEVELOPMENT, SCIENCE AND INNOVATION
COMMITTEE

PROACTIVELY RELEASED

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PROACTIVELY RELEASED

Executive Summary

- 1 The Aotearoa New Zealand Public Media Bill was introduced to the House on 23 June 2022 and seeks to strengthen the delivery of public media services to ensure all New Zealanders can access relevant and trusted public media content across the platforms they use.
- 2 The Select Committee received 920 written submissions on the Bill, and heard 86 oral submissions. Submissions came from a wide range of individual and organisations, including media sector experts, advocacy and community groups, and community and commercial media organisations.
- 3 Through the submissions process, Manatū Taonga has identified some areas where, in our view, amendments would help ensure the bill gives effect to the Government's intent, and improve the clarity and workability of the bill. We recommend the Committee consider changes to:
 - *strengthen editorial independence* – including through amendments to highlight the editorial independence of ANZPM; clarify that the Responsible Minister must act consistently with ANZPM's editorial independence; clarify what matters cannot be directed on; and remove the Minister's power to add functions
 - *better provide for a focus on public media outcomes* - by clarifying that ANZPM's public media mandate is its primary purpose
 - *clarify when content should be made available free of charge* – by providing that ANZPM will provide some of its content advertising and sponsorship-free on an ongoing basis and that content will be provided predominantly free of charge, including when it is first provided
 - *ensure the charter is sufficiently clear and inclusive* – including through amendments to clarify the charter structure; provide for content that stimulates, supports, and reflects the diversity of artistic and cultural expression in New Zealand; and incorporate specific reference to children and young people in ANZPM's operating principles
 - *ensure that disabled people are specifically provided for* - by referencing “disabled people”, rather than “New Zealanders of all abilities”
 - *rethink the use of the term ‘broadcasting’* - by using a plain English term such as “provide” to avoid requiring a definition to be given in the bill
 - *clarify provisions relating to market impacts* – by giving ANZPM's board a collective duty to ensure that ANZPM takes account of services provided elsewhere in the broader media ecosystem to support the capability, capacity

and sustainability of that ecosystem; and clarifying in the bill that the Commerce Act applies to ANZPM's ongoing operations

- *clarify how ANZPM should collaborate within the media ecosystem* – by giving ANZPM's Board a duty to ensure that ANZPM collaborates in a way that positively influences the capability, capacity and sustainability of the broader ecosystem
- *clarify what pre-existing services remain commercial free* – by more clearly specifying the pre-existing RNZ services that must be provided commercial-free and providing that these services that cannot carry advertising for ANZPM's commercial services
- *clarify and improve provision for transitional arrangements* – including minor amendments to clarify provisions relating to redundancies, reporting requirements and tax arrangements.

- 4 There are several areas where, after carefully considering submitters' feedback, we do not recommend changes to the bill.
- 5 We do not recommend changes to the entity form or the provisions for governance, monitoring or ongoing reporting requirements for ANZPM. The Crown Entities framework that underpins this bill includes a well-tested set of mechanisms to enable entities to be set up at arm's length from government and protect their statutory independence where needed, while still providing appropriate governance and accountability arrangements to ensure delivery of their statutory objectives and other responsibilities.
- 6 In addition, we do not recommend changes in relation to the provision for the Crown's Treaty of Waitangi obligations in the bill. The intent is that ANZPM will be expected to operate in a way that improves outcomes for Māori and respects the Crown's responsibility to give effect to the principles of the Treaty of Waitangi. The bill provides specific expectations for ANZPM to ensure it can be held to account, without placing unnecessarily onerous or unclear obligations on it.

Introduction

- 7 This report sets out Manatū Taonga – Ministry for Culture and Heritage’s advice to the Economic Development, Science and Innovation Committee on the Aotearoa New Zealand Public Media bill. The report sets out:
 - key recommended changes to the bill arising from submissions, analysis from Manatū Taonga and feedback from other government agencies (**Section One**)
 - other key points raised by submitters where Manatū Taonga does not recommend amending the bill (**Section Two**)
 - a clause-by-clause list of other points raised by submitters or identified by officials, alongside the recommended approach of Manatū Taonga (**Section Three**).
- 8 A consolidated list of all key recommended amendments to the bill, and other minor technical recommended amendments to the bill, are set out in **Annex One** and **Annex Two**, respectively. A list of submitters is included in **Annex Three**.
- 9 All recommended amendments to the bill are subject to Parliamentary Counsel Office (PCO) advice about how to best express each recommended change in legislation. In addition, PCO may include in the revision-tracked version additional minor technical amendments or editorial changes that are necessary for the overall coherence and quality of the bill.

Background

Aotearoa New Zealand Public Media Bill

- 10 The Aotearoa New Zealand Public Media Bill creates a new autonomous Crown entity, Aotearoa New Zealand Public Media (ANZPM), with the aim of strengthening the delivery of public media services to New Zealanders to ensure that all New Zealanders can access relevant and trusted public media content across the platforms they use.
- 11 The bill repeals the Radio New Zealand Act 1995 and Television New Zealand Act 2003 and makes consequential changes to other legislation, including the Broadcasting Act 1989.
- 12 The bill establishes ANZPM in legislation, provides for its objectives, functions and governance, and sets out the necessary transitional arrangements for its establishment.

- 13 The bill gives effect to the Government's intent that a new entity is established that will:
- have a public media focus first and foremost
 - have strong editorial independence
 - be able to deliver new services to new audiences in new ways
 - reflect the Crown's intent to recognise and respect Treaty principles
 - earn commercial revenue to support its delivery of public media outcomes.
- 14 There is work being undertaken by officials on other aspects of the new entity that are outside the scope of this bill, including work to:
- establish the detailed funding arrangements for ANZPM
 - establish a monitoring framework and accountability arrangements
 - prepare for the appointment of ANZPM's board
 - develop a proposed operating model (including how ANZPM will work collaboratively with other media organisations and a proposed organisational structure) for consideration by ANZPM's board
 - support the transition of staff and services from RNZ and TVNZ to ANZPM.

Submissions

- 15 The Select Committee received 920 written submissions on the Bill, and heard 86 oral submissions.
- 16 Submissions came from a wide range of individual and organisations, including public, community and commercial media organisations, advocacy and interest groups and media sector commentators and experts. Both Television New Zealand (TVNZ) and Radio New Zealand (RNZ) made written and oral submissions.

Section One: Key recommended changes to the bill

- 17 Manatū Taonga has carefully considered the written submissions received by the Committee, as well as the oral evidence provided by submitters, in the context of the Government's intent as outlined in paragraph 8 above.
- 18 Consequently, Manatū Taonga recommends changes to the bill in a number of key areas to respond to concerns and suggestions raised in submissions, and issues identified in the further analysis conducted by Manatū Taonga. These changes aim to:
 1. strengthen editorial independence
 2. better provide for a focus on public media outcomes
 3. clarify requirements for provision of commercial-free content
 4. ensure the charter is sufficiently clear and inclusive
 5. ensure that disabled people are specifically provided for
 6. rethink the use of the term 'broadcasting'
 7. clarify provisions relating to market impacts
 8. clarify how ANZPM should collaborate within the media ecosystem
 9. clarify what pre-existing services remain commercial free
 10. clarify and improve provision for transitional arrangements.
- 19 Minor recommended changes to the bill are set out in **Section Three** of this report.

1.1 Strengthen editorial independence

Issues

- 20 The majority of submitters were concerned about ensuring that ANZPM would have strong editorial independence – particularly that it should have editorial independence from the government of the day.
- 21 Many submitters were generally opposed to the Government having anything to do with the media, or the Crown owning public media entities (or funding public media at all).
- 22 Many submissions focused on the impact of the proposed autonomous Crown entity (ACE) form (and the ability for the responsible Minister to issue a direction to an ACE under s. 104 of the Crown Entities Act 2004) – this issue is discussed further in **Section 2.1** of this report.
- 23 Submitters also identified direct Crown funding, Ministerial appointment of board members and monitoring of the entity by departments as potentially limiting NZPM's editorial independence – these issues are all discussed further in **Sections 2.3** and **2.4** of this report.
- 24 Some submitters were concerned about the proposal in cl 15(2) of the bill, which would allow for the responsible Minister to add to the functions of ANZPM. For instance, TVNZ was concerned that this could be used to make inappropriate directions, such as directing ANZPM to focus on a particular audience segment. Koi Tū expressed similar concerns, suggesting that the consent of Parliament should be required should the Minister choose to exercise this power. RNZ recommended that this power should be further limited by explicitly requiring the Minister to consult with ANZPM before issuing such a direction and clarifying that such a direction should not relate to editorial matters.
- 25 Other submitters wanted changes to, or clarification about, the phrase *for any reason relating to broadcasting, selecting, commissioning or producing particular content* in 15(3) and 15(5). For instance, Koi Tū sought a very broad provision seeking independence “in all matters.” Better Public Media was concerned that the wording of these sub-sections had ‘loopholes’, for instance in relation to general editorial direction, scheduling decisions and promotion and prominence decisions.
- 26 Some submitters made specific proposals to strengthen or emphasise the existing provisions for editorial independence in the bill, or raised specific concerns about them, for instance:
 - TVNZ, RNZ and Koi Tū suggested new stand-alone clause(s) to emphasise the weight given to ANZPM's editorial independence or independence from ‘state influence.’ Better Public Media went further in seeking a general statement of

independence from the government similar to provisions in the Commerce Commission or Electoral Commission's establishing legislation.

- RNZ sought clarity that the requirement for the Minister to act in accordance with the charter applies to cl 11 and 12 as well as 13.
- Victoria Spackman and Robin Gunston suggested cl 15(3) should reference board members and contractors as groups that Ministers may not give a direction to in relation to editorial matters.

27 Some submitters, raised issues with ANZPM's objective in sub cl 11(k) to "counter misinformation," arguing that this could be read as stifling freedom of thought and diversity of perspective and restricting ANZPM's editorial independence:

- The Free Speech Union submitted that this objective could be used to limit the diversity of views in content and services or allow ANZPM to "hold itself as the arbiter of truth."
- Kate Fowler submitted that the reference to countering misinformation should be removed from the bill as it could limit the media's willingness to report on every side of an issue, or from all perspectives.
- Voices for Freedom submitted that it was inappropriate for a publicly owned media organisation to take an active role in countering misinformation, particularly in relation to government produced information.

28 Conversely, some submitters were supportive of this objective including Netsafe New Zealand, and some thought it should be strengthened or expanded.

29 Some submitters wanted sub cl 15(3) and 15(6) preventing directions given under the Crown Entities Act in relation to editorial matters to be broadened beyond the Responsible Minister to also cover other ministers/other people acting on behalf of the Minister.

Response

30 As noted above, issues relating to editorial independence and entity form, funding, appointment of board members and independent oversight are discussed in **Section 2** of the report.

31 The Government's intent is that ANZPM has strong protections and expectations in relation to editorial independence. That includes editorial independence from the government of the day as well as from commercial and other influences.

32 The view of Manatū Taonga is that the current provisions in the bill already give ANZPM very strong protections and expectations in relation to its editorial independence.

- 33 In addition, we note that the Crown Entities framework itself provides a longstanding, well-tested set of mechanisms to enable entities to operate at arm's length from government (while still ensuring the availability of clear, transparent levers to hold those entities accountable for delivery of their statutory objectives and other responsibilities). Many of the submissions did not reference or reflect, or misinterpreted, the protections afforded by the Crown Entities Act in relation to how it strongly regulates Ministers' and departments' interactions with Crown entities. The specific provisions associated with the ACE form, including Ministerial powers of direction, are discussed further in **Section 2.1** of this report.
- 34 We agree, however, that some clarification and further strengthening of the relevant provisions in the bill are warranted. This would ensure that ANZPM's editorial independence is as strong as possible (without removing key accountability levers) and to help reassure the many submitters who raised concerns.
- 35 In accordance with suggestions made by a number of submitters, we **recommend that the bill be amended to highlight the editorial independence of ANZPM and indicate the key clauses in the bill that protect ANZPM's editorial independence.**
- 36 We also **recommend amending sub cl 15(1) to provide that the Responsible Minister must exercise or perform their powers, duties and functions in a manner that is consistent with ANZPM's editorial independence rather than ANZPM's charter.** This will give effect to the policy intent to limit the Minister's ability to use any of their powers, duties and functions to seek to influence ANZPM.
- 37 The view of Manatū Taonga is that the submissions indicate there is some confusion about the exact meaning of the wording in sub cl 15(3) and 15(5) relating to "*broadcasting, selecting, commissioning or producing particular content*". The intent of this wording was to cover anything that could relate to editorial decision-making. However, based on submitters' feedback, we **recommend replacing this phrase with a term such as editorial matters** that is broad enough to capture any way that the editorial direction of ANZPM could be influenced. A similar approach is taken in other legislation (e.g. a number of ACEs including NZ On Air and Te Māngai Pāho have a provision in their legislation preventing their Responsible Minister directing them on 'cultural matters').
- 38 We also **recommend clarifying that no minister can direct ANZPM in relation to editorial matters.** While sub cl 15(3) and 15(6) only relate to directions given (or appointments made) by the Responsible Minister, other ministers can direct ANZPM (under powers that enable them to direct all Crown entities including ICEs and Crown entity companies). Broadening this provision to cover all ministers will help to clarify that editorial decision-making is a statutorily independent function under the Crown Entities Act and can never be directed on. However, the clause does not have to be broadened beyond this, as only ministers can direct Crown entities. No other people have the power to direct. If other people attempted to influence or direct ANZPM, ANZPM would be entitled to ignore any such attempt, and would also be

obliged to act in accordance with the principle of demonstrating editorial independence in their decision making in relation to any response.

39 We agree that clause 15(3) should make reference to contractors to ensure all individuals working for ANZPM may not be given a direction. **We recommend including reference to contractors alongside members, subsidiaries and employees as a group that the Ministers may not give a direction to in relation to editorial matters.** We do not agree that the clause does not include board members as there is an explicit reference to 'members' in the clause.

40 In addition, we have re-looked at cl 15(2) in light of submitters' concerns that its usefulness outweighs possible perceptions that it could be used to inappropriately direct ANZPM:

- Allowing the responsible Minister to add functions to a Crown entity is a relatively common provision under s.122 of the Crown Entities Act (where it is provided for in that entity's establishing legislation).
- In ANZPM's case, cl 15(2) was intended largely to enable the responsible Minister to direct ANZPM to continue to provide a Pacific service (as currently specified in s 8(l) of the Radio New Zealand Act, reflecting that ANZPM's charter would not seek to specify particular services).
- Manatū Taonga does not agree that with TVNZ's assertion that this provision could be used to add a function that would have a material effect on ANZPM's editorial independence – cl 15 prevents the Responsible Minister from issuing a direction that would impact on ANZPM's editorial independence and ANZPM would only have to *have regard to* a direction to add a function (not give effect to it). However, we agree with TVNZ's view that the provision could cause confusion, since carrying out the charter is deemed to be a statutorily independent function, and the responsible Minister cannot issue directions in relation to it. We also acknowledge that other submitters have raised concerns with how this provision could be used.
- If this power were removed, ANZPM would still have a requirement *to provide, or support the provision of, content and services that recognise New Zealand's strong and enduring relationships with Pacific Islands countries and New Zealand's interest in promoting and protecting Pacific languages.*
- In addition, there is specific funding allocated to the RNZ Pacific service within Vote Arts, Culture and Heritage and an existing agreement between Manatū Taonga and RNZ for delivery of the service (which is to be read as an agreement with ANZPM should the bill pass). The intent is for this funding to remain separate, rather than being included in ANZPM's core funding – which, along with the agreement with Manatū Taonga, will mean ANZPM will not be able to simply decide not to continue to provide the service. There has also

been recent investment of \$4.4 million dollars in a new transmitter for RNZ Pacific, which demonstrates an ongoing commitment to providing the service.

- On balance, Manatū Taonga therefore **recommends removing cl 15(2)** to help address concerns about its use and to remove any lack of clarity relating to the charter's status as a statutorily independent function – noting that this would be very unlikely to affect ANZPM's continued provision of the RNZ Pacific service.

41 Manatū Taonga also acknowledges some submitters' concerns about how ANZPM's objective to 'counter misinformation' could be seen as acting to stifle diversity of thought or opinion. This is not the intent of this provision – which was intended to help ensure that the information ANZPM provides is high-quality and accurate, and can be relied upon by New Zealanders. Given these concerns, and reflecting a proposed amendment from RNZ, Manatū Taonga **recommends that this phrase be removed from cl 11(2)(k) and the relevant operating principle at cl 13(1)(a) is amended** to demonstrating editorial independence, impartiality, *accuracy* and balance.'

42 In relation to other proposed changes:

- Some of the submissions did not appear to recognise that the Crown already owns RNZ and TVNZ along with other media entities, and there is no intent for the Crown to divest itself of these.
- We do not recommend any changes that would confer very broad independence on ANZPM beyond editorial independence – for instance, a broad statement of ANZPM's independence from government, or a commitment to provide ANZPM independence 'in all matters.' It is essential that there are clear and transparent mechanisms available that would enable ANZPM and its board to be held to account in relation to its statutory mandate, without compromising its editorial independence – the Crown Entities framework provides such mechanisms.

1. Manatū Taonga recommends:

- a. amending the bill to highlight the editorial independence of ANZPM, and indicating the key clauses in the bill that protect ANZPM's editorial independence
- b. amending sub cl 15(1) to provide that the responsible Minister must exercise or perform their powers, duties and functions in a manner that is consistent with ANZPM's editorial independence

- c. replacing the phrase *broadcasting, selecting, commissioning or producing particular content* in sub cl 15(3) and 15(5) with a general term such as “editorial matters”
- d. clarifying that no Minister can direct ANZPM in relation to editorial matters
- e. including reference to contractors in subclause 15(3) alongside members, subsidiaries and employees as a group that the Ministers may not give a direction to in relation to editorial matters
- f. removing cl 15(2) allowing the responsible Minister to add functions to a Crown entity, to help address concerns about its use and to remove any lack of clarity relating to the charter’s status as a statutorily independent function
- g. removing the phrase *counter misinformation* from cl 11(2)(k) and amending the relevant operating principle at 13(1)(a) to *demonstrating editorial independence, impartiality, accuracy and balance*.

PROACTIVELY RELEASED

1.2 Better provide for a focus on public media outcomes

Issues

- 43 Many submitters were concerned that the bill does not put sufficient emphasis on the public media focus of ANZPM and wanted changes to strengthen this. For instance:
- RNZ and other submitters expressed concern that lack of explicit provision for ANZPM's public media mandate could lead to it coming under pressure to earn more commercial revenue at the expense of delivery of public media outcomes, contrary to the Government's intent. RNZ recommended that the new entity's public media focus be made more explicit in the bill to ensure it is clear the entity is a public media entity supported by commercial revenue, and not the other way round
 - the Public Media Alliance and some submitters also wanted to see explicit reference to the primacy of the public interest, and a focus on non-commercial elements of ANZPM's operations, as well as its ultimate accountability to the public not commercial partners
 - several submitters including Better Public Media and its supporters, E Tū and others suggested that cl 1 of the purpose section in RNZ's current charter (*As an independent public service broadcaster, the public radio company's purpose is to serve the public interest*) should be placed upfront in this bill, to highlight the primary purpose of ANZPM as a public media broadcast
- 44 Some submitters wanted to see the bill explicitly state the entity's "not-for-profit" status. For instance, Peter Thompson wanted the bill to make ANZPM's not-for-profit status explicit, while also specifying that commercial revenue needs to be designated as a means for delivering the charter outcomes, and not an end in its own right.
- 45 Other submitters, including Allied Press and the RBA thought the sole focus of ANZPM should be to provide content for under-served and under-represented audiences – i.e. those not already served by commercial media.
- 46 Conversely, some submitters wanted a greater emphasis on the commercial performance of the entity. For instance, TVNZ recommended that a clearer statement be inserted in the bill that ANZPM would optimise commercial performance to supplement Crown funding and to maximise delivery of public media outcomes (along with explicit provision for monitoring ANZPM's commercial performance) on the basis that this would help maintain commercial discipline and manage fiscal risk.

- 47 The Commercial Communications Council wanted to see greater recognition of a clear commercial imperative for ANZPM to ensure the advertising sector is not destabilised. The Council's view is that, without a clear commercial mandate, the bill does not adequately recognise the role TVNZ currently plays in supporting jobs, businesses and revenue that can be generated through advertising. They also see a risk that audiences will not be retained if the focus of ANZPM focuses too much on content that informs and enlightens rather than entertains.

Response

- 48 The Government's intent is for ANZPM's primary focus to be delivering public media outcomes, not generating commercial revenue. While ANZPM is expected to earn commercial revenue, this is to support the entity's ability to provide public media content in fulfilment of its charter obligations, and support its financial sustainability.
- 49 In this context, Manatū Taonga agrees the legislation could usefully clarify ANZPM's public media mandate as its primary purpose, consistent with the policy intent. We therefore recommend that the bill is amended to add this primary purpose.
- 50 Such an approach would help to reduce any ambiguity as to the relative priority of meeting its charter obligations and earning revenue. It may also address concerns that the bill does not refer to public interest or the public good, along with helping address the concerns some submitters have expressed about the potential competition and market impacts ANZPM's ongoing activities could have on the broader media ecosystem.
- 51 We agree that RNZ's current purpose statement is a good starting point for such a statement - however, it would need to be updated to be platform neutral.
- 52 We do not agree, however, that the purpose of ANZPM should be focused solely on those under-served by commercial media. Public media should be available to all New Zealanders. However, we note the recommendation set out in **Section 1.7** of this report that ANZPM be required to consider the services of other media entities, as well as the expectation that ANZPM will collaborate to support a diverse, capable, and resilient media ecosystem (see **Section 1.8** of this report).
- 53 Manatū Taonga also does not propose including reference to ANZPM being a *not-for-profit* entity in the legislation. While ANZPM will not be focused on generating a profit, it may do so, particularly in its first years of operation. We think that explicitly stating the primarily public media focus of ANZPM will provide sufficient clarity.
- 54 Alternatively, we do not agree with suggestions that ANZPM's commercial imperative should be more explicitly outlined in the legislation, or that ANZPM should optimise its commercial revenue, as this does not align with the policy intent of the bill.

- 55 For the same reason, we do not propose to include any provision that requires ANZPM to optimise or maximise commercial revenue - as this could shift ANZPM's focus away from its charter obligations to the earning of commercial revenue. We also note that ANZPM is being established on the basis that commercial revenues are likely to continue to decline over time, which is why it will be partly funded by the Crown.
- 56 Our view is that s 51 of the Crown Entities Act 2004, requiring the board of a statutory entity to be financially responsible, manage its assets and liabilities prudently and endeavour to ensure its long-term financial viability, provides sufficient guidance for how ANZPM should maintain commercial discipline and manage fiscal risk.

2. Manatū Taonga recommends:

- a. amending the bill to clarify that ANZPM's public media mandate is its primary purpose.

1.3 Clarify requirements for provision of content commercial-free

Issues

- 57 Many submitters raised issues relating to ANZPM's provision of content on a commercial versus a non-commercial basis. 'Commercial' in this context relates both to content containing advertising (or being subject to other commercial arrangements such as sponsorship), and to content being charged for.
- 58 Submitters' views on the provision in sch 1, cl 8 (requiring ANZPM to provide services commercial-free if they are the same as those provided by RNZ before the commencement date) are discussed later in **Section 1.9** of this report. Submitters' concerns about the market impacts of ANZPM are covered in **Section 1.7** below.

Content containing advertising or attracting sponsorship

- 59 Many submitters wanted the bill to provide more detail about what or how much content ANZPM should provide advertising-free.
- 60 Some submitters thought that the bill should require ANZPM to provide specific services or content free of advertising and sponsorship, or wanted greater detail about the relative weighting that should be given to commercial or non-commercial content. There was a range of views on what that might look like, for instance:
- all content provided should be advertising free
 - an advertising-free television channel should be provided in addition to advertising-free radio
 - all future radio services should be provided advertising-free
 - current TVNZ1 services should be made advertising free
 - core services such as current affairs and news, arts and culture, educational and Māori language content should be advertising-free across all platforms
 - advertising should only be allowed on webpage content, or only on platforms and content aimed at entertainment.
- 61 Koi Tū submitted that the bill should contain explicit provisions setting out the relationship between commercial and non-commercial elements. The changes proposed by Koi Tū included specifying that some content (e.g. news and current affairs functions and children's programming) should be provided on a non-commercial basis; prohibiting promotion of ANZPM's own services on otherwise commercial-free programmes and platforms; and including clear criteria to be

applied to determine if a programme, content or service should be commercial-free or revenue-earning.

- 62 Better Public Media submitted that the bill should explicitly identify what functions could be provided on a commercial basis (e.g. all TV broadcasts and non-factual video), with all other content being provided on a non-commercial basis – their view was that this approach would prevent commercial services replacing legacy non-commercial services over time when compared to the current provision preserving some existing (RNZ) services as non-commercial.
- 63 The PSA indicated its members were concerned that all services - other than those that are the same or substantially the same as RNZ's existing commercial free services - could include advertising or sponsorship, and recommended that ANZPM have a duty to broadcast commercial free by default.
- 64 Some submitters including the Spinoff and Victoria Spackman were concerned that commercial-free services should be provided for a range of audiences, not just the predominately older audience that accesses current commercial-free services. As the Spinoff put it, 'it would be cool if it was not just a continuation of ad-free products for older New Zealanders, ad-funded products for everyone else.'
- 65 NZME wanted the bill to clarify that ANZPM's online platforms would be advertising-free, in line with RNZ's current online platform.
- 66 Conversely, the Commercial Communications Council (CCC) and the Association of New Zealand Advertisers (ANZA) submitted that the bill did not sufficiently acknowledge the important role advertising will play in the ongoing revenue of ANZPM. TVNZ also submitted that the bill should provide further clarification as to the important role ANZPM will have in generating commercial revenue to support its public media outcomes. More specifically:
 - the CCC submitted that the bill fails to recognise the importance of TVNZ's current role in supporting the New Zealand economy, local business, jobs and revenue generation through the enablement of advertising, or how advertising benefits consumers by supporting competition and lowering prices. It submitted that the bill should acknowledge the need for the entity to deliver commercial outcomes at a level on par or exceeding existing levels of TVNZ.
 - ANZA was concerned about a lack of clarity in the bill about how the mixed public/advertiser funding model will be managed across Government, the legitimate interests of commercial media players, ANZPM itself, and the advertising sector that funds half of it.
 - TVNZ asked for the bill to include a clear statement that ANZPM will optimise commercial performance as discussed in **Section 1.2** of this report. In addition, in its oral submission, TVNZ indicated that it saw any services that are not specified as commercial-free as being able to carry advertising in the future. This

approach would, in their view, continue the important contribution to the economy that TVNZ's current commercial partnerships make.

Charging for content

- 67 A number of submitters focused on when and whether ANZPM should be able to charge for content.
- 68 Many submitters were opposed to ANZPM being able to charge for content at all for a range of reasons, for instance:
- the Public Media Alliance and Wellington Community Justice Project submitted that such an arrangement could infringe on the equitability of public media and the principle of universal access
 - Better Public Media, Trisha Dunleavy, Sky and a number of other submitters expressed a view that no content should be charged for (at least for New Zealanders) as this is inconsistent with a public media mandated organisation already funded by taxpayers
 - Bryan Bruce and others submitted that the ability to charge for content could act as a disincentive for ANZPM to produce non-commercial content
 - the RBA and others were concerned that this would result in increased competition with commercial media for content such as sport.
- 69 Other submitters wanted further restrictions or clarifications on what could be charged for and when, for instance:
- Peter Thompson suggested that content could be paywalled or licensed to subscription providers overseas, while being made freely available in New Zealand
 - the Directors and Editors Guild of New Zealand submitted that revenues could be earned from charging for content in a way that didn't delay New Zealanders' access to free content – for example by providing the first episode of a series simultaneously on a free to air channel, an advertising - based video on demand service (e.g. TVNZ+) and a subscription video on demand platform, and then letting viewers decide how to watch the rest of the series
 - Ngā Taonga Sound and Vision noted the importance of free access to archive material to align with the Public Records Act principles of open access and obligation to make content readily available to people, free of charge

- Ngā Aho Whakaari submitted that broad and sweeping access to taonga Māori is in breach of WAI262 and contradicts the Māori data sovereignty mahi currently underway
 - NZME wanted the bill to clarify that ANZPM's online news platform will be advertising and subscription-free, in line with RNZ's current online news platform
 - Asia Pacific Media Network submitted that subscriptions could be one option, if a mixture of funding methods could be introduced, including sponsorship, and special taxes, to move beyond advertising revenue.
- 70 A number of submitters asked for clarity as to the definition of “predominantly” free of charge and what would be considered a “reasonable” timeframe for making the content available.
- 71 Fund RNZ believed a paywall model could be a good compromise to balance the need to provide freely available information while generating commercial revenue. However, they noted that the approach would need to be carefully balanced to ensure time-sensitive and important public information is not paywalled.

Response

- 72 The intent of the bill is that all New Zealanders can easily access public media content across the genres and platforms of their choice. New Zealanders should not be prevented from accessing ANZPM content that they want to see, hear or read because they do not have the ability to pay for it.
- 73 More specifically, the intent is that:
- there will be no charge to access the majority of content that ANZPM provides at any time, including new content
 - all content that ANZPM produces will be able to be accessed free of charge – either when it is first provided, or subsequently.
- 74 However, it is also important that ANZPM is not unduly limited in terms of the commercial opportunities available to it, or what platforms it can put its public media content on. That is important because:
- ANZPM's funding model will rely on it continuing to generate revenue from linear and other advertising to ensure New Zealanders can access public media content
 - advertising revenues from linear TV are dropping and ANZPM will need to have the flexibility to find new funding arrangements and revenue sources

- ANZPM will need significant flexibility to ensure it can deliver to all its audiences over time, without being limited, for instance, by a requirement to only put content on non-commercial platforms – audience behaviours are changing rapidly and ANZPM should not be restricted from accessing under-served audiences if they choose only to use commercial platforms.

75 It is therefore important that ANZPM has the flexibility to generate sufficient commercial revenue to support its delivery of the charter and reach the audiences it needs to. While we acknowledge that the preference of many submitters was for more content to be provided advertising-free compared to what TVNZ currently provides, this also has to be balanced against ANZPM's ability to be able to fund the provision of this content in the first place (note that the requirement to ensure existing RNZ services are provided free of charge for as long as they continue is discussed further in **Section 1.9**).

Content containing advertising or attracting sponsorship

76 The view of Manatū Taonga is that placing specific restrictions in the bill in relation to what content should be delivered free of advertising or sponsorship (or what content should be allowed to carry advertising or sponsorship) would unduly limit ANZPM's ability to identify and take advantage of current and future commercial opportunities, make the legislation less flexible and enduring, and potentially create unintentional consequences over time.

77 We note the point made by the CCC that a shortfall in advertising revenue could result in weaker content and audiences simply migrating to other providers. It is also important not to simply characterise advertising as negative, given its economic and other benefits.

78 However, we do agree that it would be helpful to ensure there is an explicit but broad expectation that ANZPM will provide some of its content advertising and sponsorship-free – including current RNZ services, but also on an ongoing basis (reflecting the point made by submitters that, without such an expectation, any shift away from RNZ's legacy services could mean a much higher proportion of ANZPM's services carry advertising over time).

79 This obligation could be met by, for instance, ANZPM providing some specific new services commercial-free as was envisaged in the Cabinet paper. Such a provision in our view would help address some of the concerns of submitters, while not locking ANZPM into providing specific services or content advertising-free.

80 We therefore **recommend adding an operating principle to the charter that ANZPM will provide some of its content advertising and sponsorship-free.**

81 We also think that the proposal to provide a clearer statement of ANZPM's public media focus (see **Section 1.2**) will help reassure those submitters concerned about ANZPM taking an overly commercial approach.

82 In relation to concerns about the impact of advertising and sponsorship on editorial independence, our view is that the bill provides sufficiently for this through the requirement in ANZPM's charter regarding editorial independence and balance. In addition, ANZPM will have to ensure all advertising and sponsorship meet Advertising Standards Authority standards. Any further thinking on the use of advertising within the media sector should be considered on a sector-wide basis to ensure a cohesive system is maintained, rather than considering bespoke arrangements for individual entities.

Charging for content

83 Given the overall intent, the bill needs to provide sufficient direction to ANZPM to ensure that *all* content it provides is *ultimately* provided free of charge and *the majority of* content is *always* provided free of charge – while not overly restricting its ability to charge for some content.

84 The key provisions in the bill are to:

- provide freely-available content across all genres in cl 12(1)
- ensure content is broadcast predominantly free of charge in cl 13(1)(e)
- subsequently broadcast free of charge any content for which there is a charge on first broadcast in cl 16.

85 Our view is that these provisions – taken together with the addition of the recommended clarification that ANZPM should focus primarily on public media outcomes discussed in **Section 1.2** above – place a clear expectation on ANZPM in line with the intent.

86 In our view, trying to limit what ANZPM can charge for would make the legislation less flexible and enduring, and potentially create unforeseen and unintentional consequences over time. We also note that all of TVNZ's content is currently provided free of charge, even though its legislation currently only requires it to provide two free-to-air channels rather than preventing it from charging for content.

87 However, we think that a further clarification would be helpful in relation to clauses 13(1)(e) and 16 to avoid an (unlikely but possible) interpretation that the requirement to make content predominantly free of charge could be fulfilled by charging for all content initially and subsequently making it free of charge. We therefore **recommend clarifying that the intent of cl 13(1)(e) is that content will be provided predominantly free of charge, including when it is first provided.** This would not prevent ANZPM from charging for some content when it is first provided.

3. Manatū Taonga recommends:

- a. adding an operating principle to the charter that ANZPM will provide some of its content advertising and sponsorship-free on an ongoing basis
- b. amending cl. 13(1)(e) to clarify the intent that content will be provided predominantly free of charge, *including when it is first provided*

PROACTIVELY RELEASED

1.4 Ensure the charter is sufficiently clear and inclusive

Issues

88 Many submitters sought changes or additions to the charter to strengthen provision for particular groups or interests, to ensure it is sufficiently ambitious, or to make it more prescriptive.

Charter structure

89 A number of submitters found the structure of the charter provisions confusing, and were unclear as to which sections of the bill comprised ANZPM's charter. For instance:

- TVNZ and Save RNZ Concert submitted that it should be made clear in the bill that the charter comprises sections 11, 12 and 13. Save RNZ Concert submitted that the definition of charter contained in cl 4 of the bill should be amended to state this explicitly.
- TVNZ and Save RNZ Concert also submitted that the lack of clarity as to which sections made up the charter meant it was also unclear what sections were part of ANZPM's statutorily independent functions as provided for in s 13(2) of the bill.

90 Other submitters thought there was repetition between the sections. For instance, Better Public Media thought that much of s 12(1) was a repeat of the objectives.

Provision for New Zealanders living overseas

91 Some submitters suggested that the charter be strengthened to provide content and services for, and consider the needs of, New Zealanders living overseas. For instance:

- Peter Thompson submitted that the charter should provide some level of consideration for New Zealanders living overseas, particularly in the Pacific region.
- Robin Gunston submitted that the bill should consider the needs of audiences consuming New Zealand media content and services from outside of New Zealand.
- Better Public Media was concerned that the current definition of broadcasting used in the bill specifically excludes New Zealanders living overseas.

- Susanne Vincent submitted that specifying reception by “the New Zealand public” in the definition of broadcasting, limits ANZPM’s ability to provide content and services for New Zealanders living overseas and audiences in the Pacific Islands.

Provision for New Zealanders living outside of main centres

92 Some submitters wanted ANZPM to be required to be more regional in its focus, and were concerned that the content and services provided by ANZPM would not adequately consider the needs of New Zealanders living outside of main centres. For instance:

- Crux Publishing Ltd submitted that a network of hyperlocal digital platforms should be established that would play a role in providing local content both to regional and national audiences through a new national streaming platform that ANZPM could also use content from.
- Michael Smith submitted that ANZPM should not be solely based in the major centres of New Zealand.
- Dell Hood submitted that current public media content and services are currently not available to all regions and communities of New Zealand, and a required timeframe to achieve this should be included in the charter.
- Gerard Smyth submitted that current public media content and services prioritise North Island, and particularly Auckland, audiences. He also submitted that ANZPM should have a responsibility to ensure that public media content and services are as readily available and accessible to South Island audiences as North Island audiences – and to enable people living in the South Island to tell their stories on a national scale.

Provision for arts, music and culture

93 Many submitters highlighted the role that public media has in supporting New Zealand’s arts, culture and music sector, and were concerned that the current charter does not contain a provision related to arts, music and culture. The majority of these submissions related to arts, music and culture broadly, but many had a particular focus on classical, European or ‘fine’ music, or saw such a provision as a way to ensure the RNZ Concert service is continued.

94 Many submitters noted that the current RNZ charter includes a provision relating to arts, music and culture and were concerned that its exclusion from the current ANZPM charter would weaken the delivery of content and services relating to arts, music and culture.

95 RNZ suggested that a provision from the current RNZ charter could be included in ANZPM’s charter, requiring ANZPM to *foster a sense of national identity by*

contributing to tolerance and understanding, reflecting and supporting ethnic, cultural, and artistic diversity and expression.

- 96 Save RNZ Concert, and its supporters recommended that an additional function under cl 12 be added requiring ANZPM to *provide content that relates to music, including New Zealand composition and performance, other arts including performing arts, or New Zealand literature*. Save RNZ Concert saw this additional charter provision, along with other suggested changes, as important to recognise the importance of services delivered by RNZ Concert and ensure that these services continue to be delivered.
- 97 In addition, a number of submitters indicated strong support for the retention of the current RNZ Concert service, and asked for continued provision of it to be guaranteed in the charter.

Provision for children and young people

- 98 A number of submitters wanted children and young people to be more prominent throughout the charter.
- 99 The New Zealand Children's Screen Trust, its supporters, and local producers wanted to ensure that ANZPM's charter placed a significant focus on meeting the public media content and service needs of children and young people, a key underserved audience. The New Zealand Children's Screen Trust, and its supporters, also wanted the United Nations Convention on the Rights of the Child (UNCROC) to be explicitly recognised in the bill.
- 100 The New Zealand Children's Screen Trust, and its supporters suggested that an "outcomes for children" section be added to the charter which provided for specific outcomes for children relating to:
- access to age-appropriate content and services
 - rights under UNCROC
 - ensuring that content and services are available to children of diverse genders, religions and cultures.
- 101 The New Zealand Children's Screen Trust also suggested a number of specific changes to the charter to strengthen ANZPM's responsibility in relation to children.
- 102 The Child Poverty Action Group asked for the bill to be strengthened to meet the specific needs of children in poverty.

Provision for local content and production

103 Many submitters, particularly independent content producers and representatives from the local production sector, wanted the charter to place a greater obligation on ANZPM to support the local production sector and deliver local content to audiences.

104 For instance:

- The Directors and Editors Guild of Aotearoa wanted ANZPM to be required to contribute to the development and growth of the independent New Zealand production sector.
- New Zealand Writers Guild Puni Taatuhi o Aotearoa suggested that provisions be added to the charter requiring ANZPM to contribute to a sustainable and resilient local production sector and to support the production of scripted drama.
- SPADA submitted that a new objective be included in the charter requiring ANZPM to contribute to a sustainable and resilient independent production sector.
- Aotearoa New Zealand Book Sector Organisations sought explicit recognition of the role public media has in supporting the local production sector and local creative industries and wanted the phrase *predominantly and distinctively of New Zealand* to be strengthened to ensure that content made by New Zealanders is prioritised.
- WeCreate similarly thought *predominantly and distinctively of New Zealand* did not provide the necessary clarity and certainty to ensure that content made by New Zealanders is prioritised within the boundaries of the law and international agreements to which New Zealand is a signatory.
- Brian Mathewson wanted a requirement for ANZPM to increase the amount and quality of New Zealand-made content.
- Koi Tu wanted ANZPM to have a specific obligation to support the private creative sector and suggested that ANZPM be required to support independent local production.

105 Other submitters wanted more specific requirements in relation to commissioning and funding. For instance:

- Greenstone TV suggested that ANZPM be required to commission local scripted drama and comedy, including ringfenced funding for a range of budget levels.

- The Independent Drama Producers' Collective wanted funding for commissioning local scripted content across all tiers to be mandated and ringfenced in the charter.
- Richard Harman submitted that the bill should require ANZPM to source a percentage of its news and current affairs programming from the local production sector.
- Whitebait Media submitted that the ANZPM charter must enshrine guaranteed hours of local content for children across the genres, ages and stages best suited to serve them.

106 Some submitters supported the use of quotas in the legislation, for instance:

- Kiwi Kids Music Trust submitted that a quota is included in the bill to support local content production
- Richard Harman suggested that the legislation include a quota for independent production
- Aotearoa New Zealand Book Sector Organisations recommended a local content quota, citing the New Zealand Voluntary Music Code and Australia's ABC as examples of when quotas have been used to support and champion the creative sectors
- Kura Productions and Eva and Sam Tamura suggested a quota to ensure equal representation for Māori and te reo Māori programmes. Kura Productions recommended 50 percent of content should be Māori, with all content having an element of te reo Māori in it
- Warner Bros. Discovery submitted that clarity should be provided on how local production efforts will be measured or achieved
- Rex Simpson submitted that total hours of expected programming for children's programming should be specified
- NZME and Mediaworks suggested there should be mechanisms to ensure a substantial proportion of programming and content is provided in te reo Māori and the languages of Pacific Islands, including language quotas.

Provision for Pacific peoples

107 Some submitters wanted the charter to be strengthened to further provide for Pacific peoples, or to clarify the role of ANZPM in providing Pacific media content and services. For instance:

- Tara Ross submitted that ANZPM should have an obligation to support Pacific media entities and Pacific audiences, and notes that Pacific media entities in

New Zealand may come worse off in competition with ANZPM if they are providing similar content and services.

- SunPix submitted that a charter provision be added requiring ANZPM to consider Moana perspectives and deliver content and services for Pacific peoples. It also submitted that the bill should recognise New Zealand as a Pacific/Moana nation, with corresponding responsibilities.
- National Pacific Radio Trust (NPRT) submitted that ANZPM's charter creates an overlap in objectives between NPRT and ANZPM.

108 A number of submitters wanted a stronger expectation in relation to the provision of media content and services to Pacific Island countries:

- Susanne Vincent noted that the charter does not carry through the provision contained in the RNZ charter requiring it to provide an international service to the South Pacific in English and a range of Pacific languages. Richard Harman also wanted to see the provision retained.
- Koi Tū similarly submitted that the charter should include an obligation to provide, and develop, services to Pacific Island nations in English and a range of Pacific languages, noting that this is currently provided for in the RNZ charter.
- Wellington Community Justice Project submitted that provision of content to Pacific Island nations be prioritised, in acknowledgement of the role New Zealand has in providing media content and services to Pacific Island nations.

Provision for archiving

109 A number of submitters were concerned that the charter did not include an explicit reference to archiving:

- The Association of Professional Orchestras Aotearoa, SOUNZ Centre for New Zealand Music, Dunedin Symphony Orchestra, the New Zealand Symphony Orchestra, and other musical organisations, submitted that a provision should be included in the charter requiring ANZPM to archive broadcasting material of cultural and historic interest (the archiving provision currently included in the RNZ charter).
- Save RNZ Concert, and its supporters, submitted that the charter should include a provision requiring ANZPM to preserve, archive and enable access to New Zealand musical and other cultural performance, and programmes about New Zealand arts.

110 Some submitters were focused on ensuring that access to archive material was increased or otherwise strengthened, for instance:

- Ngā Taonga submitted that future content created by ANZPM, and legacy content created by RNZ and TVNZ should be made publicly available by default
- Te Whakaruruhau o Ngā Reo Māori suggested a range of amendments to the legislation to strengthen the archiving provision in relation to Māori. It also suggested amendments to clarify how the archiving provision would be operationalised, including proposing that the provision specify who will be making the decisions determining the significance of content to New Zealand's history, ensure that Māori representatives are part of the decision-making process relating to archiving, and include Māori data sovereignty principles.

111 The Digital Media Trust submitted that the charter should retain a function that enables content held in the TVNZ Archive to be made available for re-screening - along the lines of the current Archived Works Scheme in the TVNZ Act which sets out how pre-1989 works held in the TVNZ Archive can be re-screened and how rights holders can be compensated.

Provision of news services

112 A number of submitters suggested that the charter be strengthened in relation to the provision of news services:

- Brian Mathewson submitted that ANZPM should be required to provide accurate information on subjects that are relevant to New Zealanders.
- Luke B submitted that the charter should include a provision that ANZPM must maintain the highest journalistic standards particularly with regard to news and current affairs.
- Ernest Munro submitted that ANZPM should ensure good coverage, presentation and comment on local, national and international news.
- Aine Kelly-Costello submitted that ANZPM should place more emphasis on putting international news in a New Zealand context.
- The Asia Pacific Media Network submitted that ANZPM should be required to strengthen and broaden news and information services about the Asia-Pacific region and for Pacific peoples.
- Gary Wills submitted that ANZPM should provide more regional and community news.
- TVNZ submitted cl 13(1)(a) should be amended to include factual programming as an area where ANZPM should demonstrate editorial independence, impartiality and balance, alongside news and current affairs.

Provision for New Zealand Sign Language

113 A number of submitters were concerned that the bill did not recognise New Zealand Sign Language (NZSL) as an official language of New Zealand. They also submitted that ANZPM should have an obligation to improve access to content and services for deaf and hard of hearing New Zealanders.

114 Deaf Aotearoa submitted that:

- a purpose of ANZPM should be to contribute to a valued, visible and flourishing NZSL (sitting alongside ANZPM's purpose to contribute to a valued, visible and flourishing te reo Māori)
- the bill currently ignores the status of NZSL as an official language as set out in the New Zealand Sign Language Act 2006, and is inconsistent with the United Nations Convention on the Rights of Persons with Disabilities
- the bill should mandate accessibility services for deaf and hard of hearing New Zealanders, particularly captioning.

115 Aine Kelly-Costello submitted that the charter could be strengthened by amending cl 11(2)(f) to include an obligation to reflect, include and serve New Zealand's diverse languages, particularly its official languages te reo Māori and NZSL.

116 Fund RNZ submitted that given NZSL's status as an official language, ANZPM should be obligated to increase the provision of accessibility services for deaf and hard of hearing New Zealanders.

Provision for diversity

117 A number of submitters wanted to ensure that the bill required ANZPM to be more inclusive of the diversity of New Zealand:

- Eva and Sam Tamura submitted that representation of New Zealand citizens from diverse cultural backgrounds is important.
- Jack Tankersley submitted that ANZPM should have integrity and respect in all cultures.
- Konrad Hickson submitted that ANZPM needs to be more inclusive of the diverse communities of New Zealand, including immigrant populations.
- Lesley King submitted that ANZPM needs to be fully representative of all cultures, genders and tastes.
- The New Zealand Chinese Association submitted that ANZPM should play a special role in ensuring that news content is available in a variety of ethnic

languages, ensuring the accessibility of news content to ethnic communities – including the Chinese community.

- The New Zealand Writer’s Guild submitted that the charter could be strengthened by ensuring that ANZPM represents and reflects the diversity of New Zealand’s communities.
- The Public Media Alliance was supportive of the current focus on diversity in the charter, however wanted more specificity about how these charter objectives, functions and principles would be operationalised.
- Conversely, TVNZ submitted that the charter should adopt more agnostic or inclusive terminology, for example amending the requirement for ANZPM to reflect the needs, interests and experiences of “New Zealanders of all ages, genders, identities, abilities, ethnicities and from all regions and communities” to “all New Zealanders” to mitigate the risk that people are excluded.

Response

- 118 The charter sets out ANZPM’s objectives, functions and operating principles in relation to the public media outcomes that ANZPM is expected to contribute to. The intent is to provide sufficient specificity in the charter to ensure ANZPM can be held to account for achieving its objectives and delivering its functions consistent with its operating principles, while still allowing a high degree of flexibility in how ANZPM provides content and services in the context of ongoing technological and demographic change. It is therefore important that the charter is not overly detailed or prescriptive.
- 119 In addition, the intent is for the charter to be broad and inclusive, ensuring that all New Zealanders can see themselves in it, and providing for all interests and types of content. This approach means the charter does not aim to provide a comprehensive list of groups of people, interests or particular genres that will be provided for – both in terms of practicality, but also because of the risk of missing out some groups or interests.
- 120 However, the charter currently does reference specific groups where provision of public media is particularly important – namely Māori as Treaty partner; children and young people in reflection of their particular needs and vulnerabilities; and Pacific people in reflection of the important role New Zealand plays in the Pacific.

Charter structure

- 121 Our view is that the bill provides that cl 11 (objectives), 12 (functions) and 13 (operating principles) should be collectively considered to be ANZPM’s charter, and carrying out all three sections to be deemed as a statutorily independent function. This is provided for in cl 13(1).

122 However, we **recommend some reworking to make it clearer that cl 11, 12 and 13 are intended to be read together as the charter**, particularly in relation to the subheadings in subpart 2.

123 The charter structure aligns with the Crown Entities Act framework, which sets out that an entity in performing its functions, must act consistently with its objectives (cl 14 of the Crown Entities Act). This means that for most provisions in the charter there is a relevant objective, function, and operating principle. We therefore disagree that this approach means there is repetition within the charter. Rather, corresponding provisions within each section should be read in conjunction with each other.

Provision for New Zealanders living overseas

124 The charter does not specifically provide for or consider the needs of New Zealanders living overseas. However, the bill is not intended to prevent ANZPM from providing content for overseas audiences, as long as doing so is consistent with the delivery of its charter. This is to avoid placing a particularly onerous obligation on ANZPM to deliver content to all New Zealanders overseas.

125 We do not agree that the definition of broadcasting would prevent ANZPM from providing content to its Pacific audience, as sub cl 12(2)(b) gives ANZPM a specific function to *provide or support the provision of content and services that recognise New Zealand's strong and enduring relationships with Pacific Island countries (and New Zealand's interest in promoting and protecting Pacific languages)* separate to broadcasting the content listed in s 12(1).

126 Manatū Taonga therefore recommends no changes to the charter in relation to provision for New Zealanders living overseas. However, further consideration of the broadcasting definition is set out in **Section 1.6**.

Provision for New Zealanders living outside of main centres

127 The intent is for ANZPM to provide media content and services to all New Zealanders, including those living outside of the main centres.

128 The charter provides for New Zealanders from all regions and communities by including:

- an objective to ensure that content and services are available and accessible to all regions and communities
- a function to provide content and services that reflect the needs and experiences of New Zealanders from all regions and communities
- a principle to strive to understand, engage and serve New Zealanders of all regions and communities.

- 129 In our view, these provisions place a sufficient obligation on ANZPM to provide for audiences across New Zealand. Making the current provisions more prescriptive would reduce ANZPM's flexibility to decide on the best way to deliver on these obligations.
- 130 In terms of issues with the availability of services across regions, this is likely to rely on a range of factors that may be outside the control of ANZPM, such as broadband availability. The charter will require ANZPM to deliver across regions to the best of its ability, given any technological or other constraints.
- 131 ANZPM will be monitored on how it provides for New Zealanders from all regions and communities as part of its regular reporting on its charter.
- 132 Manatū Taonga therefore recommends no changes to the charter regarding provision of content and services for New Zealanders living outside of the main centres. However, we agree with TVNZ's submission that factual programming should be included within cl 13(1)(a) as an area where editorial independence, balance and impartiality should be demonstrated. We therefore **recommend factual programming is reflected in this provision.**

Provision for arts, music and culture

- 133 Our view is the charter should not over-specify particular genres or types of content the entity is expected to deliver. This approach helps to ensure particular genres or interests are not excluded or prioritised over others. We therefore do not support a specific provision relating to classical or 'fine' music.
- 134 However, we agree the charter should include provision for arts, music and culture more generally. This would more explicitly recognise the important role a range of artistic and cultural (including music) content can have in creating an inclusive, enriched and connected society - and so contributing to ANZPM's objectives. Manatū Taonga therefore **recommends that an additional function for ANZPM is drafted based on the current RNZ charter provision to provide content that stimulates, supports, and reflects the diversity of artistic and cultural expression in New Zealand.**
- 135 We do not recommend that RNZ Concert is provided 'protected' status in the charter. In our view, this would unnecessarily restrict ANZPM's editorial independence and its ability to make operational decisions relating to the types of services ANZPM provides to ensure it meets its charter obligations.

Provision for children and young people

- 136 The charter makes specific provision for children and young people, who were identified as a key underserved audience, and to reflect the important role public media can play in the lives of children and young people in New Zealand. It does this through an objective in cl 11(2)(g) to *support children and young people's*

emotional, physical, and mental wellbeing; creativity, learning and development; and social participation and sense of belonging.

- 137 However, cl 12 and 13 of the charter (the corresponding functions and operating principles) do not currently make a specific reference to children and young people, instead using the phrasing “New Zealanders of all ages”. While this is intended to include children and young people, Manatū Taonga considers that there is merit in referencing children and young people specifically, as suggested by submitters. Manatū Taonga therefore **recommends the charter is amended to incorporate specific reference to children and young people within the functions and operating principles**, to ensure alignment with the objective set out in cl 11(2)(g).
- 138 Manatū Taonga does not recommend any changes relating to UNCROC. While UNCROC is a legally binding international agreement that has been ratified by New Zealand, it is not Government’s intent to give it the force of domestic law in New Zealand by way of inclusion in the ANZPM bill.
- 139 In addition, we do not recommend that the more detailed amendments proposed by some submitters are included, as they are not consistent with the broad, inclusive and non-prescriptive approach taken throughout the charter.

Provision for local content and production

- 140 As outlined in the charter, a function of ANZPM is to provide content that is predominantly and distinctively of New Zealand.
- 141 This is a broad provision intended to ensure that ANZPM is providing content that is locally produced, tells New Zealand stories, is about New Zealanders and is relevant to New Zealanders.
- 142 The view of Manatū Taonga is that this provides sufficiently for local content – including content produced locally (which will likely be the bulk of local content). Specific provision for this content to be produced by the local production sector rather than produced by ANZPM in-house is discussed in **Section 1.7**.
- 143 The charter specifically refers to all genres to ensure particular genres are not prioritised over others, or some genres omitted. On this basis, we do not agree that reference should be made specifically to local drama. Such an approach would be out of step with the rest of the charter.
- 144 We also do not support inclusion of quotas for local (or other content) in the bill. Statutory quotas would considerably reduce ANZPM’s flexibility to fulfil all the requirements of its charter in the most effective way. Quotas could make the legislation less able to adapt to changing circumstances, and could lead to unintended consequences (for instance incentivising production of large amounts of lower quality/lower budget local content to fulfil quota requirements, or creating inconsistencies with obligations under the various Free Trade Agreements that are in force in New Zealand).

145 Additionally, the Government supports the production of local content by funding NZ On Air and Te Māngai Pāho, who in turn fund local productions that are provided on New Zealand media platforms. This arrangement ensures that local content is produced, without risking the unintended consequences as outlined above.

Provision for Pacific peoples

146 It is the view of Manatū Taonga that the charter already provides for Pacific content and audiences via provisions relating to diversity of ethnicities, communities, cultures and languages. The charter also provides for New Zealand's particular role in the Pacific and interest in Pacific languages through cl 12(2)(b). Manatū Taonga therefore does not recommend any changes to the charter regarding Pacific peoples.

147 There is no intent for ANZPM to duplicate or take over functions that are already provided for by organisations such as the NPRT. This acknowledges that these entities play a crucial role in the media ecosystem – particularly in their ability to provide Pacific media content and services for Pacific peoples, made by Pacific peoples.

148 We note that ANZPM will have a requirement to support a sustainable and diverse media ecosystem as further discussed in **Section 1.8**, and we have recommended an additional provision that will require ANZPM to take account of services provided elsewhere in the media ecosystem as set out in **Section 1.7**. It is our view that these clauses taken together makes it clear that ANZPM's focus will not be on taking over functions already provided for. ANZPM's focus will be on working with other entities to ensure audiences are well served by public media, regardless of whether the deliverer of content is ANZPM or another provider. We note these provisions will be subject to the provisions of the Commerce Act, as discussed in **Sections 1.7 and 1.8**.

149 As noted by some submitters, ANZPM's charter does not contain a specific obligation to provide an international service to the South Pacific in English and a range of Pacific languages. This is because the charter sets broad functions rather than requiring the delivery of specific services so that ANZPM will have the flexibility to determine how best to meet its objectives in the face of technological, demographic or other change.

150 The charter enshrines in the legislation an ongoing obligation on the part of the entity to provide for New Zealand's relationships with Pacific Island countries while leaving flexibility in the way the entity will do this.

151 As discussed in **Section 1.1** above, there is specific funding allocated to the RNZ Pacific service within Vote Arts, Culture and Heritage and an existing MOU between Manatū Taonga and RNZ for delivery of the service. This should ensure its continued provision.

152 Manatū Taonga therefore recommends no changes to the charter regarding provision for an international service to the Pacific.

Provision for archiving

153 Archiving is provided for by cl 12(2)(a), which establishes that a function of ANZPM is to preserve and enable access to content that reflects New Zealand's history and to enable iwi, hapū, and Māori entities to have access to content by and about themselves.

154 This is intended to place a broad obligation on ANZPM to preserve and make available content that reflects New Zealand's history, and to ensure that, wherever possible, Māori can access content by and about themselves. It does not set more specific obligations on ANZPM, reflecting complexities including around copyright, the costs of digitisation and storage, and broader obligations under the Public Records Act - all of which ANZPM will have to consider when archiving content and making available archived content. Manatū Taonga therefore does not recommend any change to these provisions.

155 Manatū Taonga also does not recommend that a scheme similar to the Archived Works Scheme be provided in the bill as:

- the scheme is highly prescriptive and restrictive about what content can be shared, when, and how – reflecting difficulties around copyright issues for some content
- the scheme has never been used by TVNZ. TVNZ has also advised Manatū Taonga that most of the content in the TVNZ archive is able to be easily used by TVNZ without the need to use the arrangements in the scheme
- there are existing mechanisms under the Copyright Act to allow archival material to be screened, should this be required.

156 Manatū Taonga acknowledges the position of Ngā Taonga, which manages much of the Crown audio-visual collection, that access to archived works should be prioritised by ANZPM. The bill provides that all existing archiving arrangements in place for RNZ and TVNZ, including those with Ngā Taonga, will transfer to ANZPM on commencement. Once ANZPM is operational, it will need to review these arrangements to ensure consistency with its charter obligations around archiving and accessibility.

157 Manatū Taonga does not recommend that Te Whakaruruhau o Ngā Reo Māori's proposed amendments are included in the charter, as they relate to operational decisions that are best made by ANZPM. However, we note that ANZPM's board has a duty to ensure ANZPM engages with Māori about relevant strategies and policies. In our view, this would provide an appropriate mechanism for Māori entities to engage with ANZPM on their archiving policies and strategies.

Provision of news services

- 158 The charter states that a function of ANZPM is to provide content that is regional, national, and international news and information that is reliable and accurate, and comprehensive, impartial and balanced. The charter also includes a principle that ANZPM demonstrate editorial independence, impartiality, and balance particularly when broadcasting news and current affairs.
- 159 These charter provisions provide broad but clear expectations to ensure that ANZPM delivers high-quality news, current affairs and factual content, at regional and national levels.
- 160 It is also important to note that ANZPM will be monitored on how it delivers its charter, including on how it provides news, current affairs and factual content for New Zealanders. ANZPM will be expected to report on its charter delivery annually, including the provisions relating to regional accessibility.
- 161 Our view is that the issues raised by submitters are therefore appropriately provided for by the current charter provisions.
- 162 However, we agree with TVNZ's submission that factual programming should be referenced within cl 13(1)(a) as an area where ANZPM should demonstrate editorial independence, impartiality and balance alongside news and current affairs. We **recommend an amendment to provide for factual programming in this clause.**

Provision for New Zealand Sign Language

- 163 Submitters have argued that as an official language, NZSL should be given the same prominence in the bill as te reo Māori. However, the explicit references to te reo Māori in the bill are included to recognise and respect the Crown's responsibility to give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi – not to reflect its status as an official language.
- 164 Instead, the charter includes an objective to reflect, include, and serve New Zealand's diverse languages. This is intentionally broad to capture the breadth of languages used by New Zealanders, including NZSL.
- 165 In addition, Manatū Taonga considers that other charter provisions will set a broad expectation that provide for NZSL users and other diverse communities, including obligations to:
- represent and reflect the diversity of New Zealand's communities
 - identify and work to address any areas where public broadcasting is not easily accessible or meeting the needs of New Zealand's communities
 - ensure that the perspectives of under-served and under-represented audiences are reflected in the development and delivery of content and

services, including by providing opportunities for participation by those audiences.

Obligations under the New Zealand Sign Language Act

166 The New Zealand Sign Language Act 2006 sets out some broad principles to guide government departments, so far as reasonably practicable, in carrying out their functions. It does not impose specific obligations in relation to how the government must give effect to these principles. Our view is that the relevant provisions outlined above are consistent with the principles of the NZSL Act, in that they will require ANZPM to provide for users of NZSL along with other language speakers - noting that s 9(3) of the NZSL clarifies that the intent of the principles are to *promote access to government information and services for the Deaf community without conferring on that community advantages not enjoyed by other persons*.

167 Obligations under the UN Disability Convention are covered in **Section 1.5** below.

Provision for diversity

168 The view of Manatū Taonga is that the bill makes clear that ANZPM will be required to reflect and provide for diversity through the objectives, functions and operating principles in its charter. We do not agree that the charter needs to provide more specificity on which diverse communities or cultures need to be provided for as this runs the risk of inadvertently excluding some. Nor do we agree that the charter should be less detailed as TVNZ suggests. Our view is that this would make the expectation that ANZPM endeavour to deliver across all diverse communities and interests less clear.

4. Manatū Taonga recommends amending the charter to:

- a. ensure it is clear that the charter comprises clauses 11, 12 and 13 of the bill
- b. include a broad provision to require ANZPM to provide content that stimulates, supports, and reflects the diversity of artistic and cultural expression in New Zealand
- c. incorporate specific reference to children and young people within its functions and operating principles
- d. include specific reference to factual programming as an area where ANZPM should demonstrate editorial independence, impartiality and balance.

1.5 Ensure that disabled people are specifically provided for

Issues

- 169 A number of submitters raised issues about how the ANZPM charter currently provides for disabled people.
- 170 Some submitters were concerned that the charter does not explicitly provide for the needs of disabled people and disabled audiences. For instance:
- Jonathan Mosen submitted that the use of the term *people of all abilities* throughout the charter is inconsistent with the social model of disability endorsed by the New Zealand Disability Strategy.
 - Koi Tū submitted that there is no obligation to provide services to disabled people, on the basis that disabled people are not referred to in the charter.
- 171 Some submitters were also concerned that if not defined in the bill, the term “accessibility” could have various interpretations, and therefore not place strong enough obligations on ANZPM. For instance, TVNZ submitted that the use of the term in the bill could be more clearly defined, as it may be interpreted as either general access or access for disabled people.
- 172 A number of submitters were concerned that the bill did not place an obligation on ANZPM to provide accessibility services for disabled people, including captioning and audio description. Suggestions were made, that the bill be amended to include specific and measurable requirements relating to these services:
- Aine Kelly-Costello suggested accessibility be defined as a requirement to provide specific services including captioning for video content, digital stories and transcripts for radio content, descriptive alternative text added to images on digital content, accessibility of language, digital accessibility of platforms and access to services for people with limited internet services.
 - Fund RNZ suggested that ANZPM be required to provide content accessibility services for people who use NZSL.
 - Deaf Aotearoa submitted that the bill is inconsistent with the United Nations Convention on the Rights of Persons with Disabilities because it ignores NZSL’s status as an official language. Deaf Aotearoa also wanted mandatory captioning on all content.
 - Able recommended that the bill should include an obligation to ensure that all ANZPM platforms are capable of hosting captioning and audio description services, and that the bill should be explicit that providing accessible media

content and services for New Zealanders includes ensuring that the content is accessible to audiences who are blind, have low vision, are Deaf, or hard hearing.

Response

- 173 Government's intent is that ANZPM should consider and provide for the needs of disabled audiences. Cl 11(2)(h)(ii), 12(1)(h)(ii) and 13(1)(d) use the term "New Zealanders of all abilities," which was intended to place an obligation on ANZPM to consider the needs of disabled people, in line with that intent. Other terms such as New Zealand's diverse communities" and "under-served and under-represented audiences were also intended to capture disabled people, along with other communities.
- 174 In addition, the charter has provisions that will require ANZPM to consider disabled people – for instance, it requires ANZPM to ensure that its content and services are available and accessible; to identify and work to address where its content and services are not easily accessible; and ensure that the perspectives of under-served and under-represented audiences (which include disabled people) are reflected in the development and delivery of content and services.
- 175 However, Manatū Taonga agrees with submitters' feedback that the current language used in the charter is not sufficient to represent disabled people, and that it should reflect the social model of disability, as endorsed by the New Zealand Disability Strategy. We therefore **recommend that the charter specifically provides for "disabled people" not "New Zealanders of all abilities"**. This will help ensure that disabled people are explicitly, rather than implicitly, provided for in the charter.
- 176 Manatū Taonga does not agree that accessibility needs to be more narrowly defined. The term is used in its broadest sense, as it is intended to cover a variety of issues related to accessibility – including access for New Zealanders living outside of the main centres, how easy it is for people to consume ANZPM's content and services and access for disabled New Zealanders. Defining access to mean the specific provision of accessibility services for disabled people, would unduly narrow the application of the term and the public media outcomes it is intended to enable ANZPM to deliver.
- 177 In addition, Manatū Taonga does not recommend any changes to include specific statutory requirements for ANZPM to deliver accessibility services. The Government's view is that any regulatory change relating to the provision of accessibility services should be cross-sector and align with broader reforms to the current media content regulation regime.
- 178 In terms of consistency with Article 21 of the United Nations Convention on the Rights of Persons with Disabilities, the convention encourages the mass media, including providers of information through the internet, to make their services

accessible to persons with disabilities. As discussed in **Section 1.4** above, there are a number of provisions in the bill intended to ensure that ANZPM is considering and providing for the needs of disabled people, including making its services accessible to people with disabilities. Manatū Taonga therefore considers that the bill is well-aligned with Article 21 of the UN Disability Convention.

179 We also note that:

- ANZPM will be monitored on the delivery of its charter, including on how accessible its services are to disabled people, and how it is working to address any access gaps. In the view of Manatū Taonga, more specific expectations in relation to the provision of accessibility services would be better set (and monitored and reported on) at this level, rather than in primary legislation.
- as the Committee heard through Able's submission, the Government has been providing increasing funding for captioning and audio description in New Zealand via funding through NZ On Air, which is helping to increase access across all platforms.
- one of the main reasons for this proposal is to facilitate investment in online platforms - this would include ensuring that ANZPM's digital platform(s) are capable of hosting captioning and audio description services.

180 On this basis, Manatū Taonga is leading work on captioning and audio description that will be progressed in parallel with the broader review of the Broadcasting Act 1989, and other work on content regulation that is being led by the Department of Internal Affairs.

5. Manatū Taonga recommends:

- a. amending the charter to reference disabled people, not "New Zealanders of all abilities"

1.6 Rethink the use of the term ‘broadcasting’

Issues

- 181 A number of submitters were concerned that the use of the term “broadcasting” is outdated and does not align with the policy intent to create a modern, future-focused legislative framework for ANZPM. These submitters were concerned that continued use of a term that is predominantly associated with traditional linear broadcasting via television and radio could inadvertently restrict ANZPM’s future activities or leave out new ways of providing media content. Some submitters noted that future technologies are likely to be multi-directional rather than mono-directional (i.e. from the broadcaster to the receiver) and the current definition may limit ANZPM’s ability to engage in new types of technology and platforms that enable multi-directional content or interaction.
- 182 The majority of submitters who raised this point suggested the definition should either be removed entirely, or at least amended to ensure the legislation reflects a modern legislative and platform-neutral media environment that covers all audiences:
- TVNZ suggested replacing the term ‘broadcasting’ with ‘transmitting’, with the definition; *broadcasting, transmitting, publishing, or otherwise making available content by means of telecommunication*. This was on the basis that TVNZ uses ‘transmit’ to cover both broadcasting and online publishing because it is platform-agnostic.
 - RNZ, Better Public Media, Lane Street Studios and others wanted the definition to be expanded to ensure other distribution methods, such as printed publications and events, as well as ensuring other ways of distributing content in the future could be captured.
 - Better Public Media was concerned that specifying ‘the New Zealand public’ in the definition limits the ability for ANZPM to make available content for audiences outside of New Zealand, such as New Zealand citizens living abroad or any other international audience.
 - Koi Tū wanted to retain ‘broadcasting’ rather than replacing the term, but to update it to ensure newer forms of media were not inadvertently left out.
 - Nicola Hudson suggested that the term ‘receiving apparatus’ requires definition, as it is not clear what devices this refers to.
 - Peter Thompson suggested the definition could be changed to *content of any form including audio and/or visual and/or textual material, hosted or distributed or received through any medium, platform or device*.

183 Submitters suggested a range of alternative wording options that could be used instead of broadcast, including:

- provide
- distribute
- facilitate
- engage
- communicate (to align with the technology-neutral definition used in the Copyright Act 1994)
- distribute on any platform.

184 Better Public Media and its supporters submitted that that it is not necessary to match the definition used in the Broadcasting Act, and it may cause conflict, requiring qualification as to whether the definition being used is that of the ANZPM bill or the definition used elsewhere.

185 Conversely, the Association of New Zealand Advertisers was concerned that, if the Broadcasting Act 1989 definition of 'broadcasting' remained in force for other broadcasters but not for ANZPM, this might put ANZPM in conflict with the definition used in other parts of the media sector.

Response

186 The current use of 'broadcasting' in the bill is intended to reflect that ANZPM will be operating within the broader context of the Broadcasting Act. On that basis, the definition of 'broadcasting', 'content' and 'visual image' have been aligned with the current Broadcasting Act definitions as far as possible, while being amended slightly to ensure coverage of digital platforms and future platforms (including the removal of the current explicit exclusion of 'on-demand' content from the definition).

187 Our view is that the use of 'broadcast' with its current definition ensures ANZPM has a clear mandate to use both current (i.e. on-demand platforms) and future methods of content delivery. We do not agree with the view that the current definition limits ANZPM's ability to adapt to future technological advances - given the definition includes making available content, which in our view sufficiently captures future developments.

Comparison of definitions	
Broadcasting Act	ANZPM bill
Broadcasting means any transmission of programmes, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by means of broadcasting receiving apparatus but does not include any such transmission of programmes made on the demand of a particular person for reception only by that person; or made solely for performance or display in a public place	Broadcasting means transmitting or <i>making available content</i> , whether or not encrypted, by radio waves or other means of telecommunication for reception by the New Zealand public by means of receiving apparatus.

- 188 However, we agree with submitters that the use of the term ‘broadcasting’ despite the updated definition, is largely associated with linear platform delivery and could therefore give the impression that the bill continues to use outdated terminology, not reflective of a modern future-focused legislative framework.
- 189 We have also re-looked at the issue of whether the definition in this bill needs to align with the definition in the Broadcasting Act in light of submitters’ feedback. It is not the intent of the bill for the change to have an impact on the ongoing application of the Broadcasting Act to ANZPM.
- 190 Our view is that, if ANZPM is providing content in a way that meets the definition of a broadcaster for the purposes of the Broadcasting Act, it will continue to be subject to all relevant requirements set under that Act, including broadcasting standards. The Broadcasting Act does not name specific entities as being broadcasters, nor does it require establishing legislation to designate an entity a broadcaster. For example, commercial media entities do not have establishing legislation, but meet the definition on the virtue of the activities they undertake. The same approach will apply to ANZPM. Therefore, as is currently the case with RNZ and TVNZ, content provided by ANZPM via traditional linear television or radio services will be regulated under the Broadcasting Act (and content streamed by ANZPM via the internet will not).
- 191 We also note that the Minister for Broadcasting and Media has commissioned Manatū Taonga to start initial work on reviewing the Broadcasting Act 1989. Consideration of the use of the term broadcasting as it applies across the sector is likely to be within scope of this work.

- 192 Manatū Taonga therefore **recommends that the term ‘broadcasting’ is replaced throughout the bill with another plain English term such as ‘provide’** to avoid requiring a definition to be given in the bill. This approach would reflect the policy intent of creating a modern, future-proofed legislative framework for ANZPM. It would also alleviate concerns that ANZPM would be unable to engage in multi-dimensional content provision. We recommend that PCO be asked to provide drafting advice on such a term.
- 193 We also **recommend changing the references to ANZPM as a public ‘broadcaster’** to something like a ‘public media entity’ as this aligns to both the name of the entity, as well as the purpose provided to ANZPM of providing trusted public media content. We recommend PCO be asked to provide drafting advice on this.
- 194 This will require a further amendment to cl 3(c) *provide for transitional arrangements for the transfer of the Crown’s provision of public broadcasting from RNZ and TVNZ to Aotearoa New Zealand Public Media*. Subject to PCO advice, ‘public broadcasting’ could be amended to ‘public media.’
- 195 We do not recommend a change to the reference to broadcasting in sch 1, sub cl 1(1) - *transitions the Crown’s provision of public broadcasting from 2 Crown entity companies to 1 autonomous Crown entity* - be changed, as TVNZ and RNZ both currently provide broadcasting services as defined in the Broadcasting Act.
- 196 In relation to terms such as ‘transmission’ or ‘distribution,’ our concern is that this could create unnecessary confusion as both terms are used with different meanings within the sector. In addition, these terms are also not as commonly known and may therefore still require a definition, which could risk excluding future developments.
- 197 Removing the broadcasting definition would mean there are virtually no restrictions in relation to what types of content ANZPM can provide on what platforms. While this is the intended outcome for digital based platforms, it would also broaden the scope for using non-digital methods. For example, ANZPM could choose to provide printed content or undertake live performances. Our view is that this is not problematic, given the requirements for it to deliver on its charter obligations, provide content predominantly free of charge, consider services provided by others and collaborate, along with the recommended new provision for ANZPM to consider the services provided by others (see **Section 1.7**).
- 198 Removing the definition also removes the reference to reception by the New Zealand public. Such an approach would align with the views of submitters who suggested overseas-based New Zealanders should not be excluded from accessing content provided by ANZPM as discussed in **Section 1.3** above:
- It is not intended that the bill prevent ANZPM from providing content for overseas audiences, as long as doing so is consistent with the delivery of its charter. This is to avoid placing a particularly onerous obligation on ANZPM

that it has to make specific provision to deliver content to all New Zealanders overseas.

- The current TVNZ and RNZ Acts focus on New Zealand audiences (TVNZ's functions include *providing content that is relevant to, and enjoyed by, New Zealand audiences* and RNZ's charter references *providing services that inform, entertain, and enlighten the people of New Zealand.*) However, we do not think the proposed change would *oblige* ANZPM to deliver to overseas audiences, as its charter can be fulfilled without doing this – though it would give ANZPM the ability to target New Zealand audiences overseas should it choose to do so.

6. Manatū Taonga recommends:

- a. replacing the term 'broadcasting' with another plain English term such as 'provide' to avoid requiring a definition to be given in the bill
- b. replacing references to ANZPM as a public 'broadcaster' with a 'public media entity' or something similar.

PROACTIVELY RELEASED

1.7 Clarify provisions relating to market impacts

Issues

- 199 A number of submitters, including commercial media entities such as Stuff, Allied Press, Mediaworks, Sky, NZME and Warner Bros. Discovery and media sector associations such as the RBA and News Publishers Association submitted on the competition effects of the proposal, particularly the impacts that ANZPM would have on the private media sector, and the effects on New Zealand on Air.
- 200 Some submitters were concerned about what they saw as a lack of a thorough cost benefit analysis, including assessment of market impacts – this is covered in more detail in **Section 2.6** below.

Effects of scale and market power

- 201 Many of these submitters expressed concern that ANZPM's scale and market power would enable it to dominate across television, radio and digital platforms as it competes for audience and advertising revenue. For instance, Stuff described ANZPM as “a media giant with substantial market power.” NZME submitted that ANZPM would have the largest audience in New Zealand and the largest news and current affairs team once it is established.
- 202 These submitters thought that ANZPM's market dominance could see it out-compete commercial media operators, particularly in relation to journalism, and that this would ultimately have a negative impact on the sustainability and diversity of the commercial media sector. For instance, Mediaworks submitted that ANZPM's market power would enable it to “suppress current market players and prevent new entrants to market.”
- 203 Similarly, Koi Tū submitted that the establishment of ANZPM could affect advertising, production and programming across all platforms given the ability for ANZPM to use its size or combine with other public media entities to outbid competitors or set market prices. Warner Bros. Discovery was concerned about progression of a model that “unfairly advantages ANZPM over its competitors.”
- 204 Submitters noted that the proposal comes in the context of a challenging environment for commercial providers. For instance, NZME noted that the reduction in newspaper circulation and the rise of global platforms has reduced available revenue and led to significant reductions in the number of journalists in New Zealand.
- 205 Many of these submitters' concerns centred around ANZPM's provision of news - with ANZPM potentially having the largest audience in New Zealand and the largest news and current affairs team. Concerns were raised about the effects the consolidation of TVNZ's and RNZ's newsrooms may have in relation to reduction of diversity and labour market competition. Stuff said that, as the biggest funder of

journalists across New Zealand, more so than any other media organisation, it was concerned about being at a material disadvantage when competing for journalism talent.

206 There were numerous suggestions made about possible mitigations in relation to ANZPM's scale and market power, in particular:

- A number of submitters wanted to see a high-level obligation placed on ANZPM in the bill to set expectations on how it would engage with its competitors and the broader market. For instance, Sky suggested adding an operating principle that ANZPM should have regard to the impacts of its activities on the media ecosystem and seeking to avoid adverse impacts. Allied Press wanted to see an obligation placed on ANZPM to avoid adverse impacts on competition, similar to the obligation placed on the BBC. The RBA suggested the charter should require ANZPM to have a positive impact on the media ecosystem, or at a minimum require it to “do no harm”. The RBA also suggested a duty should be added to the board's responsibilities, similar to RNZ's current charter that requires it to take account of services already provided by other broadcasters.
- Similarly, William Earl, the Student Radio Network and the Association of New Zealand Advertisers wanted the bill to provide a terms of trade requirement for ANZPM to commit to fair, reasonable, non-discriminatory and transparent (FRANDT) principles in its dealings.
- Other submitters wanted more detailed provision than this in the bill. For instance, MediaWorks and NZME asked for a detailed “principles of operation” clause to be included in the bill to set specific legislative requirements relating to an adequate rate of return on shareholder funds, having regard to effects on its activities on competition in New Zealand's media markets, avoiding adverse effects on competition, and ensuring that commercially funded services are conducted fairly without putting ANZPM at an unfair advantage.
- Koi Tū wanted the bill to require ANZPM to develop a Fair-Trading Policy, within six months of commencement, that would be reviewable and enforceable by the Commerce Commission, including sections on market domination, market duplication and fair dealing with independent creative industries.
- A number of submitters wanted to see restrictions or specific requirements placed on the services ANZPM provides to help manage any market dominance – for instance, ANZPM being required to focus only on areas where commercial media do not or cannot operate, to avoid undermining the provision of commercial media, or the inclusion of minimum quotas of Māori and other languages (up to 40 percent).
- Some submitters including Tom Frewen, NZME and Warner Bros. Discovery were concerned that there is no cap on the amount of revenue ANZPM can earn from commercial activities. NZME and Warner Bros. Discovery suggested

restrictions on ANZPM's capacity to earn or retain revenue. NZME suggested a cap on the amount of commercial revenue ANZPM is allowed to generate annually of \$200 million per annum, adjusted for inflation in ongoing years, while MediaWorks suggested a \$150 million cap. Warner Bros. Discovery submitted that ANZPM's digital platform should be advertising-free, consistent with RNZ's current website. NZME and others proposed that all its content should be made available free of charge to all other media entities. Warner Bros. Discovery and others submitted that ANZPM should be required to invest a portion of its commercial returns into contestable funds that would then be available to the rest of the sector.

- Some submitters also asked that the bill be explicit that ANZPM's ongoing operations are subject to the Commerce Act's anti-competition provisions (including clarifying that ANZPM is engaging "in trade" for the purposes of the Commerce Act). This was to ensure the Commerce Commission would have oversight and could take enforcement action if ANZPM were to conduct its ongoing operations in ways that risked lessening competition or misusing ANZPM's substantial market power.
- 207 Several commercial media entities and associations wanted the bill changed to apply s 47 of the Commerce Act 1986, to ensure the creation of ANZPM was subject to consideration by the Commerce Commission before proceeding.
- 208 There were also concerns raised about the effects on smaller commercial and community organisations. Some submitters such as Radio 1XX, SYSCA and the Spinoff raised issues including ANZPM's impact on smaller entities' revenue, and operating abilities, staff retention, and the impact on plurality in the sector. There were concerns about ANZPM duplicating content already provided elsewhere in the sector, crowding out other organisations such as the Asia Pacific Media Network, NPRT and Whakaata Māori.
- 209 In addition, submitters from the independent production sector were concerned that ANZPM could choose to bring more content production in-house, to the detriment of the independent production sector. This concern arose largely from the proposed direct funding model - meaning ANZPM will be responsible for a large quantum of funding for direct commissioning that was previously allocated via contestable funding through NZ On Air. A number of submitters from the production sector asked for the bill to specify the important role of the local content production sector, with an expectation ANZPM will outsource production.

Effects of mixed funding model

- 210 Some submitters thought the market impacts would be exacerbated by ANZPM's mixed funding model.
- 211 For instance, concerns were raised by a range of commercial entities that ANZPM would be able to operate in a loss-making, anti-competitive or unsustainable way

due to its level of public funding; not needing to make a commercial rate of return or return a dividend to the Crown; and its ability to cross-subsidise its commercial activities with commercial funding. Submitters were concerned that this could allow ANZPM to offer advertising at lower prices than other media could compete with, or make investments across its platforms, content, people and systems that commercial media could not.

- 212 Submitters including Stuff and Koi Tū raised concerns that ANZPM would be able to build up significant cash reserves, without being required to return a dividend, or without a mechanism being available for the Government to require surplus to be returned to the Crown.
- 213 Koi Tū, Peter Thompson and the News Publishers Association also raised concerns that ANZPM would have a distorting market effect due to the government funding it receives.
- 214 Submitters suggested a range of mitigations:
- Commercial entities suggested the bill should explicitly exclude the ability to cross-subsidise commercial activity. For instance, NZME submitted that there should be restrictions placed on ANZPM using airtime to promote any programming or content from a commercial platform on its non-commercial services. Peter Thompson also suggested requiring publicly-funded content to carry reduced or no advertising, or public funding being directed solely towards under-provided genres or to underserved or minority audiences that would not be commercially viable.
 - RBA submitted that ANZPM should not be able to run advertising for commercial activities on RNZ's existing commercial free services, as it would be anti-competitive. This approach would currently be allowed under sch 1, cl 8 that carries over RNZ's current provision allowing in effect for advertising by ANZPM of any of ANZPM's own services.
 - Koi Tū and a number of other submitters wanted ANZPM's commercial and non-commercial operations to be structurally separated.

Impacts of transfer of funding from NZ On Air

- 215 Some submitters commented on the future role of NZ On Air, particularly in relation to ensuring it is sustainably funded in the future to support the delivery of public media content across a range of platforms outside of ANZPM:
- Bryan Bruce wanted to ensure independent producers have alternative outlets for public interest programming.
 - Crux Publishing suggested the commissioning of content for both local and national audiences should be done via NZ On Air. Crux suggested that this

commissioning role should include the establishment of a national streaming platform that distributes, curates and promotes regional content to audiences.

- Some submitters, including the Directors and Editors Guild of New Zealand and Rex Simpson wanted to ensure NZ On Air is not impacted in order to maintain a vibrant independent production sector.
- SPADA, Sky, and the NZ Writers Guild wanted to see an increase of funding to NZ On Air and other funding agencies such as Te Māngai Pāho and the NZ Film Commission.
- Others from the production sector sought clarity on the overall quantum of funding that will be available through both ANZPM and NZ On Air for funding.
- Peter Thompson thought it would be sensible to preclude or limit ANZPM's eligibility for NZ On Air and Te Māngai Pāho contestable funding for in-house productions, while retaining its eligibility as a distributor of independent content.

216 A number of submitters also commented on cl 18 that requires ANZPM to have regard to the funding policies adopted by NZ On Air and Te Māngai Pāho when carrying out the charter. Most of these submitters wanted to ensure that there was not duplication in content being awarded funding through ANZPM and NZ On Air. Specifically:

- the Independent Drama Producers Collective recommended that the clause be amended to ensure all channels including ANZPM can apply for contestable funding to develop scripted content (but not production) through ANZPM
- Koi Tū recommended an amendment to require ANZPM to apply the guidelines and principles adopted by NZ On Air when commissioning independent local production
- Sky recommended that ANZPM should also have regard to the funding policies of the Film Commission, that the provision should be expanded to include collaboration with other funding bodies, and that the purpose to avoid any gaps or duplication in the public provision of content should be included.

Ongoing oversight

217 Many of these submitters wanted more provision for oversight of ANZPM's operations in relation to its market impacts:

- As noted above, a range of submitters would like it to be made clear in the legislation that ANZPM's ongoing operations are subject to all Commerce Act 1986 anti-competitive conduct requirements.
- Some submitters, including NZME asked for the Commerce Commission to have an annual review and reporting role. Stuff asked for the Commerce

Commission to have a role in ensuring ANZPM does not distort the market, gain an unfair advantage and receive a commercial rate of return on its activities.

- NZME also asked for additional transparency measures that would require ANZPM to make information about its operations publicly available – for instance ANZPM should make publicly available the minutes of its board meetings, and any “important decisions” along with providing detailed information on the remuneration of senior employees (this is covered in **Section 2.4** below).
- Koi Tū suggests distorting effects should be monitored and regulated through the establishment of a Parliamentary Commissioner or through the Commerce Commission, who would have additional powers to review, monitor and take enforcement action relating to ANZPM’s activities, particularly to ensure it complies with a Fair Trading Policy (that would be developed by ANZPM). Koi Tū envisions this regulatory role extending to behavioural matters including board appointments, structure and funding mechanisms.

Other perspectives

- 218 A smaller number of submitters were concerned that ANZPM would be unduly constrained from earning advertising revenue. For instance, TVNZ and advertising associations raised concerns that the Bill unnecessarily caps the ambition of ANZPM by not maintaining focus on commercial performance in order to be able to better deliver on its public media objectives.
- 219 Other submitters did not want to see restrictions on what content ANZPM could provide or how it should provide it as a result of concerns raised by commercial providers. Better Public Media asked the Committee to prioritise the public over the commercial interests of mainstream private media and industry organisations, saying that private media are understandably focused on acting to the benefit of their shareholders rather than prioritising or delivering public media outcomes – which is the focus of this bill.

Response

- 220 Manatū Taonga acknowledges the concerns raised by commercial media entities and other submitters in relation to market impacts and agrees that it is important the legislation clarifies as far as practicable how ANZPM will operate in relation to other media entities and the broader sector, without being overly prescriptive or restrictive, noting that many details are more appropriately provided for through ANZPM’s operating model. Key to this is further clarifying the requirement to collaborate which is covered in **Section 1.8** below.

How the bill currently recognises possible market impacts

- 221 The Government's overall objective is a vibrant, trusted and diverse media ecosystem, as set out in the Strategic Framework for a Sustainable Media System¹, released by Manatū Taonga. The objectives include a strong commercial media sector, as well as a strong public media sector (acknowledging that public media content is provided by a wide variety of organisations, even if it is publicly funded). There is no intent that a strong public media sector should come at the expense of a strong private media sector, or vice versa.
- 222 This proposal is focused on strengthening public media provision but doing so in a way that doesn't create significant market impacts.
- 223 As a starting point, the Government's position, based on external legal advice and consultation with MBIE, is that the proposal to establish ANZPM would not substantially lessen competition. This position is based on a view that TVNZ and RNZ largely operate in separate markets and are not close competitors of each other. Where their operations do overlap, such as in provision of online news, they face competition from an abundance of other media companies. On this basis, there is unlikely to be a material lessening of competition resulting from combining the two entities' operations.
- 224 In addition, the Government's position is that the transfer of shares and assets are not acquisitions for the purposes of s. 47 of the Commerce Act, because the ultimate owner is remaining the same (i.e. the Crown). Sch 1, cl 10's disapplication of parts 2 and 3 of the Commerce Act reflects that position for the purposes of clarity.
- 225 It is important to note that ANZPM will not be a predominantly commercially focused entity like TVNZ currently is but focused on public media outcomes, with the generation of commercial revenue not a primary purpose of the entity. Our recommendation to further strengthen ANZPM's primary focus on public media outcomes, discussed in **Section 1.2**, should help to clarify this expectation in the bill.
- 226 At the same time, ANZPM is also required to earn commercial revenue to support its core baseline funding and ensure it can deliver on those public media outcomes. That will mean it will need to sometimes compete with commercial media providers for revenue (just as TVNZ currently does), audiences and talent (just as TVNZ and RNZ currently do). As noted in **Section 1.3**, it is important to ANZPM's success that its ability to earn commercial revenue is not unduly restricted.
- 227 In addition, there are a specific number of provisions in the bill that are intended to have the effect of focusing ANZPM on delivery of public media rather than commercial outcomes, limiting its capacity to earn revenue to some degree:

¹ *Strategic Framework for a Sustainable Media System*

- its ACE form (as opposed to a Crown entity company form operating under the Companies Act)
 - its charter, with a focus on delivery to under-served and under-represented audiences
 - the requirement to collaborate with other media organisations
 - limitations on ANZPM's ability to charge for content.
- 228 Our recommendation for the bill to include a new operating principle in the charter requiring ANZPM to provide some of its content advertising and sponsorship-free on an ongoing basis (see **Section 1.3**) will add to this list.
- 229 ANZPM will also have to operate in accordance with the Commerce Act – including, provisions preventing entities engaging in anti-competitive behaviour. Given it will have to earn commercial revenue to support delivery of public media outcomes, it will have a strong incentive to earn a commercial rate of return for its commercial activities.
- 230 In addition:
- ANZPM is required to have regard to the funding policies of NZ On Air and Te Māngai Pāho, which will help ensure a consistent approach across government funding of content, and prevent duplication of funding.
 - ANZPM will be monitored on how well it is fulfilling its public media mandate and delivering on the clarified provision for collaboration proposed in **Section 1.8** below.
- 231 It is also important to note that, while this work sits outside the scope of the bill, ANZPM's financial model is considering:
- constraints on ANZPM's ability to seek contestable funding from NZ On Air as a commissioning platform through the annual letter of expectations
 - non-legislative mechanisms to discourage the entity from building up excessive cash reserves².

Further provisions to address submitters' concerns

232 In this context, Manatū Taonga does not agree that there is a need for provisions specifying when or how ANZPM should be allowed to compete, further limiting its

² Including officials' requests for further information on balance sheet and strategy, the letter of expectations, direction in the House, and/or adjusting future funding if significant amounts of cash or assets are built up on ANZPM's balance sheet.

ability to compete, requiring it to avoid adverse effects of competition, or limiting how much revenue it can earn or how it can earn it. Such provisions would significantly reduce the flexibility ANZPM will need to respond to the ongoing challenges faced by ANZPM and all media organisations in the context of increasing competition from global digital platforms.

- 233 It is also important that ANZPM is not limited in which audiences it can deliver to – the government’s intent is, while there should be a focus on under-served audiences, all New Zealanders should also be able to benefit from the services provided by ANZPM.
- 234 However, we agree that it would be helpful to provide a clearer, high-level expectation that ANZPM will consider the effect of its activities on other media providers, and on the health of the broader media eco-system.
- 235 We therefore **recommend that, in addition to our recommendations to strengthen ANZPM’s public media purpose and clarify its requirement to collaborate, the bill includes an obligation that ANZPM should take account of services provided elsewhere in the broader media ecosystem to support the capability, capacity and sustainability of that ecosystem.** This provision could be based on and expand the provision in the current RNZ charter, as proposed by the RBA.
- 236 Such a provision could help to address a number of the concerns raised by submitters, including concerns about ANZPM bringing significant production inhouse in competition with the independent production sector - without unreasonably restricting ANZPM’s ability to deliver public media content to all New Zealanders.
- 237 We recommend that this obligation be framed as a collective duty of the board (the same recommendation we are making in relation to the collaboration obligation as discussed in **Section 1.8** below). This would provide clear accountability on the part of the board to ensure ANZPM is considering the impacts of its activities on the broader sector – including community providers as well as commercial media entities.
- 238 We **also recommend clarifying in the bill that ANZPM’s ongoing operations are subject to the Commerce Act.** Without providing an explicit direction that the Commerce Act will apply, there could be uncertainty on how the Act applies to an ACE that is operating for a primarily non-commercial purpose, in accordance with a statutory mandate. We consider this approach would appropriately clarify that the Commerce Commission could hear complaints if there were concerns ANZPM was engaging in anti-competitive behaviour, or could choose to proactively investigate ANZPM’s activities.
- 239 In addition, we agree with the RBA’s concern that it would be inconsistent with the policy intent for ANZPM to be able to advertise any commercial services on the pre-existing RNZ services provided for in sch 1 cl 8. We therefore **recommend this**

clause is clarified to ensure ANZPM cannot promote content delivered on a commercial basis on the pre-existing RNZ services provided for in this clause.

240 In relation to some of the other specific comments and proposals made by submitters:

- We do not agree that the bill should require ANZPM to outsource production, as such a provision would be difficult to implement and monitor in a way that does not unduly restrict ANZPM's ability to make choices about how best to deliver content. In addition to the recommended provisions for ANZPM to take account of other services, such an expectation could be set outside the legislation – for instance, in the Letter of Expectation - and form part of ANZPM's monitoring framework.
- Similarly, any statutory restrictions on how public funding could be used, or requirements to separate public and commercial funding (including in relation to ANZPM's organisational structure) are unlikely to be practical, and would likely lead to significant complexity and inefficiencies. We also note that this is not a requirement in relation to other ACEs that deliver both commercial and non-commercial services such as Te Papa (which operates in the conferencing and catering markets).
- As noted above, we do not agree that there is a need for additional oversight or transparency measures over and above the Commerce Commission's current oversight role - including expanding the Commission's current role to provide additional oversight - as this would restrict the Commission's discretion to allocate its limited resources to cases where it considers it can have most impact across the economy. It would also be an unusual role for the Commission, which ordinarily focuses on competition in markets or economic regulation of profit-orientated monopoly providers.
- While we note that a number of submitters raised comparisons with the obligations placed on the commercial activities of public media entities internationally, comparisons need to consider the size and scale of commercial activities undertaken by public media internationally. For example, the BBC and ABC have significant production arms, and earn commercial revenue at a level ANZPM will not reach.

Impacts of transferring funding from NZ On Air

241 In relation to the impacts of transferring NZ On Air funding to ANZPM, we have provided advice to the Committee to clarify that:

- the \$84.8 million of redirected funding from NZ on Air is not all contestable funding for content - \$42.6 million of this funding currently funds RNZ as a platform. Of the remaining \$42.2 million, \$2.2 million currently goes directly to TVNZ. In total, \$40 million of funding that other platforms could be eligible to

benefit from will go from NZ On Air's contestable funding pool directly to ANZPM

- this is significantly less than the funding that RNZ and TVNZ have benefitted from as commissioning platforms in recent years – for instance RNZ and TVNZ received total platform funding and benefitted from total contestable funding of \$97.4 million in 2021/2022 and \$93.3 million in 2019/2020. Therefore, this reallocation of funding does not reduce the amount of funding available for other platforms - as this was funding that would have likely gone to TVNZ or RNZ anyway
- in terms of content producers, the intent is that there will be significantly more contestable funding available than ever before, given new funding of \$109 million per year for three years into ANZPM, as well as \$40 million per annum for Māori media through Budget 2022.

242 The bill makes no changes to the role of NZ On Air or Te Māngai Pāho. Both will be expected to continue to fulfil their statutory mandates.

243 However, the bill recognises the importance of the three entities working in a coordinated way to help maximise the overall effectiveness of government investment in content, and creates a statutory obligation for each of those entities to have regard to the funding/commissioning policies of the other.

244 Manatū Taonga notes that cl 18 is based on the existing clause in the Broadcasting Act that requires NZ On Air and Te Māngai Pāho to have regard to each other's funding policies. It gives the three entities significant flexibility to decide how that requirement should work operationally, without cutting across their statutory independence. We do not recommend any further expansion of the clause to specify how it would be used, or to include other funding entities.

245 We also note that s 50 of the Crown Entities Act will require the board of each of these entities to ensure the entities perform their functions in collaboration with other public entities³ where practicable – further supporting coordination between ANZPM, NZ On Air and Te Māngai Pāho, as well as other public entities.

7. Manatū Taonga recommends:

- a. giving ANZPM's board a collective duty to ensure that ANZPM takes account of services provided elsewhere in the broader media ecosystem to support the capability, capacity and sustainability of that ecosystem

³ As defined in the Public Audit Act – which includes the Crown, offices of Parliament, Crown entities, government departments, and local authorities.

- b. clarifying in the bill that ANZPM's ongoing operations are subject to the provisions of the Commerce Act
- c. clarifying in sch 1, cl 8 that pre-existing RNZ services cannot carry advertising for ANZPM's commercial services

PROACTIVELY RELEASED

1.8 Clarify how ANZPM should collaborate within the media ecosystem

Issues

- 246 Submitters generally strongly supported the bill's inclusion of a requirement for ANZPM to collaborate with other media organisations, on the basis that this would help ensure ANZPM did not focus on generating commercial revenue at the expense of the wider sector or cut across provision by other media entities delivering public media content.
- 247 Some submitters did not think that the clause went far enough to capture the original policy intent, or generally thought the intent of the provision needed to be clarified. For instance, Sky recommended that the clause include wording from the bill's general policy statement to support a diverse, capable, and resilient media ecosystem to provide a clear objective for ANZPM, and also wanted ANZPM to "support" other media entities. Koi Tū thought that the word 'co-operate' rather than 'collaborate' would signal a more equal form of engagement, as originally intended. RBA thought the clause should require ANZPM to have a positive impact on the sector or else "do no harm".
- 248 A number of submitters wanted collaboration requirements to be included as part of ANZPM's charter. RBA submitted that the Charter and the board's duties should both specify the need for the entity to collaborate with all New Zealand media to build a stronger, healthier and sustainable New Zealand media sector. Sky also recommended that a matching function and operating principle be added to the charter.
- 249 Other submitters were concerned that the bill did not provide enough specificity as to what the collaboration requirement would look like in practice, and wanted greater detail set out in the bill. For instance:
- Peter Thompson submitted that the bill should provide specific details as to the scope of the activities that constituted collaboration – such as external commissioning, or content sharing, the intended purpose of such practices – such as increasing diversity, minimising duplication or preventing distortion and the range of entities that the requirement applies to.
 - MediaWorks asked for collaboration to be defined, and/or operational details, including the expected principles, parameters and measurement mechanisms for collaboration to be included in the bill.
 - MediaWorks, NZME, Allied Press and the News Publishers Association wanted this clause to include a more specific requirement that ANZPM make its content available free of charge for other entities within a reasonable time period. The News Publishers Association wanted to see a particular focus on news content

being made available. Other submitters wanted to ensure RNZ's current high level of content sharing and initiatives such as the local democracy reporting scheme are continued.

- Warner Bros. Discovery also wanted the clause to specify that ANZPM should share content and resources wherever possible – for example sending one camera operator to scheduled events and sharing content produced.
- A number of production sector organisations including Greenstone TV and the Collective of Independent Drama Producers submitted that the clause should be explicit on what content ANZPM could produce inhouse (news, current affairs sports and unscripted shows) with all other content to be outsourced to the other entities.
- Some submitters including SunPix Ltd and Tara Ross wanted the clause to clearly ensure entities could work with ANZPM without functions being duplicated, especially in the Pacific media sector.
- Community Access Media Alliance submitted that the ANZPM bill should include safeguards to ensure that content that is hyperlocal, independent, and made by niche communities are protected.
- Some submitters suggested the clause should explicitly include a role in building capability and providing training, infrastructure and development opportunities.
- Whakaata Māori saw collaboration specifically including co-productions, collaborative projects and initiatives, shared resources and partnership opportunities.

250 Some submitters wanted clarification of who was included in the phrase *Māori media entities and other media entities* or were concerned that this phrase excluded key groups. For instance:

- a number of submitters from the independent production sector, including SPADA and Greenstone TV, wanted the clause to specify that collaboration was required with the independent production sector on the basis that the current clause does not clearly include this group.
- SOUNZ and APRA suggested the wording of the clause should be expanded to include content creators.
- Peter Thompson and Whitebait Media suggested that collaboration should extend to public sector and community organisations such as education organisations and non-media civic organisations to involve them in programme productions.

- Netsafe wanted to ensure this provision requires collaboration with entities such as Netsafe who operate with a harm prevention focus.
 - a small number of submitters asked for the clause to include collaboration with international entities such as the BBC and ABC.
- 251 Some submitters thought that the clause could be interpreted in a way as to actually lessen competition (for instance if collaboration became collusion). Koi Tū recommended that the clause stipulate that collaboration (or co-operation) must not be used to create market dominance or reduce opportunities for the private sector.
- 252 Other submitters were concerned about whether the clause could impose too broad an obligation on ANZPM that could interfere with its delivery of the charter or other statutory responsibilities. For instance:
- Koi Tū was concerned that the provision could compel ANZPM to undertake courses of action that it did not want to take or could be compelled through other work (such as the Māori media sector work programme) that would require a disproportionate share of its resources or outputs. It recommended that cl 17 and 18 include a caveat that collaboration should be consistent with the overall objectives and functions of ANZPM (not just limited to the charter).
 - TVNZ was concerned that the clause should clarify that collaboration does not prevent ANZPM from meeting government expectations to earn commercial revenue.

Response

- 253 The requirement for ANZPM to collaborate with other media entities reflects Government's intent that ANZPM have a positive influence on the capability, capacity and sustainability of the broader sector. Cl 17 is intended to:
- help address concerns about the potential impacts of a large public media entity, funded partly by commercial revenue, on the viability and sustainability of other media entities
 - acknowledge that public media content is also provided by community and private sector media organisations, and these organisations make a valuable contribution to public media outcomes by reaching specific audiences and providing a wider range of views and perspectives.
- 254 Given this intent, the focus of the provision on other media entities, or organisations who are part of the media sector, Manatū Taonga does not agree that the provision should name particular groups or organisations, nor be expanded to cover groups beyond those in the media sector, as that is not the intent of the provision.

- 255 We also do not think it is appropriate for ANZPM to be given a specific requirement to collaborate with the independent production sector, given ANZPM will often be entering into contracts with these individuals and organisations. We note that the proposed new requirement for ANZPM to take account of services provided by others elsewhere in the media ecosystem (see **Section 1.7**) will help address the concerns raised by the independent production sector about the possibility that ANZPM will bring all its content production in-house.
- 256 In addition, Manatū Taonga does not agree that a requirement to collaborate should become part of ANZPM's charter. Instead, it should remain subordinate to ANZPM's delivery of its charter and support it to do this. This is to ensure that ANZPM is not required to collaborate in ways that undermine its sustainability or its ability to deliver on its charter, or that ANZPM is not prevented from generating sufficient revenue to deliver its charter – recognising that this will sometimes require the entity to act in competition with other media organisations. We agree with submitters who thought such an approach could result in ANZPM being pressured or having to commit to activities that did not align to the delivery of its charter obligations.
- 257 However, after considering submitters' feedback we agree with Sky and other submitters that the provision could better capture the original objective. We therefore **recommend that the bill clarify that ANZPM should be required to collaborate in a way that positively influences the capability, capacity and sustainability of the broader ecosystem** – rather than simply requiring it to collaborate with other media entities with no stated objective. We also think this would help to clarify that the intent is not for ANZPM to collaborate in a way that would lessen competition or be contrary to the relevant provisions of the Commerce Act (e.g. it should not be used to fix prices, restrict output or allocate markets).
- 258 In addition, in light of the feedback, we **recommend framing the collaboration provision as an operating principle** (outside the charter) rather than as a standalone provision as it is now. In our view, this would better capture the policy intent by setting the expectation for the way ANZPM should operate when carrying out its functions, rather than what it must do under a particular duty. We also **recommend that the board has a collective duty to ensure ANZPM acts in accordance with this operating principle when carrying out its functions**. This will give the requirement to collaborate sufficient status and the ability to set clear accountability measures through the Crown Entities Act framework.
- 259 We do not think any further provision in the bill for how collaboration would work is needed. This will give ANZPM the flexibility to decide how best to collaborate with particular media entities and in particular circumstances. We note that work is currently underway in conjunction with NZ On Air and Te Mangāi Pāho, as well as in relation to the strengthening Māori media work on ways in which ANZPM could work collaboratively across the media sector consistent with delivery of its statutory objectives and reflecting its editorial independence.

260 However, to ensure it is clear that ANZPM's collaboration activities should not involve anything that would breach the Commerce Act (such as allocating markets or enabling cartel-like behaviour) we recommend clarifying in the bill that the requirement to collaborate is not an exemption under s 43 of the Commerce Act - which provides that the Commerce Act does not apply to anything specifically authorised by other legislation.

8. Manatū Taonga recommends:

- a. amending cl 17 to become an operating principle that ANZPM collaborates in a way that positively influences the capability, capacity and sustainability of the broader ecosystem, where this is consistent with ANZPM's delivery of its charter and with s 51 of the Crown Entities Act; and to give ANZPM's board a collective duty to ensure ANZPM operates in accordance with this principle
- b. clarifying in the bill that the requirement to collaborate is not an exemption from the Commerce Act under s 43.

PROACTIVELY RELEASED

1.9 Clarify what pre-existing services remain commercial free

Issues

- 261 There was strong support for the provision that RNZ's current radio services RNZ National and Concert must continue commercial free following the transition to ANZPM, for as long as they continue to be provided. However, it was apparent that there was confusion about the effect of this clause.
- 262 Many submitters wanted to clarify what specific RNZ services this clause covers – for instance, there were a number of submitters seeking reassurance as to whether this clause captured all of RNZ's current services, and a number of submitters sought clarification whether the clause included RNZ's current online content.
- 263 Other submitters were concerned that the clause didn't guarantee ongoing provision of RNZ's services – for instance Asia Pacific Media Network Inc were concerned that there was no provision to ensure current radio services continued commercial free permanently.
- 264 A small number of submitters, including Kushlan Sugathapala, suggested current RNZ content should be permitted to take commercial advertising to ensure taxpayers are not having to fund the entity.
- 265 Submitters questioned the application of the clause if RNZ's services changed in the future, for instance:
- Better Public Media and its supporters identified the websites of RNZ and TVNZ as a potential area of conflict. They were concerned that, if the provision of the websites merged in the future, it would be unclear if the merged website would still be provided on a non-commercial basis. A similar concern was raised by Shit You Should Care About (SYSCA) and the Spinoff in relation to podcasts.
 - Some submitters thought that, if ANZPM choose to provide a different radio service on RNZ's current frequencies, that service should also be provided commercial free.
- 266 There was also a concern from current RNZ listeners that advertising for television content could appear on radio services that currently only signal upcoming radio shows.
- 267 Beyond provision of RNZ's existing services, a number of submitters wanted the bill to specify what other ANZPM services would be commercial free, and others wanted to broaden commercial free provision to TVNZ's or other services – this is discussed in more detail in **Section 1.3**.

Response

- 268 As noted above, consideration of matters relating to when services should be provided on a non-commercial basis are set out in **Section 1.3**.
- 269 The Government's intent is for cl 8 of sch 1 to ensure that, where ANZPM continues to provide the specific services that are currently provided on a commercial-free manner by RNZ, it must retain their commercial-free status. However, the clause does not:
- require ANZPM to continue to provide these services
 - prevent advertising about ANZPM's own services, a continuation of the approach currently provided for in the Radio New Zealand Act.
- 270 Manatū Taonga does not recommend that the clause commit ANZPM to continue providing RNZ's current services indefinitely – it is important that ANZPM has the ability to make choices about its future services in line with its editorial independence, and its need to earn commercial revenue to support delivery of these services. As some submitters pointed out, it is also important that a range of audiences benefit from commercial-free provision, not just the ones who currently benefit from RNZ's services.
- 271 Manatū Taonga also does not recommend that the scope of the clause is broadened to provide additional services commercial-free, where they are currently delivered on a commercial basis. The clause is a savings provision that applies to RNZ's current services, as ANZPM is established and sets its future content strategy.
- 272 However, the intent is not for ANZPM to simply commercialise all its services over time. This should be clarified through our recommendation in **Section 1.3** which would require ANZPM to continue to provide some advertising and sponsorship free services in the future, without predetermining what those services may be.
- 273 We agree with submitters that there could be some confusion caused in determining what a current RNZ service is, for instance:
- what "substantially the same" means in this context – that is, what degree of change would be required before a service was no longer considered substantially the same
 - what constitutes a "service" – e.g. whether the RNZ website is a service. The clause does clarify that a means of transmission is not a service, therefore ANZPM would not have to provide all radio services or all website content commercial-free under the current clause.
- 274 We think the bill could be strengthened by articulating specifically what services the clause refers to, in order to avoid the two areas of uncertainty above.

275 On that basis, **we recommend the clause specifies that the following must be provided commercial free**, for as long as ANZPM continues providing them:

- the current RNZ National, Concert and Pacific radio services
- the current www.rnz.co.nz website.

276 In relation to RNZ's website, this clarifies that, as long as ANZPM continues to provide this website (using this URL), it will be provided commercial-free. However, this does not mean TVNZ's website will have to be commercial-free if ANZPM continues to provide this service, and ANZPM can set up new websites either on a commercial or a commercial-free basis.

277 In relation to the current National and Concert services, this approach aligns with the conditions placed on the radio licenses provided for the running of each service under the Radiocommunications Act 1989. S 175(2)(b) of the Act provides *that no advertising programme shall be broadcast on either frequency, when it is used for the purposes of any service by FM Concert and National Radio*. This condition is attached to the services for as long as ANZPM continues to hold the licences. If ANZPM chose to stop funding National and Concert, the current conditions of the licenses would lapse, meaning ANZPM would become liable for annual levies on each license, consistent with all commercial media entities (when providing commercial-free services on each of those frequencies, no levy is required).

278 We have addressed concerns that internal advertising could increase on commercial-free services in **Section 1.7** above.

9. Manatū Taonga recommends:

- a. Amending sch 1, cl 8 to specify that the current RNZ National, Concert and Pacific radio services and the current www.rnz.co.nz website must be provided commercial free, for as long as ANZPM continues providing them

1.10 Clarify and improve provision for transitional arrangements

Issues

279 Some submitters raised specific matters relating to the transitional and savings provisions set out in sch 1 of the bill.

Employment provisions

280 A number of submitters were concerned about ensuring all staff, particularly RNZ presenters were retained within ANZPM on an ongoing basis, to ensure continuity of services. Staff was concerned that “there is nothing in the Bill that protects journalism jobs in this new entity,” particularly if rationalisation occurs within ANZPM.

281 The Public Service Association (PSA) submitted that the current transfer of employee provisions does not provide for the continuation of non-statutory service-related terms and conditions in employment agreements. They also raised concern that sch 1, cl 15 does not provide sufficient detail on who collective agreements would apply to within ANZPM, risking unnecessary uncertainty for employees about their terms and conditions.

282 The PSA also raised concerns that cl 14 has the ability to replace collective agreement provisions on redundancy in the case of redeployment within ANZPM with less favourable terms.

283 TVNZ submitted that:

- the application of part 6A of the Employment Relations Act 2000 should be explicitly excluded under cl 11 on the basis that the equivalent transfer provision under s 86 of the Public Service Act 2020 does override Part 6A of the ERA
- under cl 12 the term “new position” could be confusing when the intent of the Bill is for employment to be continuous, suggesting that the clause could refer to a move from the “pre-commencement media company” to “ANZPM” to better reflect the intent and that this would be a similar approach to sch 1, s 25 of the Pae Ora (Healthy Futures) Act 2022.

Final reporting obligations

284 TVNZ, RNZ and the Office of the Auditor-General sought clarification on final reporting obligations for TVNZ and RNZ, with a view to avoiding unnecessary costs and complexity during the transition process:

- RNZ was concerned that cl 45(K) of the Public Finance Act requires a final report (for the period between 1 July 2022 and the establishment of ANZPM on 1 March 2023), no later than 1 June 2023 (three months after the entities cease being required to provide reports). It recommended that the bill is amended to provide both entities additional time to provide final reports under the Public Finance Act.
- TVNZ submitted that the bill should require both TVNZ and RNZ to prepare full audited financial statements for the 8 months ending 28 February and that the first set of ANZPM audited financial statements should be prepared for the 16-month period ending 30 June 2024.

285 The Office of the Auditor General also submitted that the bill is not clear as to what the final reports needed to include, or who would be responsible for signing the associated statements of responsibility, as the Directors and Chief Executives cease on 28 February 2023.

Freeview shares

286 Warner Bros. Discovery submitted that, by transferring RNZ and TVNZ's shares in Freeview, ANZPM will hold 49.9 percent of the shares – and when Whakaata Māori is included, Government-owned broadcasters will have an almost 68 percent shareholding. They asked for further thought on the future of Freeview.

Assets and liabilities

287 A number of submitters, including the Office of the Auditor General and TVNZ, suggested the bill could be strengthened by clarifying responsibility for liabilities. TVNZ's view was that, as currently drafted, the responsibility for liabilities remains with the TVNZ subsidiary rather than transferring to ANZPM. Their view was that this would have the effect of leaving the TVNZ subsidiary (as it will become from 1 March 2023) with outstanding liabilities without the assets or means to perform its obligations, effectively rendering TVNZ insolvent. They suggested that the timing of the transition either be sequenced to provide additional time to have agreements in place, or the Bill explicitly provide for TVNZ's liabilities to transfer to ANZPM on commencement.

288 RNZ submitted that the preservation of the legal position of RNZ and TVNZ should be clarified. For example, it is their view that under sch 1, cl 7(1)(b), RNZ and TVNZ would continue to be responsible for certain obligations while all property and assets would be transferred to ANZPM.

289 The Office of the Auditor General submitted that the term 'property' has not been clearly defined, to provide certainty as to whether all current and non-current assets in RNZ and TVNZ's statements of financial position are included. It also submitted that it is how unclear how future revenue recognition will work, and requested more

clarity on how ongoing liabilities carried by the subsidiaries will be met if ANZPM is entitled to the revenue and cashflows.

International agreements

290 TVNZ submitted that the provision deeming that establishment of ANZPM does not affect international agreements may be ineffective where international agreements are governed by laws outside of New Zealand.

291 TVNZ also submitted that, if the TVNZ subsidiary retained the ownership of international contracts, it would also need to retain the necessary employees and infrastructure to discharge its contractual obligations.

Transition process

292 TVNZ proposed that, to establish ANZPM, TVNZ and RNZ could simply be amalgamated under the Companies Act. Its view was that this would reduce the complexities associated with the current approach, reduce the resources required to formally effect the transfer of rights and obligations, and reduce the need to obtain the consent of contracting parties to agree to engage with a new entity, avoiding disruption. This approach would mean ANZPM becomes a Crown entity company rather than an Autonomous Crown Entity.

293 TVNZ also wanted sch 1, cl 17 to refer to the dissolution of subsidiaries to align with the purpose clause of the bill to “dissolve RNZ and TVNZ.”

Tax issues

294 Through the transition planning work, Manatū Taonga identified a number of proposed changes to the bill in consultation with IRD to ensure the proposal is tax-neutral manner, without any tax costs (or benefits) arising solely from any restructuring.

Response

295 The Government intends that the transition from RNZ and TVNZ to ANZPM should be as efficient as possible, while providing certainty for employees and the broader media sector, continuity of service for audiences, and giving ANZPM adequate time and flexibility to resolve more complex contractual issues.

296 The transitional arrangements in the bill are intended to reflect that the Crown remains the ultimate owner. The transfer of staff, assets and functions to the new entity should have no impact on ANZPM’s overall financial position relative to RNZ/TVNZ. In addition, the bill intends to have no impact on TVNZ and RNZ staff entitlements or continuity of service (with the exception of both Chief Executives).

Employment provisions

- 297 Manatū Taonga does not agree that any provision should be made to ensure ANZPM retains all staff, including its journalists, on an ongoing basis. While there is no intent for a reduction in staff numbers as a result of this proposal, this should be an operational decision for ANZPM.
- 298 Our view is that the current provisions provide sufficient certainty in relation to continuation of non-statutory service-related terms and conditions in employment agreements.
- 299 The Government's intent is for all contractual obligations owed by a pre-commencement company (i.e. TVNZ and RNZ) to continue as if this bill had not been passed. This approach has been provided for in sch 1, cl 7, which provides that any contractual arrangements that are owed to another person will continue, and any reference in those contracts will be read as a reference to ANZPM.
- 300 Cl 7 therefore ensures that collective agreements will transfer to ANZPM, including the continuation of non-statutory service-related terms and conditions in those agreements, as they are contractual arrangements entered into by either TVNZ or RNZ.
- 301 Until any new round of collective bargaining by ANZPM, as would have occurred under the current entities, collective agreement terms and conditions will continue to apply (with one exception as set out below).
- 302 We understand some individuals within the current entities may have employment agreements that state that an individual's position sits at a particular tier within the organisation. The establishment of ANZPM could mean that their tier moves down a level (while not impacting on their remuneration or any other conditions), creating a situation where the terms and conditions of their employment have been changed. This situation could occur following an interim Chief Executive being appointed, with ANZPM simultaneously choosing to employ the current Chief Executives in some capacity for transitional purposes.
- 303 We do not consider this situation to be a substantive change to the terms and conditions of an individual, as their remuneration and responsibilities would both remain the same. We therefore recommend clarifying in the bill that where any employment agreement refers to the employee being employed at a particular tier, the employee will still be considered to be employed on the same terms and conditions if they are moved to a position at a lower tier on establishment of ANZPM.

Cl 14, sch 1 – other restrictions on redundancy payments

- 304 Cl 14 sets out restrictions on when redundancy payments will be made. This provision is intended to apply as and when ANZPM employees are moved into positions in ANZPM's new structure (after being transferred over to ANZPM on 1 March in their existing positions).

- 305 The conditions of the clause mean that, where this is the first redundancy for an ANZPM employee, redundancy will not be paid if the employee is offered a position with comparable duties and responsibilities to their previous role. This is intended to apply a clear and consistent approach to ensure all employees are treated the same, and to clarify their rights during this period.
- 306 This provision does not override the Employment Relations Act 2000 (ERA), nor specify the operational or financial decisions ANZPM can make. ANZPM still has to act in good faith and reasonably, in accordance with the ERA, which usually requires meaningful consultation with employees about any restructuring.
- 307 However, we agree with the PSA's submission that the clause does have the effect of cutting across any collective or individual employment agreement if that agreement sets out more favourable redundancy conditions for when an "alternative" position is offered. For instance, we understand that some contracts may enable an employee to trial an alternative position for a period of time before deciding whether to accept it or choose to take redundancy.
- 308 The intent is for no employee to be worse off as a result of restructuring. When individuals are redeployed into a comparable role on the same terms and conditions (which would include their favourable redundancy rights for any future redundancy), then they are no worse off than they would have been prior to the transition. We therefore do not recommend any changes to the provision to ensure that the same provisions apply to all employees when they are first redeployed into ANZPM's new structure.
- 309 This approach ensures ANZPM is not required to pay redundancy in situations where an employee is offered a comparable role. It also provides all staff with certainty, and a consistent approach to redundancy in the first instance. We note that ANZPM could choose to honour redundancy provisions in employment agreements at an operational level, as this approach is not prevented by the legislative provisions. We also note that, if an employee's contract does include more favourable redundancy conditions, those conditions would still apply to all future redundancies in ANZPM – just not the first redundancy.
- 310 We have also considered whether an end date should be added to cl 14 to provide certainty to all employees. Without an end date, there could potentially be inconsistent treatment of employees. Employees who were there for the first restructure following establishment would have the redundancy provisions in their employment agreements apply to any subsequent redeployments. However, new employees who commence employment after the first restructure would be subject to cl 14, and their employment agreements relating to redundancy wouldn't apply. This would not be consistent with the intent of the provision, which is to provide certainty in the first instance of restructuring, rather than to provide ANZPM with an ongoing mechanism to be able to limit its obligation to pay redundancy. We therefore **recommend adding a "sunset clause" to this provision.** We consider 30 June 2026 to be an appropriate date to coincide with the end of establishment funding.

Other issues raised by TVNZ

311 In relation to other issues raised by TVNZ:

- we do not agree that part 6A of the Employment Relations Act 2000 (ERA) should be explicitly excluded under sch 1, cl 11. This is because part 6A of the ERA (and s 86 of the Public Service Act) relates to restructuring, while cl 11 of the bill relates to technical redundancies. Part 6A of the ERA therefore has no application, and so it is unnecessary to disapply. Cl 14 of the bill however does deal with restructuring, and 6A has therefore been disappplied
- we agree with TVNZ's submission that the use of the term "new position" in sch 1, cl 12 could be confusing when the intent of the bill is for employment to be continuous and positions are meant to be effectively the same. **We recommend the committee asks PCO to consider how the clause could be clarified** to make clear that the role at ANZPM is essentially the same role they have at the pre-commencement company, not a new title or job description.

Final reporting obligations

Final report

- 312 The Public Finance Act 1989 (PFA) sets out the final reporting requirements for RNZ and TVNZ. We have considered whether either section 45J or 45K of the PFA apply to TVNZ and RNZ on 1 March 2023 when ANZPM is established and both entities are converted to subsidiaries. Section 45J sets out the requirements for disestablished entities providing a final report, while 45K sets out the requirements for a final report for entities that cease to be subject to requirement to provide an annual report.
- 313 In our view, neither section applies in this situation. This is because both TVNZ and RNZ will remain on the companies register, as they did before the commencement of ANZPM. The disestablishment date for both entities will be determined by ANZPM's board, as provided for in sch 1, cl 1. On this basis, neither entity is disestablished on 1 March 2023, therefore 45J does not apply.
- 314 TVNZ and RNZ will continue as subsidiaries, and will remain Crown entities. Crown entities are subject to reporting requirements, however, s 156A of the Crown Entities Act allows a parent Crown entity (in this case ANZPM), to consolidate its information and that of its subsidiaries as a Crown entity group for reporting purposes. On this basis, neither entity ceases to be subject to reporting requirements, the information is instead included in the partner report, and s 45K does not apply either.
- 315 Our view is that, if no provision is provided for in the bill, on 1 March ANZPM could consolidate the annual report of all its subsidiaries as a Crown group, and therefore no final reports would be required for either TVNZ or RNZ. Instead, the information would be included in ANZPM's first annual report in the year to 30 June 2024.

- 316 However, given the establishment of ANZPM will have a substantive impact on the ongoing operations of both entities, we **recommend that the bill require each entity to undertake an interim final report following the establishment of ANZPM**. This approach would mean there is a 'snapshot' of each entity's position as at 28 February 2023, to provide ANZPM with a clear picture of each entity and provide public transparency. Without such a provision, reporting information would not be required until three months after 30 June 2024, leaving a significant gap in reporting. An 'interim' final report would need to include the same information as if it was a final report for the purposes of the Public Finance Act, and be prepared as if it is an annual report. S 45J would then apply to each entity at the point in which they are disestablished.
- 317 While an annual report would normally be required no later than three months after the end of the financial year, we consider it appropriate to specify a later date for the provision of an interim report to give each entity sufficient time to produce this report. We consider 30 September 2023 appropriate, which is six months after the establishment of ANZPM.
- 318 We believe this approach would also address the Office of the Auditor-General's concern about who would be responsible for signing off each report, as both TVNZ and RNZ are continuing as subsidiaries during this period.

First annual report of ANZPM

- 319 The first annual report of ANZPM is governed by s 45 of the PFA. This section allows for the Minister of Finance to exempt a new entity from providing an annual report if it is established during the last four months of the financial year. The information on the first four months would then be included in the financial statements of the year to 30 June 2024.
- 320 We do not recommend including a specific provision in the bill, as the Public Finance Act 1989 already gives the Minister of Finance the ability to provide an exemption should one be required. We consider the use of the Public Finance Act provisions the appropriate way for such an exemption to be sought via the Minister of Finance.

TVNZ half yearly report

- 321 TVNZ is required to produce half-year financial statements with unaudited accounts within two months after the first six months of each financial year as set out in s 24 of the TVNZ Act. The work to complete these accounts will need to be substantially completed by the time the bill is expected to be passed, with a report due on 1 March 2023. Removing this requirement would mean there would be a gap in the reporting provided by TVNZ during the financial year.
- 322 Based on advice from the Treasury as TVNZ's lead monitoring agency, we do not consider there should be a provision to remove this reporting requirement as it is important to support the ongoing monitoring of TVNZ.

Freeview shares

- 323 RNZ and TVNZ's shares in Freeview transfer to ANZPM as set out in sch 1 of the bill. However, the current wording is ambiguous and could be interpreted to include the transfer of all shares (including those of Warner Bros. Discovery and Whakaata Māori) to ANZPM.
- 324 The bill does not intend for ANZPM to be the sole shareholder of Freeview, nor would it be appropriate for ANZPM to arbitrarily receive the shares of other media organisations, who are otherwise not included in the establishment of ANZPM. We **recommend the bill is clarified to provide certainty that only RNZ and TVNZ shares transfer.**
- 325 We note Warner Bros. Discovery's view that further intervention into the future of Freeview is required, however this is outside the scope of the current bill. We also note that the overall proportion of shares held by Government-owned media entities does not change as a result of ANZPM's establishment.

Assets and liabilities

Liabilities

- 326 While the bill does not specifically reference liabilities, sch 1, cl 7 provides that:
- any contractual rights (which includes liabilities) that either TVNZ or RNZ owe to another person will continue
 - any reference to TVNZ or RNZ in those contracts will be read as a reference to ANZPM.
- 327 The view of Manatū Taonga is that this is sufficiently clear to ensure liabilities transfer to ANZPM.
- 328 The approach in the bill would not require the consent of the other contracted parties. While the liabilities do not transfer, ANZPM is empowered to deal with them as if they were a contract ANZPM entered itself.

Current and non-current assets

- 329 In relation to the Office of the Auditor General's concern about non-current assets, our view is that non-current assets will transfer to ANZPM, under the current provisions of the bill, and no changes are needed.
- 330 Non-current assets comprise assets such as investments and projected income yet to be realised within the accounting year. Such assets are usually governed by some kind of documentation such as a contract, or agreement. In most cases, our view is that non-current assets will therefore be treated as property, and therefore will transfer to ANZPM.

331 If a situation arises when an asset is not considered property, it will still relate to an existing legal position and therefore ANZPM's name must be read into any documentation as provided for in sch 1, cl 7(1)(b).

International agreements

332 The bill reflects the Government's intent that the ownership of international content agreements will not change from TVNZ or RNZ. Instead, the relevant subsidiary will continue to hold the contract, aiming to avoid triggering assignment clauses or an international party deeming the establishment to be a change of control. Sch 1, cl 7 is intended to clarify that a change of control or assignment has not occurred under relevant international contracts to avoid triggering non-assignment clauses.

333 We agree there is a risk that parties to international content agreements may not recognise the legislative effect of the transitional arrangements provided for in the bill. However, as the relevant contracts will be outside of New Zealand jurisdiction, there are limited mechanisms available to reduce this risk, other than what has already been provided for in the bill.

334 We therefore do not recommend any changes to the bill. However, Manatū Taonga will continue to work with TVNZ, which has been reaching out to international parties to discuss novation of the relevant contracts to ANZPM.

335 We disagree with TVNZ's view that the TVNZ subsidiary will need to retain the necessary employees and infrastructure to discharge its contractual obligations under those contracts. ANZPM will be in a position to provide a downstream guarantee to international parties for the liabilities the subsidiary has under international agreements. It will also be able to provide financial resource or access to its contracted services (such as transmission) either by ANZPM board resolution or with delegated authority to management. These arrangements can be made from ANZPM to the subsidiary to ensure it has appropriate funds available to pay all liabilities. We therefore do not recommend any change to the proposed approach.

Transition process

336 We do not agree that ANZPM should be established via amalgamation. We note that, while amalgamation may remove some of the complexities involved in the transition process, it would have to occur under the Companies Act and would require ANZPM to be a Crown entity company. However, as outlined in **Section 2.1** below, the Crown entity company form does not align with Government's intent for ANZPM to be a predominantly public media focused organisation.

337 We also disagree with TVNZ's view that sch 1 cl 17 needs reference to the pre-commencement media companies. This clause is designed to set the dissolution date, however it does not provide for what happens on that date. Sch 1, cl 18 and 19 set out the transfer of any remaining international agreements after dissolution and the removal of pre-commencement media companies from the companies

register, both of which reference the pre-commencement companies. We therefore do not recommend any changes to this provision.

Tax issues

- 338 Manatū Taonga has worked with IRD and the Treasury to consider the tax implications for both the establishment of ANZPM and its ongoing operations, and whether provision needs to be made for this in the bill.
- 339 As context, the general tax policy approach to facilitate restructuring to achieve government policy objectives has been to provide transitional tax relief via legislation. This approach ensures that government-mandated reforms are carried out in a tax-neutral manner without any tax costs (or benefits) arising solely from any restructuring. General tax rules then apply going forward.
- 340 In the absence of a legislative amendment, the transfer of RNZ and TVNZ's assets to ANZPM will have tax consequences. For example, the transfer of depreciable property for no consideration may give rise to depreciation recovery income and the transfer of any financial arrangements may have complex tax implications.
- 341 As the establishment of ANZPM will not result in a change in the ultimate economic owner, it would be consistent with general tax policy to provide transitional tax relief to ensure there are no unintended tax costs (or benefits) solely arising from the reform.
- 342 To facilitate a tax-neutral approach, we recommend **treating each of RNZ and TVNZ as the same person as ANZPM for the purposes of all Inland Revenue acts** to ensure there are no income tax or GST consequences arising from the transfer of assets and employees.
- 343 The bill proposes that the shares in RNZ and TVNZ, and the shares in their subsidiaries, will be transferred to ANZPM. Under general tax rules, imputation credits and tax losses can only be carried forward to be used in later years if there has been sufficient continuity of shareholding interests.
- 344 We also **recommend that the transfer of shares proposed in the bill is ignored for the purposes of the continuity provisions in the Income Tax Act**. This will ensure that the transfer of shares will not breach shareholder continuity and that no tax losses or imputation credits will be lost due to the establishment of ANZPM.

10. Manatū Taonga recommends:

- a. adding an "sunset clause" of 30 June 2026 to sch 1, cl 14 to provide certainty in the first instance of restructuring without creating an ongoing mechanism for ANZPM to be able to limit its obligation to pay redundancy

- b. amending the use of “new position” in sch 1 cl 12 to make it clear that this is intended to be the same role as would previously have been held at RNZ/TVNZ
- c. clarifying in the bill that, where any employment agreement refers to the employee being employed at a particular tier, the employee will still be considered to be employed on the same terms and conditions if they are moved to a position at a lower tier on establishment of ANZPM
- d. specifying that an interim final report to 28 February 2023 should be completed by TVNZ and RNZ no later than 30 September 2023, and that the report would be required to contain the same information as a final report provided for the purposes of the PFA
- e. clarifying that the intent of sch 1, 4(1) is not that all Freeview shares transfer to ANZPM, only the ones held by RNZ and TVNZ
- f. clarifying that RNZ and TVNZ are to be treated as the “same person” as ANZPM for the purposes of all Inland Revenue acts
- g. amending the bill to ensure that the proposed transfer of shares is ignored for the purposes of the continuity provisions in the Income Tax Act

Section Two: Key issues where changes are not recommended to the bill

345 There were a number of key areas that attracted significant number of submissions but where, after careful consideration, Manatū Taonga does not recommend changes to the bill:

1. ANZPM's organisational form
2. ANZPM's funding
3. Monitoring and reporting
4. Board and governance
5. Treaty of Waitangi clauses
6. Speed of change
7. Scope of the bill and operational considerations.

2.1 ANZPM's organisational form

Issues

346 Many submitters raised concerns with the choice of an autonomous Crown entity (ACE) form, primarily on the basis of a perception that Ministers can exert more influence over ACEs relative to some other entity forms. Most of these submitters were particularly concerned about the ability for an ACE to be directed by the responsible Minister to have regard to a government policy under s 104 of the Crown Entities Act, and how this could impact on the perceived or actual independence of the organisation, particularly in its delivery of news content.

347 The majority of submitters who commented on entity form, including Better Public Media recommended that ANZPM be an independent Crown entity (ICE) on the basis that this would provide the entity increased independence from any Ministerial or political direction and/or interference. The key reasons for supporting the ICE form given by submitters included board appointments being made by the Governor-General (although on the recommendation of the Minister), the Minister needing to have 'just cause' to remove board members, and the Minister having no power to direct ICEs under s 104 of the Crown Entities Act.

348 Some of these submitters expressed a view that, while ICEs typically have a quasi-judicial function, this should not prevent ANZPM from being an ICE. For instance, Better Public Media's view was that ANZPM should have similar levels of independence to the Electoral Commission since it can also affect election

outcomes and noted that, while ICEs don't normally run businesses, they are not explicitly excluded from doing so by the ICE form. Conversely, TVNZ's view was that an ICE form would not be appropriate on the basis that ANZPM would be an outlier as an ICE given that ICEs have regulatory and quasi-judicial roles.

349 A smaller number of submitters, including Allied Press, TVNZ, MediaWorks, NZME and Stuff supported the retention of the current Crown entity company form. Most of these submitters again raised an actual or perceived loss of editorial independence as the reason for supporting the Crown entity company form – again, generally focused on concerns about the Minister's ability to direct ANZPM under s 104 of the Crown Entities Act (this power is not available to Ministers in relation to Crown entity companies). Some submitters saw further benefits for the Crown entity company form, for instance:

- Stuff submitted that the Crown entity company form would provide the relevant Ministerial oversight to ensure the entity maintains commercial discipline
- TVNZ submitted that a Crown entity company form would likely reduce long-term cost to the Crown compared to an ACE, due to the commercial disciplines of the model – while noting that this form was not incompatible with a public media focus (given RNZ is currently a Crown entity company)
- TVNZ also submitted that selection of the Crown entity company form would enable ANZPM to be established through amalgamation of TVNZ and RNZ – and this would mitigate risks to both entities' existing contractual agreements and reduce the complexity of the transition process (the transition process is discussed in more detail in **Section 1.10** above).

350 However, other submitters were concerned about the Crown entity company form and its potential focus on commercial outcomes:

- RNZ did not support the Crown entity company form on the basis of ANZPM's predominantly public media focus.
- Peter Thompson also expressed concern that the Crown entity company form would subject the entity to commercial oversight by the Treasury. His view was that, although ensuring general financial responsibility is entirely reasonable, this would risk diluting public service imperatives via demands for dividends and/or commercial performance. He was supportive of the Bill specifying that the Minister of Finance/Treasury has only a limited responsibility for ensuring ANZPM is not financially mismanaged and will otherwise play a secondary role to Manatū Taonga. He saw this as essential if the charter is to be prioritised, otherwise a similar situation to TVNZ's previous charter arrangements could occur, where the ability to deliver on charter obligations was compromised when a return on dividend was incompatible with public media objectives.

- 351 A number of submitters indicated they would like to see the form change without specifying an alternative option, or that they were comfortable with either an ICE or Crown entity company form. The predominant reason for this view that either of these entity forms would increase the independence of the entity to ensure government could not compromise ANZPM's editorial independence relative to an ACE model.
- 352 Other submitters wanted a different approach to be taken. They did not specify what that approach would look like but wanted it to ensure government could not interfere with editorial independence through the board appointment process, or by cutting future funding.
- 353 Trisha Dunleavy and Warner Bros. Discovery favoured establishing ANZPM as an ACE on the basis that the ACE form supports ANZPM's prioritisation of public media outcomes over a commercial focus. For instance, Warner Bros. Discovery submitted that the requirement for ACEs to act in a manner consistent with the spirit of service to the public and the entity not having obligations under the Companies Act, particularly "to act in the best interests of the company", would reduce the likelihood ANZPM could encourage or prioritise commercial pathways over public media outcomes. Trisha Dunleavy saw the ACE form as "foregrounding" the delivery of the charter rather than commercial outcomes, and meant that Manatū Taonga rather than the Treasury would be responsible for monitoring ANZPM.

Response

- 354 After carefully considering all the submissions, the view of Manatū Taonga is that the ACE form remains the most appropriate for ANZPM, and that the ACE form does not pose any concerns in relation to ANZPM's editorial independence (when combined with the provisions protecting ANZPM's editorial independence in the bill).
- 355 The starting point for this view is that all Crown entities are intended to operate at arm's length from Ministers. The Crown Entities Act 2004 then provides the basis for establishing, governing, and operating all Crown entities. Each Crown entity has a Minister responsible for the performance of a Crown entity (the responsible Minister). The responsible Minister's role is to oversee and manage the Crown's interests in each Crown entity – regardless of that entity's form. This role does not grant the Minister any control over the statutorily independent functions of any entity – however, it does provide a means to hold entities to account for their delivery of their statutory objectives as well as helping ensure they are operating in line with the New Zealand public's expectations of them.

ICE form

- 356 The view of Manatū Taonga remains that an ICE form is inappropriate for this entity. ICEs generally:

- have quasi-judicial or regulatory functions

- have a formal role investigating the actions of government
- do not deliver services
- do not earn commercial revenue.

357 Examples of ICEs are the Commerce Commission, Independent Police Conduct Authority, Electoral Commission, and the Transport Accident Investigation Commission. The Broadcasting Standards Authority, which would have regulatory oversight of ANZPM, is an ICE.

358 This is consistent with Public Service Commission Te Kawa Mataaho's (PSC's) previous advice on this issue. PSC has provided further advice in light of the submissions, noting that:

- where independence is only required for one or a few functions in a proposed agency, such as editorial independence in the case of ANZPM, a statutorily independent function is likely to be more appropriate than an ICE
- the necessary degree of editorial independence will not (and should not) come through ANZPM's form, but through its own enabling legislation
- although not required to "have regard" to government policy, it should be noted ICEs may, like other Crown entities, be covered by "whole of government" directions issued under s 107 of the Crown Entities Act 2004. These generally relate to back office/support service matters and therefore do not conflict with the independent exercise of the entity's specific statutory functions
- from a whole of government perspective, there is a risk of using the ICE form as an unnecessary 'labelling' device as it may undermine the independent functions that exist, through legislation, in agencies that are not ICEs.

Crown entity company form

359 The main concern of Manatū Taonga about the suitability of a Crown entity company form for ANZPM is that it is best suited to entities where there is a predominantly commercial focus. Crown entity companies are also subject to the Companies Act which imposes a duty to act in the best interests of the company.

360 ANZPM is intended to have a primary focus on public media outcomes. While it will be required to earn commercial revenues to support this focus, it is not intended that it aims to maximise its revenue, or generates commercial revenue at the expense of delivering (often less commercially successful) public media content.

361 In our view, there is a clear risk that the Crown entity company form could result in an emphasis on the commercial aspects of ANZPM and the predominant focus on public media outcomes could be lost over time. The Committee heard from some submitters, including Better Public Media, Peter Thompson and Bryan Bruce, about

issues with the operation of TVNZ's charter – where TVNZ's then board and executive were faced with the difficult task of balancing an equal focus on generating commercial revenue with delivery of the public media outcomes set out in a charter. It is important that there is as much clarity as possible that ANZPM's predominant focus should be on delivering the public media outcomes in its charter.

362 We acknowledge that the Crown entity form is currently seen to work well for both TVNZ and RNZ. However, this is because:

- TVNZ already has a predominantly commercial focus
- RNZ has a specific provision in its legislation requiring it to operate in a commercial-free manner.

363 This means that neither entity faces the potential conflicts between generating commercial revenue and delivering public media outcomes that ANZPM will have to manage, with its mixed funding model.

364 In our view, the ACE form is best suited to the public media focus of ANZPM – while allowing it to earn commercial revenue to support that focus.

The ACE form and editorial independence

365 The main concern for some submitters appears to be that, as an ACE, ANZPM can be directed to *have regard* to a government policy by the responsible Minister under s 104 of the Crown Entities Act. (Some submitters also raised concerns in relation to Ministerial involvement in board appointments – this is discussed further in the section on board appointments).

366 It appeared from some submissions that there is a misunderstanding that a Minister can simply tell an ACE to implement government policy in general. However, s 104 only relates to the Responsible Minister directing an ACE following a formal and transparent process (set out in s 115 of the Crown Entities Act) to have regard to a specific government policy, where it relates to the entity's functions and objectives. Contrary to points made in some submissions, the Minister cannot simply pick up the phone and call the entity to direct them to do something, or expect the entity to have regard to government policy generally.

367 There also appeared to be some confusion that other entity forms can never be directed by Ministers. In fact, all Crown entities can in some circumstances be directed by Ministers under other sections of the Crown Entities Act (although not in relation to their statutorily independent functions).

368 To further clarify points made in some submissions:

- the power to direct under s 104 of the Crown Entities Act is a characteristic of an ACE model and applies to all current ACEs including NZ On Air and Te

Māngai Pāho, and all Crown entities forms can be subject to directions under other sections of the Crown Entities Act

- there are similar, and sometimes even stronger, powers given to Ministers to direct media entities in overseas jurisdictions. For instance, in Australia the ABC board has a duty to consider Government policy when required by the Responsible Minister and the responsible Minister can give directions to broadcast a particular matter if they are of the opinion that it is in the national interest (e.g. in the case of a national emergency). In Ireland, the RTE can be directed to refrain from broadcasting any particular matter by the responsible Minister. RTE can also be directed to allocate broadcasting time for any announcement by or on behalf of any Minister of the State. We have previously supplied the Committee with a table comparing these powers in a number of countries.

369 In this context, and considering the provisions in the bill, our view is that the ability of the responsible Minister to direct an ACE under s 104 does not compromise ANZPM's editorial independence for several reasons:

- ANPZM will not be able to be directed in relation to editorial matters or in relation to its delivery of its charter (which contains the majority of ANZPM's objectives and functions that they could be directed on).
- ANZPM only has to *have regard* to any direction given. The PSC provides guidance to ACE boards who have been issued with a s 104 direction about what that requires them to do - including considering the policy concerned and its intent (and if necessary, taking legal advice on what it means for the entity as it relates to the entity's functions and objectives), and giving the policy genuine attention and thought and such weight as the board considers appropriate. Having done that, the board may conclude the direction is not of sufficient significance to outweigh other, contrary considerations which it must consider, in accordance with its statutory functions.
- The transparency and formality of the direction process (including consultation with ANZPM beforehand) means that any direction cannot be done by stealth and lessens the likelihood of any inappropriate direction.
- Providing 'carve outs' from ministerial direction for Crown entities to recognise areas where extra protection is needed from possible Ministerial interference is a very common aspect of the Crown entities framework - for instance NZ On Air cannot be directed on 'cultural matters' (Broadcasting Act s 44(1)) and the New Zealand Symphony Orchestra and Te Papa have similar provisions in their legislation.

370 In conclusion, our view is that the bill should establish ANZPM as an ACE to enable a focus on delivery of its public media outcomes, while being able to be held to account for its statutory objectives and functions, and that the provisions for editorial

independence in the bill (including the recommended changes above) would provide sufficient reassurance that ANZPM will have strong editorial independence.

PROACTIVELY RELEASED

2.2 Treaty of Waitangi provisions

Issue

- 371 A number of submitters commented on the range of sections within the bill that recognise and respect the Crown's responsibility to give effect to the principles of the Treaty of Waitangi. Views in relation to board representation are set out in **Section 2.3** and comments relating to the charter are in **Section 1.4**.
- 372 Overall, submitters were in support of the relevant clauses. Submitters believed it was important for a public media entity to incorporate tikanga and te ao Māori at all levels of the organisation - from board representation, throughout the organisation and by way of the production of content that promotes and supports the use of both tikanga and te ao Māori to its audiences.
- 373 Some submitters wanted the bill to go further. For example:
- the PSA wanted to ensure appropriate principles, policies and measures were embedded at every level of the entity and its charter to enable it to fully deliver on its Treaty obligations.
 - Te Whakaruruhau o Nga Reo Irirangi Māori submitted that the legislation should be expanded to include reo-ā-iwi and revitalisation efforts of hapū and iwi. It also submitted that the legislation should require ANZPM to have regard to Te Taura Whiri o Te Reo Māori and Te Mātāwai's policies and strategies.
 - Kura Productions and Eva and Sam Tamura submitted that there should be ways to ensure equal representation for Māori including te reo programming such as quotas. Kura Productions suggested fifty percent of content should be Māori, with all content to have an element of te reo Māori in it.
 - Kura Productions submitted that any reference to engagement with Māori about *relevant* strategies and policies should be amended to engagement with Māori about *all* strategies and policies.
 - Nga Aho Whakaari Māori in Screen submitted that reference to *engagement* with Māori should be replaced with either *collaborate* or *partner*. It also submitted that the entity should be required to provide equity of objectives, functions and operating principles, and recognise Māori as significant product suppliers.
 - Natasha Tomo suggested that a Māori tikanga-based committee should be established to implement and advise on correct protocols.

- Whakaata Māori submitted that the bill should provide more details on how ANZPM will recognise and provide a practical commitment to the principles of the Treaty of Waitangi including by providing details on:
 - core strategy and targets that improve outcomes for Māori language, content, and Māori audiences
 - processes that create robust, regular and genuine exchange of information with Māori
 - Ministerial expectations setting out Māori outcomes and performance measures
- Te Matawai wanted the bill to formalise a commitment to language revitalisation targets and the key role that the public media sector has in contributing to the Crown's vision of *kia māhorahora te reo* – everywhere, everyway, for everyone.

374 There were also a number of submitters who disagreed with recognition of the Treaty of Waitangi, tikanga, te reo Māori or Māori representation through the legislation. These views generally centred around the following views:

- that no culture should be singled out over others
- not wanting to engage with te reo Māori in content
- that all New Zealanders should have a say in ANZPM's relevant policies and strategies.

Response

375 The bill reflects the Government's view that the entity will be expected to operate in a way that improves outcomes for Māori and help ensure the Crown meets its obligations under the Treaty of Waitangi, through:

- its governance and decision making
- its delivery of te reo Māori me ngā tikanga Māori content and Māori stories to a broad range of audiences
- its provision of content and services to Māori audiences
- the way it works with the Māori media sector.

376 In alignment with Te Arawhiti's guidance *Providing for the Treaty of Waitangi in legislation and supporting policy design*, the bill sets out a number of clear obligations for ANZPM (including in relation to board representation and engagement with Māori) while not imposing impractical or overly onerous

requirements, or impacting on ANZPM's ability to make independent decisions on editorial matters.

377 We do not recommend any changes to remove references to the Treaty of Waitangi, tikanga, te reo Māori or engagement with Māori. These provisions recognise the Crown's obligations under the Treaty and support the entity to deliver on the specific obligations and roles it has in promoting Māori interests, culture and protecting te reo Māori as a taonga.

378 We also do not support changes to the bill that would place more explicit or onerous obligations on the entity as this would limit ANZPM's and its board's ability to decide how best to meet its statutory obligations and/or impose obligations that it would be difficult or impractical to comply with. Specifically:

- we do not agree that references to *engagement* with Māori on relevant strategies and policies should be changed to *collaboration* or *partnering*. The legislation has deliberately used a broad term that, based on the Te Arawhiti guidance, could encompass both collaboration and partnership at different times and for different purposes, depending on the circumstances or nature of the activity in question. It would be the responsibility of ANZPM to determine when different options for engagement are appropriate and should be used based on the significance of the issue for Māori and how they will be affected
- we do not agree it is necessary to include Māori language quotas to ensure ANZPM is delivering to and for Māori audiences – this would be out of line with the principles-based approach taken to the rest of the charter. In our view, key performance measurements for how ANZPM is fulfilling its obligations are more appropriately provided for in the monitoring framework that sits outside the legislation. We note that the current monitoring framework for RNZ does include targets relating to the delivery of Māori language content
- we do not agree that the legislation should require the establishment of specific groups or structures. It should be an operational decision for ANZPM to determine how it will meet its obligations, and sufficient flexibility should be provided for this approach to change over time
- we do not agree language revitalisation targets should be included in the bill. The overarching objective for ANZPM to contribute to valued, visible, and flourishing te reo Māori and tikanga Māori, and corresponding functions to provide content that is in or uses, te reo, promotes tikanga Māori and reflects Māori history, experiences and perspectives to a wide audience are already provided for in the charter. Measures and targets best sit in the monitoring framework outside the bill

- we do not agree that more prescriptive requirements should be placed on ANZPM for how it will achieve its legislative objectives. Such matters are operational decisions for ANZPM.

PROACTIVELY RELEASED

2.3 ANZPM's board

Issue

- 379 A number of submitters raised concerns about the board appointment process and its impact on the independence of ANZPM. For instance, Koi Tū was concerned about the “level of Ministerial influence in the appointment of the board” which it saw as incompatible with the need for demonstrable independence.
- 380 A number of submitters, including Better Public Media and its supporters, favoured an ICE model, as one of the differences with an ACE is for appointments to be made by the Governor-General, on the advice of the responsible Minister. Discussion on entity form is set out in **Section 2.1** above.
- 381 Submitters proposed some ways in which they thought board appointments could better support ANZPM's editorial independence:
- Some submitters wanted appointments removed from Ministers – for instance, Hugh Rennie and Koi Tū submitted that there should be an electoral college that appoints the directors of the entity, which would have representation from across all sections of society. NZME submitted the board should be appointed by independent committee, like in Australia for the ABC. Better Public Media and its supporters recommended that some appointments to the board are not made by the Minister, instead they should be appointed by civil society or other organisations, such as a new Public Media Commission.
 - Te Mātāwai and Better Public Media submitted that the two Māori appointments should be made by consulting Te Mātāwai rather than the Minister of Māori Development, who is currently the same Minister. Better Public Media also submitted that the Minister of Finance's role in appointments should be revised to consider the financial skills of the board as a whole rather than for each member.
 - Some individual submitters wanted public input into the appointment process, either via elections or a share float that enabled representatives to sit on the board, and appointments to be made independently from the political cycle.
 - The Public Media Alliance recommended assurances that members of the board are not “political appointments” and are able to effectively act in an oversight capacity without undue influence from government or corporate interests. They also wanted more details on the appointment process set out in the bill.
- 382 The Taxpayers Union expressed concern that an inability to remove board members for editorial reasons as set out in cl 15(5) could bind an incoming government to a particular board, even if the members are ideological supporters of a previous government. The Taxpayers Union expressed the concern that the clause would

remove the ability for an incoming government to remove representatives who were “committed to the downfall of the incoming government.”

383 Some submitters saw putting conditions on board terms as a way of managing perceptions of government or ministerial influence. For instance, RNZ recommended that ANZPM board members should complete their terms before being replaced (unless they become disqualified from being a member under the Crown Entities Act). Koi Tū also recommended staggered periods for board members to prevent accusations that the board represents the government who appointed them. Bryan Bruce raised concern that there is no time limit on appointments and recommended a maximum term of three years is included.

384 Many submitters also wanted additional requirements in the bill relating to the make-up of the board. For instance, Susan Vincent submitted that the necessary competencies of the board should be set out in the legislation, including oversight of Chief Executive performance, policies and procedures, legal compliance, performance monitoring, entity culture and media expertise.

385 A number of submitters wanted public media or media experience to be specified in the bill as a requirement for the board, for instance:

- Better Public Media and Peter Thompson were concerned the appointment process does not adequately ensure public media skills are provided for and is too weighted towards the entity's commercial role. Peter Thompson recommended the appointment of board members with public media governance experience to ensure ANZPM remains accountable to the public rather than government or advertisers/sponsors.
- the Public Media Alliance also thought it was imperative that the bill specify that board members should have relevant media and sector experience.

386 Other submitters were concerned about diversity on the board, for instance:

- Koi Tū wanted a requirement for diversity of board members in the bill.
- The PSA submitted that, although diversity is provided for through the Crown Entities Act, it should be explicitly required that the board must reflect the diversity of the population.
- Sky recommended that the board should consider either collectively or individually the need for the board to represent and reflect a diverse range of community views.
- The National Council of Women of New Zealand submitted that the board should comprise half its membership of women, non-binary or gender diverse members.

387 Māori board appointments were another focus for submitters:

- JR Kaukau submitted that Māori representation should be individuals who whakapapa Māori, not just have an understanding of te reo and tikanga
- Ngā Aho Whakaari Māori in Screen submitted that the majority of the board should be representatives with skills and experience relating to te ao Māori and tikanga, made in consultation with Māori industry representatives
- A small number of submitters asked for the removal of appointments requiring knowledge or expertise of tikanga Māori and te ao Māori.

388 Many submitters wanted to see a range of other skills and interests provided for via representation from a variety of groups or areas including:

- consumers
- disabled people
- parliamentary opposition parties
- the arts, music and culture sectors
- the public
- the regions
- RNZ Concert
- Deaf world and Deaf culture
- ANZPM staff, via an advisory committee
- Children
- Young people
- the Broadcasting Standards Authority
- Pacific communities/Pacific media
- Te Whakaruruhau o Nga Reo Irirangi Māori
- Local cultural and creative industries
- Minority ethnic and cultural communities
- Asian communities.

Response

389 The Government's intent is that the board composition should balance efficiency of decision-making while allowing room for the board make-up to reflect a range of competencies, diversity, and sector representation.

390 It also intends that the board should have adequate knowledge and understanding of te ao Māori and tikanga Māori, and financial management skills to reflect:

- the Government's intent to recognise and respect the Crown's responsibility to give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi via the establishment of ANZPM
- the expectation that ANZPM will earn significant commercial revenue, at least in the short to medium term.

391 The provisions relating to board appointments are intended to ensure the entity's board has the collective capability to deliver on the outcomes sought, while being flexible enough to ensure the entity's governance can adapt as the entity's priorities and environment change.

Board appointments

392 As context, the Crown Entities Act underpins the specific provisions in this bill, setting out a comprehensive framework for the process of appointing members to Crown entity boards in New Zealand. The legislative requirements for appointments to an ACE board (and removal from boards) include that:

- members are appointed by the responsible Minister
- a person cannot be appointed if they are a member of Parliament
- a member of an ACE can be appointed for up to three years, or any shorter period stated in the notice of appointment (although reappointment may occur)
- a board member can be removed if, in the Minister's opinion, the removal is justified - removal must follow the principles of natural justice and include proper consideration of the matter
- a member may resign by giving written notice to the responsible Minister.

393 The view of Manatū Taonga is that, given that the proposed processes for ANZPM board appointments and removals are well-tested across a range of Crown entities, and are very similar to the current processes for TVNZ and RNZ (noting that Ministers currently appoint members to the TVNZ/RNZ boards), we do not recommend any changes to them.

394 We note that some submitters suggested staggered appointments or differing lengths of appointment. The Crown Entities framework already allows for either approach to be utilised, we therefore do not consider any additional provisions provided for such an approach to be required.

Board composition

395 S 29(2) of the Crown Entities Act gives explicit direction on the requirements for board members including that:

- a Minister may only appoint or recommend a person who has the appropriate knowledge, skills, and experience to assist the entity to achieve its objectives and perform its function
- appointments should take into account the desirability of promoting diversity in the membership of Crown entities.

396 The requirement to take into account the desirability of promoting diversity in the membership of Crown entities is further supported by:

- a Cabinet circular – *Government Appointments: Increasing Diversity of Board Membership* (CO (02) 16) that sets out Cabinet’s expectation that a diverse range of individuals are appointed to boards to ensure membership reflects the makeup of Aotearoa New Zealand
- Te Kawa Mataaho’s *Board Appointment and Induction Guidelines for Crown Entity Boards* which all public service agencies supporting board appointment processes are expected to follow
- an expectation that the monitoring agency will engage with the nomination services available at the Ministry for Women, TPK, MPP, Office for Disability Issues in Whaikaha - Ministry of Disabled People and the Ministry for Ethnic Communities, when searching for candidates to recommend. Each of these agencies maintain a database of suitably qualified candidates who want to be considered for participation in advisory groups and for board appointments.

397 Taken together, these existing requirements will help ensure that ANZPM’s board will have the appropriate knowledge to ensure ANZPM can deliver on its public media objectives, including the range of diverse interests, perspectives and needs provided for through the charter, in addition to financial management skills and experience.

398 We therefore do not recommend additional provisions are added to provide for the appointment of particular interests or groups to the board, beyond what is currently provided for. As previously discussed with the Committee, we note the difficulty in attempting to prioritise particular interests or representatives and by default excluding others.

399 In relation to other proposed changes:

- We do not recommend placing requirements on the Minister for Māori Development in relation to who they consult with, or naming particular groups to be consulted with in the legislation, during the nomination process. Our view is that there is a sufficient expectation that appointees will have the necessary skills and experience, and there needs to be flexibility in how that is provided for. Such consultation may also raise privacy concerns.
- We do not recommend that there is a requirement in the bill for appointments to be made following nominations from Te Mātāwai. While this is the case for Te Māngai Pāho and Whakaata Māori, this reflects a primary purpose across these three agencies to protect and promote te reo Māori and Māori language revitalisation. However, ANZPM has a broader purpose and functions.
- We do not agree that the Responsible Minister's powers to appoint and dismiss board members be further limited by requiring board members to serve their full terms. The bill expressly provides that board members cannot be removed for reasons relating to editorial matters. Our view is that this gives ANZPM sufficient protections, while not preventing the Responsible Minister from being able to use a key accountability lever in ensuring ANZPM is delivering on its statutory outcomes. It is also not clear how such a provision would operate should a board member themselves wish to resign from the position before their term is complete.
- Sub cl 10(2) of the bill already requires the Minister of Finance to consider the financial management skills and experience of the board as a whole, rather than focusing on the financial management skills and experience of each member. However, the Minister of Finance will need to consider individual appointments in order to adequately assess whether the board has the appropriate skills and experience overall. However, this will not require every member to have significant financial management skills or experience.

2.4 Monitoring and reporting

Issue

400 Submitters wanted to ensure the legislation included strong monitoring and reporting requirements to provide transparency in the way ANZPM conducts its operations and ensure it is held to account for the delivery of its public media mandate.

Reporting

401 Many submitters wanted to see more specific or additional requirements associated with ANZPM's reporting included in the bill, for instance:

- Rex Simpson submitted that the bill should reference the mechanisms by which the aspirations of the charter will be implemented and managed, including qualitative and quantitative measures
- Warner Bros. Discovery similarly submitted that the bill should provide more explicit measures for how the charter objectives will be achieved. They submitted that there should be a mechanism for the rest of the sector to provide continuous feedback on how the entity is performing against key metrics, including its obligation to the charter and collaboration.
- Aotearoa New Zealand Book Sector Organisations wanted ANZPM to be required to report on provision of local content, including seeking feedback from local creative industries.
- Dell Hood suggested extending the audience research requirement to include ongoing audience input throughout the year, via a media consumers forum, or mandated interaction with civil society groups such as Better Public Media.
- Save RNZ Concert submitted that audience ratings should not be the only measure of success, and ANZPM should have to report on quality measures.
- Marion Satherley submitted that accountability measures should include reporting on the use of Crown funds, to ensure they are used ethically for the delivery of unbiased news and reporting.
- TVNZ submitted that cl 21 should be amended to include assessment to the extent ANZPM is seeking commercial revenue that is necessary to deliver on its public media outcomes and operate sustainably.
- Terry Bradshaw recommended ANZPM should have and report on a responsibility to research and review best public media practices around the world and adopt/adapt these for ANZPM.

- Te Mātāwai wanted ANZPM to report on indicators that speak to the health of Māori language.
 - Kate Fowler asked for monitoring against the Media Council's standards to be provided for within reporting requirements.
 - The National Pacific Radio Trust asked for ANZPM to report in its annual report on how ANZPM is engaging with NPRT specifically.
- 402 Whakaata Māori submitted that the public media sector should be underpinned by a common performance framework. Shared priorities and outcomes could then inform key settings and strategy; including the investment approach and how value is measured, including drivers for Māori language revitalisation and audience engagement.
- 403 There was specific support from some submitters including WeCreate, the Aotearoa New Zealand Book Sector Organisations and Dell Hood for cl 21 that requires ANZPM to consider research from a representative selection of the public when undertaking its reporting requirements.
- 404 Other submitters asked for specific transparency measures to be specified in the legislation including:
- Allied Press, News Publishers Association, NZME and MediaWorks recommended an obligation similar to the BBC, to provide public transparency over its operations (including meeting minutes and reasons for commercial decisions) so its decision-making can be monitored.
 - NZME and MediaWorks recommended transparency measures should also include remuneration of senior employees, and how ANZPM has met its objectives to support a diverse and resilient New Zealand media ecosystem, and focus on content for under-served and under-represented audiences.
 - Sky submitted that ANZPM should have a similar reporting approach to NZ On Air when publishing funding decisions and should specify matters such as the quantum of funding, recipients, genre, episodes duration, platform and a synopsis. Sky also suggests this information and ratings information are reported to NZ On Air to allow NZ On Air to continue to provide data and insights on all publicly funding programming, and to minimise funding gaps and duplications.

Monitoring and oversight

- 405 Some submitters wanted specific provision for monitoring arrangements in the bill. For instance, the RBA submitted that ANZPM should be monitored to ensure it only takes audiences from those unserved by commercial market. Koi Tū recommended joint responsibility between Manatū Taonga and NZ On Air, with NZ On Air to apply

its existing guidelines to the monitoring of ANZPM expenditure regarding commissioning and production of content.

406 There was much support for independent monitoring, or the creation of an independent monitor, to have oversight of some or all of ANZPM's operations. For instance:

- Alexander Gillespie submitted that an independent annual review of the entity's independence and integrity should be undertaken.
- Better Public Media and its supporters recommended an interim oversight board who would be responsible for monitoring the ANZPM board from its first decisions.
- The Public Media Alliance supported an independent regulator similar to Ofcom as a buffer from the government.
- Koi Tū suggested the establishment of an ANZPM Guardian as a Parliamentary Commissioner or a Trust. This role could have a number of functions including monitoring ANZPM's activities to ensure it is meeting its charter obligations, acting as an independent defender of ANZPM against unwanted interference or influence, and monitoring ANZPM for any excessive use of its market position to negatively impact other sectors of the industry.
- Better Public Media and its supporters recommended an independent oversight mechanism to monitor the activities of both ANZPM and the responsible Minister. Options included the establishment of a Public Media Commission to monitor ANZPM and its relationship with the Minister, issue directives on behalf of the Minister, hear complaints relating to charter breaches, report annually to parliament on charter performance, recommend annual budgets and attend ANZPM board meetings as advisors. As an alternative, Better Public Media suggested a mechanism to allow ANZPM to be monitored by civil society. This could occur in an informal capacity but would require access to relevant information.

407 On a different note, a number of submitters, including Trisha Dunleavy suggested that the first charter review should occur earlier than the five years proposed (and that the review period should be reduced to three years). She suggested two years to ensure any problems that arise through the operationalising of ANZPM's structure, operations and funding are considered in a timely fashion, rather than needing to wait five years for the first review to take place.

Response

408 The Government's intent is that ANZPM should be subject to the standard planning and reporting arrangements for Crown Entities, including:

- a Statement of Intent (SoI)
- a Statement of Performance Expectations (SPE)
- Annual Report with an associated select committee review process
- Letter of Expectation.

409 In addition, in recognition of the important role ANZPM will play in the delivery of public media content and its role within the broader media ecosystem (including its obligations to deliver to a broad range of audiences, and collaborate with other media entities) the bill places a number of high-level requirements on ANZPM in addition to the standard requirements including:

- ANZPM to report annually on its performance in fulfilling its charter and its other statutory obligations in its annual report (cl 21(1))
- ANZPM to regularly obtain and take into account audience research as part of this assessment of its performance (cl 21 (2) and (3))
- the House of Representatives to review the entity's charter and the entity's performance against the charter every five years (cl 22).

410 In addition, to help ensure ANZPM is earning sufficient commercial revenue to support its delivery of public media outcomes, cl 20 of the bill provides the Minister of Finance with the ability to:

- request information from the entity in relation to the entity's financial performance
- provide input in relation to the entity's strategic direction and performance.

411 These mechanisms provide a well-established basis for transparently holding ANZPM to account for its performance. They also provide flexibility for the development, reporting and monitoring of a range of measures that can provide a picture of an entity's performance over time while being able to adjust to reflect changing expectations in the light of technological, demographic and other changes.

412 Given this, we do not agree that the legislation should include a prescriptive performance framework or specific performance measures, as these will be provided for through ANZPM's SoI, SPE, and annual report which are legislative requirements under the Crown Entities Act:

- The SOI sets out the Crown Entity's strategic intentions, and medium-term undertakings and provides a base against which the Crown entity's actual performance can be later assessed. This is updated at least every three years. This is presented to the House of Representatives.

- The annual SPE covers what the entity intends to achieve and how its performance will be assessed within the context of the SOI. It is a key instrument in the public accountability of Crown entities and sets out the entity's outputs, revenue and expenses, as well as how performance will be assessed. The SPE also includes the forward-looking financial statements. This is presented to the House of Representatives to use as a basis for considering the entity's annual report.
 - The annual report reports against both the SOI and the SPE. It also includes additional information on compliance with its obligations to be a good employer, any directions given to the entity by the Minister, and payments to board members. The annual report must meet generally accepted accounting standards, including those for non-financial information disclosure. The annual report is audited by the Auditor-General or an auditor appointed by the Auditor-General.
- 413 These will be supplemented by other accountability mechanisms such as performance discussions and reporting between ANZPM and its monitors.
- 414 In our view, these are the appropriate mechanisms to provide specific performance indicators, aligned with approach taken for other Crown entities and companies. These documents are made publicly available so entities can be held to account by the public for their performance.
- 415 This is the current approach taken with RNZ and TVNZ, which both have specific measures that hold them to account for their performance in their SPEs (for example RNZ's SPE includes targets for Māori language content and content sharing arrangements with other media organisations).
- 416 We also note that including performance measures in establishing legislation would be an outlier to the requirements currently placed on other Crown entities who operate within the media system, including NZ On Air. While some submitters referenced the transparency mechanisms NZ On Air uses when delivering funding as requirements that should be replicated for ANZPM, we note that those measures are not specified in NZ On Air's establishing legislation, but have been developed as operating policies and procedures in the context of its obligations under the Crown Entities Act. We would expect ANZPM would similarly develop relevant policies to ensure it is appropriately and transparently using its resources, in a manner consistent with its legislative (charter) obligations, just as NZ On Air has done.
- 417 We disagree that any additional requirements are necessary to ensure ANZPM is generating commercial revenue to supplement core baseline funding or require specific requirements to report on its obligation to collaborate with other media entities as both are already provided for under cl 20 and 21 respectively. In addition, financial reporting requirements under the Crown Entities Act will apply to ANZPM, including preparing annual financial statements in line with cl 154.

418 We also disagree with the inclusion of a specific transparency provision as suggested by MediaWorks and NZME because:

- ANZPM is already subject to accountability measures through the mechanisms outlined above
- ANZPM will be subject to the Official Information Act 1982 and Public Records Act 2005
- ANZPM will already be required to report on how it is collaborating with other media entities through its Annual Report.
- Crown entities already report on number of employees earning over \$100,000 in their Annual Report - however, privacy considerations would be unlikely to allow release of the names and salaries of individuals below Chief Executive level.

419 The establishment of an independent oversight mechanism such as a ANZPM Guardian or Public Media Commission is outside the scope of this legislation. In any case, the view of Manatū Taonga is that any such mechanism would be better considered in the context of broader regulation of all public media entities, or of the broader media eco-system.

420 However, we note that there are a number of mechanisms to ensure that Parliament can hold ANZPM to account. For instance, as a Crown Entity, ANZPM will be called on annually to appear in front of a Select Committee for an Annual Review. The Annual Review process looks at the previous financial year, and considers its performance, and what it has achieved with any funding it administers. Following its review, the select committee reports to the House and the final report is published.

421 We also note that, as discussed in **Section 1.7** above, the Commerce Act will apply to the ongoing activities of ANZPM and any concerns about competition or market impacts can be raised with the Commerce Commission.

2.5 Funding

Issue

422 A number of submitters raised issues relating to the way ANZPM will be funded. Some submitters wanted to see safeguards for ANZPM's funding to provide additional independence from Ministers. In particular:

- RNZ suggested that funding should be provided on a five-year funding cycle which is part of the charter review process. This approach would support certainty of funding, particularly for contractual arrangements with content suppliers and business partners, and would separate funding decisions from the political cycle
- William Earl submitted that the bill should include the terms of a four-year funding agreement with bulk funding over that period, and a review of the funding agreement occurring outside of the electoral cycle
- a number of individual submitters wanted to see funding provided via a secured, sustainable funding model that sat outside of the annual government budget cycles, and could not be adjusted by Government, to prevent potential budget reductions.

423 Some submitters wanted ANZPM to be funded in different ways, for instance:

- a number of submitters wanted to see ANZPM fully government funded, to ensure there was no reliance on commercial funding or sponsorship
- Better Public Media and supporters submitted that a ring-fenced micro-tax or levy should be introduced to ensure ANZPM is securely funded, away from year-by-year government decisions. Better Public Media used Finland as an example of a ring-fenced micro tax, where a very small percentage of all income tax and business revenue is ringfenced for public media services
- Better Public Media also suggested that a levy could be placed on ISP, digital advertising or screen device sales to fund ANZPM. Alternatively, it suggested the Telecommunications Development Levy could be repurposed or expanded. It also submitted that either option should include large international media providers such as Netflix, Disney, Amazon, Facebook and Google being targeted by such a levy
- the CCC submitted that ANZPM should continue to focus on funding from advertising.

424 Some submitters were also concerned with ANZPM being direct funded rather than being funded via NZ On Air as RNZ currently is:

- TVNZ noted that almost all of TVNZ's funding currently comes from commercial sources, and the small amount of Crown funding it receives is mainly (although not all) via contestable funding from autonomous Crown entities. TVNZ and Stuff noted the risk that there will be a perception that this direct funding may be seen as an attempt to influence the news agenda.
- Bryan Bruce similarly submitted that funding should continue to be provided via current entities rather than ANZPM receiving direct funding.

425 **Section 1.7** also discusses ANZPM's funding in the context of impacts on the broader media sector.

Response

426 Funding arrangements for ANZPM sit outside the scope of the bill, and we do not recommend making any provision for them in the bill. This is important to preserve flexibility and avoid attempting to bind future governments' hands.

427 However, in response to some points made by submitters:

- there is the opportunity annually through the Budget process to assess if a multi-year appropriation is more appropriate than an annual appropriation. Multi-year appropriations can be up to five years. Multi-year appropriations can still be increased or decreased during the term of the appropriation. A multi-year appropriation also does not mean that all the funding is front-loaded - for broader Crown cashflow management reasons, Crown entities within the sector are funded through the term of the appropriation
- if funded by a micro tax or levy, ANZPM would be subject to variations in the receipts of these. To change the level of funding would require a specific bill rather than through the annual estimates of appropriation bill process. Funding from general taxation tends to provide greater certainty.

428 In addition, in relation to direct funding of ANZPM, the overall intent for the approach is that it would provide a degree of funding certainty and reduce funding complexity for the new entity, compared to a model where ANZPM had to compete with other platforms to be able to commission and broadcast content funded by NZ On Air, as well as attract commercial revenue.

429 We do not agree that simply passing ANZPM's funding through NZ On Air would make a material difference to ANZPM's independence compared to RNZ's current funding approach given that, under the current approach RNZ's budget is effectively set by Ministers each year.

430 Our view is any consideration of applying a levy to either internet providers or digital platforms should be considered across the breadth of the sector. This approach would ensure any revenue generated from such a levy is distributed in an equitable

manner across the sector, all of whom are impacted by the growth of international digital platforms. A targeted approach to gather revenue solely for ANZPM would not consider the wider sector impacts. It would also be difficult to determine how much revenue could be raised through a levy given the low evidence base around the financial position and New Zealand based income of digital platforms.

- 431 Such an approach would also be out of step with the current collective bargaining approach underway via the News Publishers Association and agreements individual entities are reaching with digital platforms. Additionally, the Minister for Broadcasting and Media is currently exploring options to regulate digital platforms. We therefore do not recommend cutting across those activities.
- 432 We also disagree that a ring-fenced tax would be an appropriate mechanism for funding ANZPM. While hypothecated revenue can have benefits in terms of transparency and certainty, it bypasses the central budget process. This may result in lower value expenditure as spending decisions avoid the scrutiny and trade-offs of central prioritisation. It also reduces the government's flexibility to respond as expenditure needs arise and could result in a funding mismatch if the revenue stream exceeds or falls short of the fiscal need. Our view is government funding can be sufficiently provided for using the standard the central budget process. As outlined above, there are options through this process to provide for multi-year appropriations to ensure funding certainty without the need for a ring-fenced tax. This approach provides more flexibility to consider the balance between public funding and commercial revenue on a year-by-year basis, based on the most up to date information available for ANZPM's commercial performance and funding needs.

2.6 Scope of the bill and operational considerations

Issue

- 433 Many submitters raised issues relating to the operation or structure of ANZPM that fall outside the scope of the bill, for instance, the Public Media Alliance raised questions about various policies and structures in relation to diversity and about the appointment of the Chief Executive
- 434 A number of submitters thought the bill should go further. For instance, Koi Tū was concerned that the “shape and limits of the entity’s operation” were not set out in the bill, making it “unsafe to enact in its present form.” It wanted to see specific provision to prevent ANZPM selling key assets or the entire enterprise to private interests.
- 435 Koi Tū and Stuff also raised concerns about the role of the Establishment Board, claiming that the board will “effectively determine the form and substance of ANZPM” and suggesting that the Minister will determine operational matters outside the scope of the bill. Koi Tū recommended an audit of Establishment Board decisions to ensure its actions were consistent with the bill.
- 436 A number of submitters including SYSCA, Bryan Bruce, NZ Writers Guild, Sky, Warner Bros. Discovery and Recorded Music NZ asked for the Bill to bolster the role of and funding available for NZ On Air and Te Māngai Pāho.
- 437 A number of submitters raised matters relating to the media system, and that would need to be considered within the context of broader Broadcasting Act reform and/or other ongoing work programmes beyond the scope of the bill:
- E Tū, Te Whakaruruhau o Nga Reo Irirangi Māori and the Workforce Development Council raised the importance of establishing vocational education options to support journalism and establishing a workforce strategy to ensure viable pathways into journalism were established.
 - A number of submitters including Greenstone TV raised the need to develop an effective mechanism for taxing multi-national corporations such as Google and Facebook.
 - Submitters including James Hole and TVNZ raised the Sunday morning advertising restrictions (that are provided for in the Broadcasting Act) as a barrier to bidding on sports rights.
 - A number of submitters including Koi Tū and Kathleen Ryan raised the review of content regulation as a matter of importance.

- NZME and the RBA submitted that current commercial radio spectrum licences should be extended from 31 March 2031 to 2041.
- Alexander Gillespie and Jenny Gibson raised the need for the independence of journalists to be protected.

438 A number of submitters raised general concerns about the role of government in either owning or funding media content, both via ownership of RNZ and TVNZ as well as through the funding of content via NZ On Air, and in particularly the Public Interest Journalism Fund. There was view that government funding should not be used for either of these purposes, including suggestions that both RNZ and TVNZ should be privatised.

Response

439 Our view is that the bill contains all the necessary provisions to establish ANZPM, give it its objectives and functions, provide for its governance and enable transition from RNZ and TVNZ to a new autonomous Crown entity.

440 The approach taken in the bill is consistent with legislation establishing other Crown entities, and with the current RNZ and TVNZ Acts.

441 Some submissions also appeared not to recognise that ANZPM will be established in the context of a number of other regulatory frameworks - including the Crown Entities Act, Broadcasting Act and Commerce Act - which augment the establishment provisions in the bill and regulate how ANZPM operates. In some cases, we have recognised that it would be helpful to clarify the application of those other Acts, and have recommended changes to do that in **Section One**.

442 While we understand that the desire from many submitters was to see far more prescription in the bill to reflect particular views about how the entity should be made to operate, our view is that this would significantly limit ANZPM's ability to operate flexibly in the context of ongoing demographic and technological change and fetter its editorial and operational independence, We also note that different submitters have different and often conflicting views about what these more prescriptive provisions should be.

443 It is also useful to clarify any misunderstanding that the Establishment Board will be making any decisions about ANZPM's financial model, monitoring framework, board appointments or the operating model. The Establishment Board is not a decision-making body, but an advisory group set up by the Minister for Broadcasting and Media to:

- provide advice on issues for Ministers to consider – including the financial model and monitoring framework

- provide advice to ANZPM's incoming board/executive on issues that are for the ANZPM's board/executive to consider – including the operating model and transitional arrangements.

444 Broader consideration of the ownership of RNZ and TVNZ, and subsequently ANZPM are outside the scope of this bill. The bill sets out Government's intent to maintain its interest in the delivery of public media services, through a single public media entity, it does not contemplate the sale of Government assets.

PROACTIVELY RELEASED

Section Three: Other changes proposed to the bill by clause

[To come]

PROACTIVELY RELEASED

Annex One: Summary of key recommended changes

Manatū Taonga recommends:

1. *Strengthening editorial independence*

- a. amending the bill to highlight the editorial independence of ANZPM, and indicate the key clauses in the bill that protect ANZPM's editorial independence
- b. amending sub cl 15(1) to state that the Responsible Minister must exercise or perform their powers, duties and functions in a manner that is consistent with ANZPM's editorial independence
- c. replacing the phrase broadcasting, selecting, commissioning or producing particular content in sub clc 15(3) and 15(5) with a general term such as "editorial matters"
- d. clarifying that no Minister can direct ANZPM in relation to editorial matters
- e. including reference to contractors in subclause 15(3) alongside members, subsidiaries and employees as a group that the Ministers may not give a direction to in relation to editorial matters
- f. removing cl 15(2) allowing the Responsible Minister to add functions to a Crown entity, to help address concerns about its use and to remove any lack of clarity relating to the charter's status as a statutorily independent function
- g. removing the phrase counter misinformation from cl 11(2)(k) and amending the relevant operating principle at 13(1)(a) to demonstrating editorial independence, impartiality, accuracy and balance

2. *Better provide for a focus on public media outcomes*

- a. amending the bill to clarify that ANZPM's public media mandate is its primary purpose.

3. *Clarifying requirements for provision of content commercial-free*

- a. adding an operating principle to the charter that ANZPM will provide some of its content advertising and sponsorship-free on an ongoing basis
- b. amending cl. 13(1)(e) to clarify the intent that content will be provided predominantly free of charge, including *when it is first provided*

4. *Ensure the charter is sufficiently clear and inclusive*

- a. ensure it is clear that the charter comprises cl 11, 12 and 13 of the bill

- b. include a broad provision to require ANZPM to provide content that stimulates, supports, and reflects the diversity of artistic and cultural expression in New Zealand
 - c. incorporate specific reference to children and young people within its functions and operating principles
 - d. include specific reference to factual programming as an area where ANZPM should demonstrate editorial independence, impartiality and balance
- 5. *Ensure that disabled people are specifically provided for***
- a. amending the charter to reference disabled people, not “New Zealanders of all abilities”
- 6. *Rethink the use of the term ‘broadcasting’***
- a. replacing the term ‘broadcasting’ with another plain English term such as ‘provide’ to avoid requiring a definition to be given in the bill
 - b. replacing references to ANZPM as a public ‘broadcaster’ with ‘public media entity’ or something similar
- 7. *Clarify provisions relating to market impacts***
- a. giving ANZPM’s board a collective duty to ensure that ANZPM takes account of services provided elsewhere in the broader media ecosystem to support the capability, capacity and sustainability of that ecosystem
 - b. clarifying in the bill that ANZPM’s ongoing operations are subject to the provisions of the Commerce Act
 - c. clarifying in sch 1, cl 8 that pre-existing RNZ services cannot carry advertising for ANZPM’s commercial services
- 8. *Clarify how ANZPM should collaborate within the media ecosystem***
- a. amending cl 17 to become an operating principle that ANZPM collaborates in a way that positively influences the capability, capacity and sustainability of the broader ecosystem, where this is consistent with ANZPM’s delivery of its charter and with s 51 of the Crown Entities Act; and to give ANZPM’s board a collective duty to ensure ANZPM operates in accordance with this principle
 - b. clarifying in the bill that the requirement to collaborate is not an exemption from the Commerce Act under s 43
- 9. *Clarify what pre-existing services remain commercial free***

- a. Amending sch 1, cl 8 to specify that the current RNZ National, Concert and Pacific radio services and the current www.rnz.co.nz website must be provided commercial free, for as long as ANZPM continues to provide them

10. Clarify and improve provision for transitional arrangements

- a. adding a “sunset clause” of 30 June 2026 to sch 1, cl 14 to provide certainty in the first instance of restructuring without creating an ongoing mechanism for ANZPM to be able to limit its obligation to pay redundancy
- b. amending the use of “new position” in sch 1 cl 12 to make it clear that this is intended to be the same role as would previously have been held at RNZ/TVNZ
- c. clarifying in the bill that where any employment agreement refers to the employee being employed at a particular tier, the employee will still be considered to be employed on the same terms and conditions if, as a result of any interim CE being appointed, this tier is adjusted lower
- d. specifying that an interim final report to 28 February 2023 should be completed by TVNZ and RNZ no later than 30 September 2023, and that the report would be required to contain the same information as a final report provided for the purposes of the PFA.
- e. clarifying that the intent of sch 1, 4(1) is not that all Freeview shares transfer to ANZPM, only the ones held by RNZ and TVNZ
- f. clarifying that RNZ and TVNZ are to be treated as the “same person” as ANZPM for the purposes of all Inland Revenue acts
- g. amending the bill to ensure that the proposed transfer of shares is ignored for the purposes of the continuity provisions in the Income Tax Act

Annex Two: Summary of minor and technical changes

Item	Section	Raised by	Issue	Officials' comment
1	4	RNZ	Explicitly exclude advertising from the definition of content.	<p>Amend.</p> <p>Advertising is not intended to be captured by the definition of content. Its inclusion could mean all advertising would be subject to charter obligations, which is not the intent.</p>
2	4	TVNZ	<p>Replace 'enlighten' with 'educate' in the definition of content, and subsequently in cl 12(1). The term "enlighten" could be perceived as patronising, and it prefers "educate", which was also the word used in the list of functions approved by Cabinet (but not carried through to the provisions at cl 12).</p> <p>The BBC Royal Charter refers to services which "inform, educate and entertain" and under its legislation, the ABC is to provide programming "of an educational nature".</p>	<p>Amend.</p> <p>MCH's agrees that 'educate' would support the intent of ANZPM's public mandate, while aligning with the Reithian principles used in international public media entities' charters including the BBC and RTE.</p>
3	Sch 1, cl 7	MCH	Amend sch 1, cl 7 to provide the approach for international agreements separately to agreements with New Zealand parties. This approach would have the effect of making sure ANZPM cannot deal with liabilities under the RNZ and TVNZ's international content agreements, to ensure they are not effectively transferred.	<p>Amend.</p> <p>This change will ensure the legal effect of the provision aligns with the policy intent, to ensure RNZ and TVNZ's internationally contracts are not effectively transferred.</p> <p>This will be achieved by ensuring that only references to pre-commencement media companies in agreements between New</p>

				Zealand parties must be read as a reference to ANZPM. In the case of international agreements this will not apply.
4	Sch 2	MCH	<p>Sch 2 currently replaces “Radio New Zealand” with “ANZPM” in s 44(1A) of the Broadcasting Act 1989.</p> <p>S 44(1A) sets out that the Minister shall ensure that at all material times NZ On Air is notified with an appropriate direction, in respect of the funding of RNZ. As ANZPM will receive core baseline funding directly through an appropriation administered by Manatū Taonga, rather than via NZ On Air. This clause is no longer necessary as NZ On Air will not have a role in ANZPM’s baseline funding going forward.</p>	<p>Amend.</p> <p>MCH’s view is this provision relates to baseline funding, therefore is no longer necessary. We recommend the clause is repealed instead of amended.</p>

PROACTIVELY REPEALED

Annex Three: List of submitters

1. A Bryden Black
2. A Reid
3. Aaron Stallard
4. Aaron White
5. Abbie Robinson
6. Abby McMenemy
7. Adam Doughty
8. Adam white
9. Adrian Skelton
10. Áine Kelly-Costello
11. AJM Bennett
12. Alan Kemp
13. Alan Mathews
14. Alan Perry
15. Alan Willis
16. Alastair Brickell
17. Alastair Monro
18. Alex Kay
19. Alex King
20. Alex Lloyd
21. Alex Y
22. Alexander Cowdell
23. Alexander Gillespie
24. Alexander Mitcalfe Wilson
25. Alexander Scott-Billing
26. Alison Kenyon
27. Alison, Jamie Ritchie
28. Alistair Faulkner
29. Alistair Ramsden
30. Alister Lang
31. Allan Clarke
32. Allan Martin
33. Allan Rattee
34. Allan Wyllie
35. Allan Youl
36. Allied Press Limited
37. Alyana Grey
38. Amanda Duncan
39. Amanda Nodder
40. Amber Huia
41. Amelia F
42. Amy Caudwell
43. Andrew Beer
44. Andrew Boyce
45. Andrew Frame
46. Andrew Johnson
47. Andrew Lambert
48. Andrew Thompson-Davies
49. Angela Ritchie
50. Angus Woodhams
51. Ani Mitcalfe
52. Anita Mary
53. Ann Shelton
54. Annalisa Vaatstra
55. Anne Fitzsimon
56. Anne Molloy
57. Anne-Marie Rose
58. Annette and Michael Hamblett
59. Annette Campbell
60. Annette Faau
61. Annie Maillard
62. Ant Valk
63. Anthony Smith
64. Antony Easto
65. Ants Field
66. Aotearoa New Zealand Book Sector Organisations
67. APRA AMCOS Te Tautawhinga
68. April Glenday
69. Asia Pacific Media Network Inc. (Pacific Journalism Review)
70. Association of Blind Citizens of New Zealand (Blind Citizens NZ)
71. Association of New Zealand Advertisers
72. Association of Professional Orchestras Aotearoa (APOA)
73. Asuka Masuo
74. Auckland Philharmonia Orchestra
75. Auckland Town Hall Organ Trust
76. B Flaws
77. Barbara Grant
78. Barbara Kivi
79. Barbara McKinney
80. Barbara Thomborson
81. Barnaby Haszard Morris
82. Barry Ramsay
83. Barry Watson
84. Barry Wilson
85. Bavaro Maria
86. Bay of Plenty Music School
87. Belinda Coombes
88. Belinda Desmond
89. Belinda Vernon
90. Ben Moore
91. Ben Woolcombe
92. Benjamin Mason
93. Benjamin Nigro
94. Bernard McQueen

95. Better Public Media Trust
96. Beverley Nelson
97. Bevin Linkhorn
98. Bhaady Miller
99. Blindspot Busters
100. Bob McCree
101. Bonnie Miller Perry
102. Brent Barrett
103. Brenton Lee
104. Brian Axtell
105. Brian Hedley
106. Brian Mathewson
107. Bridget Orman
108. Brita McVeigh
109. Brock Officer
110. Bronwen Innes
111. Bruce Kivi
112. Bruce Lea
113. Bruce Pengelly
114. Bruce Ross
115. Bruce Staples
116. Bruce Ward
117. Bruce White
118. Bryan Bruce
119. Bryan Hackett
120. Bryan Nunweek
121. Bryce Bartley
122. C Jackson
123. Calum Glasgow
124. Carel Jobsis
125. Cargill McKenzie
126. Carl Bromley
127. Carla Purcell
128. Carlton King
129. Carol Archie
130. Carol Lough
131. Carol Martin
132. Caroline
133. Caroline Thomas
134. Carolyn Skelton
135. Catherine Stewart
136. CBS Music
137. Cecile Hurford
138. Charles Hadfield
139. Charlotte Moffat
140. Charmian Keay
141. Cherie Gates
142. Cherie Jacobson
143. Child Poverty Action Group
144. Chris Burt
145. Chris Clarke
146. Chris Doudney
147. Chris Peterson
148. Chris Verburg
149. Christchurch Organists' Association, Inc.
150. Christchurch Symphony Orchestra
151. Christian Anderson
152. Christina Cairns
153. Christine O'Connell
154. Christine Rynhart
155. Christo Matheson
156. Christopher Cape
157. Christopher Morrison
158. Christopher White
159. Clair Mills
160. Claire Balfour
161. Claire Blomgren
162. Claire Breen
163. Claire Kilner
164. Claire McDonald
165. Claire Windsor
166. Claudia Gunn
167. Clinton Herring
168. Clinton-stewart Irain
169. Colin Budd
170. Colin Cheyne
171. Colin Cookson
172. Colleen Ireland
173. Commercial Communications Council
174. Community Access Media Alliance
175. Conor Bolton
176. Craig Farndale
177. Craig Kelly
178. Craig Steed
179. Crux Publishing Ltd
180. Cynthia Matthews
181. Damaris Coulter
182. Damian Bason
183. Dan Suter
184. Daniel Bruce
185. Daniel Mace
186. Dara McNaught
187. Dave Geraghty
188. Dave Kelly
189. Dave McNicholas
190. Dave Thompson
191. Dave Weggerly
192. David Annett
193. David Britten
194. David Cameron
195. David Cooke
196. David Cross
197. David Gibbons
198. David Graham
199. David Kerry Mackintosh
200. David McCrone
201. David Menkes

202. David Mercer
203. David Peddie
204. David Scapens
205. David Stevens
206. David Stringer
207. David Yetton
208. Davin Butterfield
209. Deaf Action New Zealand
210. Deaf Aotearoa
211. Dean Hyde
212. Debbie Nehoff
213. Del Bromley
214. Dell Hooc
215. Democracy Action Incorporated
216. Diana Elliot
217. Dianne Landy
218. Dianne McFarland
219. Dianne Poskitt
220. Digital Media Trust
221. Dina Cloete
222. Directors and Editors Guild of Aotearoa New Zealand
223. Dirk Welschof
224. Don McDonald
225. Don Robertson
226. Donald Ensor
227. Donald Pointon
228. Donald Turner
229. Donna Barraclough
230. Donna Clotworthy
231. Donna Mummery
232. Dorothy Bauld
233. Dorothy Browne
234. Dorothy Helyer
235. Doug Barry-Martin
236. Doug Cleverly
237. Douglas Bansall-Allen
238. DPA NZ
239. Drama Magic Ltd
240. Duncan Munro
241. Dunedin Symphony Orchestra
242. E tū Incorporated
243. Edie Wadeson
244. Edward Crawford
245. Edward Linney
246. Eileen Preston
247. Elaine Engman
248. Elaine Hampton
249. Elaine Lian
250. Elise Mei
251. Elizabeth Allan
252. Elizabeth Bills
253. Elizabeth Buchanan
254. Elizabeth Burns
255. Elizabeth Dunn
256. Elizabeth Jane de Lisle
257. Elizabeth Westbrooke
258. Elizabeth Williams
259. Ella Preece
260. Emma Todd
261. Eric Jordan
262. Ernest Munro
263. Esther Cahill-Chiaroni
264. Eva and Sam Tamura
265. Eva Cope
266. Ezra Jones moki
267. Fallyn Flavell
268. Fay Brorens
269. Fi Groves
270. Fiona Copland
271. Fiona Joseph
272. Fiona Mackenzie
273. Fiona Strachan
274. Fiona Tate
275. Flora Ataria
276. Frances Bell
277. Frances Posthuma
278. Francine Bills
279. Francisco Blaha
280. Fraser Duthie
281. Free Speech Union
282. Fund RNZ
283. Gabrielle Mckenzie
284. Gael Schultz
285. Gary Scott
286. Gary Stephenson
287. Gary Wills
288. Gavin James
289. Gayleen Putt
290. Genevieve Van Eden
291. Geoffrey Booth
292. Geoffrey Dale
293. Geoffrey Hinds
294. Geoffrey Whitehead
295. geraldine Armstrong
296. Gerard Smyth
297. Gerrard Liddell
298. Gillian Hadfield
299. Gillian Whitehead
300. Glenice Bullen
301. Glenn Cheetham
302. Glenn Johnston
303. Gloriana Roebeck
304. Gordon Hossack
305. Graeme Ball
306. Graeme Collier
307. Graeme Corps
308. Graham Kitchin
309. Graham Potter

310. Graham Townsend
311. Grant Cleary
312. Grant Paton-Simpson
313. Gray Southon
314. Greenstone TV Ltd
315. Greg Gray
316. Greg Renton
317. Greg Rzesniowiecki
318. Guilherme da Silva
Vilhena
319. Hamish Macbeth
320. Hamish Peddie
321. Hans Vaatstra
322. Independent Drama
Producers Collective
323. Harry Storm
324. Haruhiko Sameshima
325. Hayat Berkaoui
326. Hayden Roberts
327. Hazel Hodgkin
328. Heather Denny
329. Heather Tanguay
QSO
330. Helen Geary
331. Helen Jakobi
332. Helen Parker
333. Helen Reid
334. Henry Stonex
335. Henry Worsp
336. Hildegard Moodie
337. Howard Clement
338. Hugh Rennie
339. Huhana Kitchingham
340. Ian Buckland
341. Ian Bywater
342. Iris Tscharnke
343. Isabel Aldiss
344. Jack Schoen
345. Jack Tankersley
346. Jackie Bason
347. Jackie Blair
348. Jacqueline Trinder
349. Jacqui Elizabeth
350. Jaimee Watson
351. James Buckland
352. James Crossland
353. James Hole
354. James Presland
355. Jan Arnold
356. Jan Whittington
357. Jane Craighead
358. Jane Gunn
359. Jane Parsons
360. Jane Penton
361. Janet S. Thomson
362. Janet Salas
363. Janine Gray
364. Janm Edwards
365. Jarden Atutahi
366. Jason Clark
367. Jason Conway
368. Jason Stewart
369. Jason Whitaker
370. Jean McKinnon
371. Jean Simpson
372. Jeanette Wilson
373. Jeff Upton
374. Jeffery Wells
375. Jeffrey Rogers
376. Jenny Corban
377. Jenny Gibson
378. Jenny Walker
379. Jenny Wilson
380. Jeremy Dunningham
381. Jeremy Gamble
382. Jeremy Lindop
383. Jeremy Redmore
384. Jill Hamel
385. Jill McLeod
386. Jim Young
387. Jo Bass
388. Jo Rees
389. Joan Donaldson
390. Joan Skurr
391. Joanna Bottomley
392. Joanna Bullock
393. Joaquin Sitte
394. Jodie Bruning
395. Johannes Laubach
396. Johannes Zender
397. John Armstrong
398. John Aston
399. John Bates
400. John Blunt
401. John Bristed
402. John Candy
403. John Clere
404. John Faber
405. John Frey
406. John Gill
407. John Henry
408. John Irving
409. John Johnston
410. John Keswick
411. John Kruiniger
412. John La Roche
413. John Lowe
414. John Macdonald
415. John Martin Miles
Rogers
416. John Nankivell
417. John Sullivan
418. John Tax
419. John Veix

420. John Woolf
421. Jonathan Mosen
422. Jonathan Tyce
423. Jonelle Nankivell
424. Joop Jansen
425. Joseph Heays
426. Joshua Thomas
427. JR Kaukau
428. Judith Prinsen
Geerligs
429. Judy Murphy
430. Julia Mcnaughton
431. Julie Chiaroni
432. Julie Irving
433. Julie Kidd
434. Julie Roberts
435. Juliet Ashton
436. Juliet Feast
437. Justice and Peace
Commission Catholic
Diocese of Auckland
438. Justin Edgington
439. Justine Payen
440. K Connable
441. Kalisha Fleischmann
442. Kararaina Barrett
443. Karen Baker
444. Karen Langdon
445. Karen Manson
446. Karen Raaymakers
447. Kari Lloyd
448. Katana Katana
449. Kate Fowler
450. Kate Last
451. Kate Stanton
452. Kate Stevenson
453. Katherine Barley
454. Katherine Thomas
455. Kathleen Mallen
456. Kathleen Ryan
457. Kathryn Ramsay
458. Kathryn Thomas
459. Kee Lu
460. Keith Darroch
461. Keith Newman
462. Keith Simes
463. Kelly Wilson
464. Ken Westmoreland
465. Kerry Nolan
466. Kerry Stevens
467. Kerry Willoughby
468. Kevin Baddeley
469. Kevin Brooks
470. Kevin Broughan
471. Kevin Collins
472. Kevin Welsh
473. Kim Hewitt
474. Kim New
475. Kim Shephard-Thorn
476. Kiwi Kids Music Trust
477. Koi Tū: The Centre
for Informed Futures
478. Konrad Hickson
479. Konstanze Artmann
480. Kornelia Mikosch
481. Kris Vollebregt
482. Kristine Geldard
483. Kristine Lee
484. Kuini Saili
485. Kūpā Russell
486. Kura Productions Ltd
487. Kushlan Sugathapala
488. Kylie Fowler
489. Lala Frazer
490. Lane Street Studios
491. Laraine Holdom
492. Lars Vandrey
493. Lauren Barus
494. Lawrence Carter
495. Leanne Cavanagh
496. Leanne Going
497. Lecia Wrathall
498. Lee Prebble
499. Lee Short
500. Leigh Curran
501. Leith Vickers
502. Leo Ovshtein
503. Leon Salter
504. Lesley King
505. Lesley Marshall
506. Lesley White
507. Let's Make Music
Cooperative
508. Lhizz Browne
509. Liisa McMillan
510. Linda Bullen
511. Linda Francis
512. Linda Pears
513. Lindie Nelson
514. Lindsay Currie
515. Lisa Cowe
516. Lisa Hart
517. Lisa Lewis
518. Lisa Smith
519. Lizzie Kerr
520. Lois Nixon
521. Lokni Stevens
522. Loopy Tunes
Preschool Music
523. Lorna Jones
524. Lorraine Bilby
525. Lorraine North
526. Louisa Miller
527. Louise Croot

528. Louise Gall
529. Luba Perry
530. Luke B
531. Luke Nola
532. Lyn Gillanders
533. Lyn McKinnon
534. Lynda Young
535. M Park
536. M Scott
537. Madeleine Blyth
538. Maire Leadbeater
539. Malcolm Fisher
540. Malcolm Rees-Francis
541. Malcolm Williams
542. Margaret Bijl
543. Margaret Cochran
544. Margaret Currie
545. Margaret Gwynn
546. Margaret Langdon
547. Margaret Maloney
548. Margaret Mollison
549. Margaret Stuart
550. Margaret Vitel
AIRMTNZ
551. Maria Gibson
552. Marianne Schultz
553. Marianne Townsend
554. Marie Lamb
555. Marina Richter
556. Marion Howie
557. Marion Satherley
558. Marjorie McKee
559. Mark Edmonds
560. Mark Elvines
561. Mark Franken
562. Mark Holland
563. Martin Cerny
564. Martin Hill
565. Martin Judd
566. Mary Ellen Warren
567. Mary Glaisyer
568. Mary Nieper
569. Mary-Louise Kearney
570. Matt Gibson
571. Matthew Croucher
572. Matthew Macmillan
573. Matthew Sew Hoy
574. Matthew Warner
575. Matthew Waswo
576. Maud Cahill
577. Maureen Simonsen
578. Maurice O'Reilly
579. Mavis Kelly
580. Max Currie
581. Maxine Gostick
582. Media Access Charitable Trust (trading as 'Able')
583. Media Matters in NZ Inc
584. MediaWorks
585. Melissa Quinlivan
586. Melva Bendall
587. Michael Gieseg
588. Michael Hansen
589. Michael McQueen
590. Michael Palmer
591. Michael Shaw
592. Michael Waldron
593. Michael Win
594. Michal Bush
595. Micheal Smith
596. Mike Newlove
597. Mini Tilly
598. Moanaroa Jakeman
599. Moewaka Dunster
600. Monarch Broadcasting Ltd
601. Monique Bond
602. Mukpuddy Ltd
603. Murray Lynch
604. Music Whakatane
605. N Culver
606. N Curtis
607. Nancy Eisenberg
608. Naomi Layzell
609. Natalie Stamilla
610. Natasha Geo
611. Natasha Tomo
612. Nathan Dunn
613. Nathan Hill
614. Nathan Kidd
615. Nathaniel Bennett
616. National Council of Women of New Zealand
617. Neets dH
618. Neil Curtis
619. Neil Pryor
620. Netsafe Incorporated
621. Neville Berry
622. Neville Busing
623. New Zealand Chinese Association
624. New Zealand Media and Entertainment (NZME Limited)
625. New Zealand Opera
626. New Zealand Organ Association Incorporated
627. New Zealand Public Service Association Te Pūkenga Here Tikanga Mahi

628. New Zealand
Symphony Orchestra
629. New Zealand
Taxpayers' Union
Incorporated
630. New Zealand Writers
Guild Puni Taatui o
Aotearoa
631. News Publishers'
Association
632. Ngā Aho Whakaari
Māori In Screen
633. Ngā Taonga Sound
and Vision
634. Nick Edwards
635. Nick O'Grady
636. Nicola Chippendale
637. Nicola Hudson
638. Nicola Tompkins
639. Nicolla Morehouse
640. Norman Holm
641. NZ Game Developers
Association
642. NZ Outdoors and
Freedom Party
643. Odette Wilson
644. Ofa Wolfgramm
645. Office of the Auditor
General
646. Office of the Privacy
Commissioner
647. Olivia Doonan
648. Orchestra Wellington
649. Pacific Kids' Learning
650. Pamela Lambert
651. Pat Gilberd
652. Patricia Graham
653. Patricia Keiller
654. Patricia Syme
655. Patrick Horan
656. Patrick Wildermoth
657. Paul Bagrie
658. Paul Diamond
659. Paul Harris
660. Paul Jones
661. Paul Kasner
662. Paul King
663. Paul Nieuwoudt
664. Paul Stanley
665. Paul Wilkinson
666. Paula-jonelle Irain
667. Paulette Cartier
668. Pauline Wells
669. PC Taylor
670. Penny Ashbrook
671. Perry Woolley
672. Peta Barker
673. Peter Broadhead
674. Peter Buxton
675. Peter Calder
676. Peter Fisher
677. Peter Harty
678. Peter Ingham
679. Peter Law
680. Peter Levin
681. Peter Manson
682. Peter Martin
683. Peter Miller
684. Peter Mundell
685. Peter Russell
686. Peter S Dredge
687. Peter Smeaton
688. Peter Thompson
689. Peter W French
690. Peter Williamson
691. Peter Wills
692. Petra Paignton
693. Petrea Andersen
694. Phee Phanshell
695. Phil Arps
696. Phil Lynch
697. Philip Clatworthy
698. Philip Engel
699. Philip Moon
700. Philip Peters
701. Philippa Goodin
702. Phillip Chiaroni
703. Physicians and
Scientists for Global
Responsibility (PSGR)
704. Playmarket
Incorporated
705. Polly Greeks
706. Polly McAdam
707. Pop-Up Workshop Ltd
708. Public Media Alliance
(PMA)
709. Rachael Brand
710. Rachael Ivory
711. Rachael Marsters
712. Racheal Helleur
713. Rachel McConnel
714. Rachel Sheppard
715. Rachel Steele
716. Radio 1XX
717. Radio Broadcasters
Association
718. Ralph Wilkinson
719. Ray Craig
720. Raymond McGrath
721. Recorded Music NZ
722. Reid Basher
723. Rex Landy
724. Rex Simpson

725. Reynold Macpherson
726. Rhondda Davies
727. Ric Stacey
728. Richard Brown
729. Richard Collins
730. Richard Entwistle
731. Richard Hamilton
732. Richard Harman
733. Richard Overy
734. Richard Sedcole
735. Rikki Menzies
736. RNZ
737. Roark Watson
738. Roark Watson Supp 1
739. Robbie Peacocke
740. Robert Culver
741. Robert Gregory
742. Robert Hole
743. Robert Hurst
744. Robert John Ewen
745. Robert Morris
746. Robert Munro
747. Robin Gunston
748. Robin Gwynn
749. Robin Uncles
750. Rochelle Wilson
751. Rod Godsell
752. Rodney Gray
753. Roger Crowden
754. Roger Frost
755. Roger Gower
756. Roger Hardie
757. Roger Horrocks
758. Roger May
759. Rohan Satyanand
760. Rohit Vig
761. Ron Vautier
762. Rosalia Onderwater
763. Rosanna Leman
764. Roseanna Harrison
765. Rosemary Burton
766. Rosemary Hudson
767. Rosemary Twiss
768. Rosetta Allan
769. Ross Bauld
770. Ross Smith
771. Rowan Buxton
772. Rowena Howard
773. Rowena Kaleopa
774. Rupert Small
775. Russell Leggett
776. Ruth Zanker
777. S Brown
778. S Tucker
779. Sally Hope
780. Sally Howe
781. Sally Lawrence
782. Sam Williams
783. Sam Worsp
784. Samantha Blanchard
785. Sandra Oxenham
786. Sandra Wood
787. Sanja Zilic
788. Sarah Chamberlain
789. Sarah Malone
790. Sarah Morrison
791. Sarah Steele
792. Sarah Stuart
793. Sarah Wale
794. Sarsha Healey
795. Save RNZ Concert
796. Sereena Burton
797. Sharon Jackson
798. Shaun Linehan
799. Sheila Powell
800. Shirley Vollweiler
801. Shit You Should Care About
802. Silke Osborne
803. Simon Chiaroni
804. Simon Garner
805. Simon Telfer
806. Simon Ward
807. Sky New Zealand
808. SOUNZ Centre for New Zealand Music
809. SPADA
810. Spark Sport
811. Sports Entertainment Network NZ Limited
812. Stan Rinaldi
813. Steen McGhie
814. Steph Hunter
815. Stephanie Gale
816. Stephanie Markson
817. Stephen Brooker
818. Stephen Campbell
819. Stephen Chalcraft
820. Stephen Dobson
821. Stephen Doyle
822. Stephen Gee
823. Stephen Hansen
824. Steve Liddle
825. Stuart Bayes
826. Stuart Gibbs
827. Stuart Lange
828. Student Radio Network
829. Stuff Limited
830. Sue Edmonds
831. Sue Peploe
832. Sue Sutherland
833. SunPix Ltd
834. Suresh Syed

835. Susan Hobbs
836. Susan Lafleur
837. Susan Lea
838. Susan Macks
839. Susan Mclaughlin
840. Susan Mingard
841. Susan Rawson
842. Susan Shone
843. Susan Thomas
844. Susanne Vincent
845. Susette Goldsmith
846. Suzanne Peddie
847. Suzy Cato
848. Sylvia Barrett
849. Sylvia Nelson
850. Tall Poppy Films Ltd.
851. Tamara Bennett
852. Tania Diedericks
853. Tara Ross
854. Te Māngai Pāho
855. Te Mātāwai
856. Te Werahi Maikuku
857. Te Whakaruruhau o Ngā Reo Irirangi Māori
858. Television New Zealand Limited
859. Terry Bradshaw
860. Terry Clements
861. Terry Tuohy
862. Teylah Moana
863. The National Pacific Radio Trust
864. The NZ Children's Screen Trust
865. The Spinoff
866. Thomas Aries
867. Thomas Coppell
868. Thomas Greve
869. Thora Blithe
870. Tiffany Fowler
871. Tim Gorton
872. Tim Paul
873. Timothy Fraser
874. Toby Farmer
875. Toi Mai Workforce Development Council
876. Tom Frewen
877. Tom Kane
878. Toni Pengelly
879. Toni Stanaway
880. Tony Barnett
881. Tony Corbett
882. Tony Dixon
883. Tony Watts
884. TORO and AMO Studios
885. Tracey Knox
886. Tracy Mace
887. Trevor Graeme Nicholas
888. Trisha Dunleavy
889. Tui Williams
890. Ursula Edgington
891. Valda Edyvane
892. Valerie Taylor
893. Vanessa Moon
894. Vicki smith
895. Victoria Davis
896. Victoria Miller
897. Victoria Quade
898. Victoria Spackman
899. Victoria Stanbridge
900. Virginia Pawsey
901. Viv Claire
902. Vivienne Crawshaw
903. Voices For Freedom
904. Wallace Woodley
905. Warner Bros. International
906. Warner Bros. Discovery
907. Warner Haldane
908. Warren Bennie
909. Wayne Hennessy
910. Wayne Humphries
911. WeCreate
912. Wellington Community Justice Project
913. Wendy Allardice
914. Whakaata Māori
915. Whetu Marama Tipuna
916. Whitebaitmedia
917. William Earl
918. William Raisbeck
919. William Sommerville
920. Wim Slooten
921. Winfield Bennett
922. Winifred Jackson
923. Yvonne van Leeuwen
924. Zane Holmes



Cabinet Economic Development Committee

Minute of Decision

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Aotearoa New Zealand Public Media Bill: Proposed Amendments

Portfolio Broadcasting and Media

On 9 November 2022, the Cabinet Economic Development Committee:

Background

- 1 **noted** that the Aotearoa New Zealand Public Media Bill (the Bill) was introduced to the House on 23 June 2022, and referred to the Economic Development, Science and Innovation Committee;
- 2 **noted** that the submissions process has identified a number of areas where changes would help ensure the Bill gives effect to the government's intent, and improve the clarity and workability of the Bill;

Proposed changes to the Bill

- 3 **agreed** to the following changes to the Bill being recommended to the Select Committee through the Departmental Report:
 - 3.1 amending the Bill to highlight the editorial independence of Aotearoa New Zealand Public Media (ANZPM), and indicating the key clauses in the Bill that protect ANZPM's editorial independence;
 - 3.2 amending subclause 15(1) to provide that the Responsible Minister must exercise or perform their powers, duties and functions in a manner that is consistent with ANZPM's editorial independence;
 - 3.3 replacing the phrase 'broadcasting, selecting, commissioning or producing particular content' as it appears in subclauses 15(3) and 15(5) with a general and well-understood blanket term, such as 'editorial matters';
 - 3.4 including reference to contractors in subclause 15(3) alongside members, subsidiaries and employees as a group that Ministers may not give a direction to in relation to editorial matters;
 - 3.5 clarifying that no Minister can direct ANZPM in relation to editorial matters;
 - 3.6 removing clause 15(2) allowing the Responsible Minister to add functions to ANZPM;

- 3.7 removing the phrase 'counter misinformation' from clause 11(2)(k) and amending the relevant operating principle at 13(1)(a) to 'demonstrating editorial independence, impartiality, accuracy and balance';
- 3.8 amending the Bill to clarify that ANZPM's public media mandate is its primary purpose;
- 3.9 adding an operating principle to the charter that ANZPM will provide some of its content advertising-free and sponsorship-free on an ongoing basis;
- 3.10 clarifying that the intent of clause 13(1)(e) is that content will be provided predominantly free of charge, including when it is first provided;
- 3.11 amending the charter to:
 - 3.11.1 ensure it is clear that it comprises clauses 11, 12 and 13 of the Bill;
 - 3.11.2 include a provision requiring ANZPM to provide content that stimulates, supports, and reflects the diversity of artistic and cultural expression in New Zealand;
 - 3.11.3 incorporate specific reference to 'children and young people' within its functions and operating principles;
 - 3.11.4 include specific reference to factual programming as an area where ANZPM should demonstrate editorial independence, impartiality and balance;
 - 3.11.5 reference 'disabled people', rather than 'New Zealanders of all abilities';
- 3.12 requesting that the Parliamentary Counsel Office considers replacing the term 'broadcasting' with another plain English term, such as 'provide' to avoid requiring a definition to be given in the Bill;
- 3.13 replacing references to ANZPM as a public 'broadcaster' with a 'public media entity' or something similar;
- 3.14 giving ANZPM's board a collective duty to ensure that ANZPM takes account of services provided elsewhere in the broader media ecosystem to support the capability, capacity and sustainability of that ecosystem;
- 3.15 clarifying in the Bill that the Commerce Act 1986 applies to ANZPM's ongoing operations;
- 3.16 replacing clause 17 with a collective duty for ANZPM's board to ensure ANZPM collaborates with media entities in a way that positively influences the capability, capacity and sustainability of the broader ecosystem, where this is consistent with ANZPM's delivery of its charter and with section 51 of the Crown Entities Act 2004;
- 3.17 clarifying in the Bill that the requirement to collaborate is not an exemption under section 43 of the Commerce Act;

- 3.18 clarifying Schedule 1, clause 8 to:
- 3.18.1 specify the Radio New Zealand (RNZ) services that must be provided commercial free, for as long as ANZPM continues providing them;
 - 3.18.2 clarify that these services cannot carry advertising for ANZPM's commercial services;
- 3.19 adding a 'sunset clause' of 30 June 2026 to Schedule 1, clause 14;
- 3.20 amending the use of 'new position' in Schedule 1, clause 12 to make it clear that this is intended to be the same role as would previously have been held at RNZ/Television New Zealand (TVNZ);
- 3.21 clarifying in the Bill that where any employment agreement refers to the employee being employed at a particular tier, the employee will still be considered to be employed on the same terms and conditions if they are moved to a position at a lower tier on the establishment of ANZPM;
- 3.22 clarifying final reporting requirements for TVNZ and RNZ;
- 3.23 clarifying that the intent of Schedule 1, 4(1) is not that all Freeview shares transfer to ANZPM, only the ones held by RNZ and TVNZ;
- 3.24 clarifying that RNZ and TVNZ are to be treated as the 'same person' as ANZPM for the purpose of all Inland Revenue Acts;
- 3.25 ensuring that the transfer of shares proposed in the Bill is ignored for the purposes of the continuity provisions in the Income Tax Act;
- 4 **noted** that a number of minor and technical changes that do not require substantive policy decisions will also be proposed, through the Departmental Report;
- 5 **noted** that changes are not proposed to:
- 5.1 the entity form;
 - 5.2 the provisions for governance, monitoring or ongoing reporting requirements for ANZPM; or
 - 5.3 provisions relating to the Crown's Treaty of Waitangi obligations in the Bill;

Legislative implications

- 6 **noted** that the changes referred to in paragraphs 3 and 4 above will be included in the Departmental Report, which is due to be provided to the Select Committee on Tuesday, 15 November 2022 for its consideration on Thursday, 17 November 2022;
- 7 **noted** that all proposed changes are subject to the Parliamentary Counsel Office's drafting advice;
- 8 **noted** the draft Departmental Report, attached as Annex 1 to the paper under DEV-22-SUB-0255;

9 **noted** that the Select Committee is due to report back to the House by 26 January 2023.

Janine Harvey
Committee Secretary

Present:

Hon Grant Robertson (Chair)
Hon Dr Megan Woods
Hon David Parker
Hon Damien O'Connor
Hon Stuart Nash
Hon Willie Jackson
Hon Michael Wood
Hon Kiri Allan
Hon Dr Ayesha Verrall
Hon Priyanca Radhakrishnan
Hon Kieran McAnulty
Dr Deborah Russell MP

Officials present from:

Office of the Prime Minister
Officials Committee for DEV

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Cabinet

Minute of Decision

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Report of the Cabinet Economic Development Committee: Period Ended 11 November 2022

On 14 November 2022, Cabinet made the following decisions on the work of the Cabinet Economic Development Committee for the period ended 11 November 2022:

Out of Scope

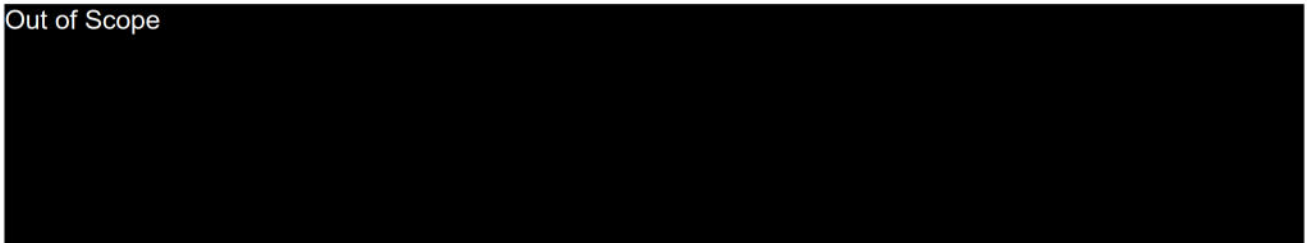


DEV-22-MIN-0255


**Aotearoa New Zealand Public Media Bill:
Proposed Amendments**
Portfolio: Broadcasting and Media

CONFIRMED

Out of Scope



Out of Scope



Rachel Hayward
Secretary of the Cabinet

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