**Submission on the Aotearoa New Zealand Public Media Bill**

To the Economic Development, Science and Innovation Committee

I support the Better Public Media Trust and my submission is based on preparation information from them.

There are four main problems with the Bill:

1 - Greater separation from the Minister.

2 - No independent oversight of the Board to make sure they are fulfilling the Charter.

3 - No clarity over what is commercial and non-commercial.

4 - Sustainable funding

Plus some specific improvements:

5 - Definitions

6 - The Charter

7 - Functions

**Problem 1 – Separation from the Minister.**

An Autonomous Crown Entity offers less independence from the Minister than RNZ and TVNZ currently have as Crown Owned Entities. The Bill does have added independence safeguards, but these will not stop a Minister from applying influence to ANZPM.

This matters because ANZPM will be a major news outlet. It will have the power to affect the fortunes of politicians including the Minister. It is imperative that the Minister cannot influence ANZPM through appointing or sacking board members, issuing directives, or approving annual budgets. We may trust the current government and opposition to not abuse such a power, what about a government in 15 or 20 years time?

Solution 1 – Improve the Editorial Independence clause

Section 15 lists when the Minister cannot give a directive to ANZPM but has loopholes and needs to prohibit:

* directives in respect of general editorial direction
* directives regarding scheduling or prominence of content

Solution 2 - Independent Crown Entity

Make ANZPM an Independent Crown Entity to ensure:

* all appointments by the Minister [go through](https://www.legislation.govt.nz/act/public/2004/0115/latest/DLM329954.html) the Governor General adding a layer of scrutiny
* the Minister [cannot](https://www.legislation.govt.nz/act/public/2004/0115/latest/DLM330353.html) make directives to ANZPM based on government policy
* the Minister cannot remove a board member unless they have ‘just cause’ which includes [misconduct etc](https://www.legislation.govt.nz/act/public/2004/0115/latest/whole.html#DLM329966).

The custom that Independent Crown Entities usually have a quasi-judicial role is not a rule, and because ANZPM has a unique role as a watchdog on democracy and politicians, it warrants the extra protection of being an Independent Crown Entity.

Although Independent Crown Entity’s don’t normally run businesses, this again is a custom rather than a rule, that would not limit its commercial abilities.

3 - Statement of Independence

The independence of ANZPM must be clearly stated, similar to the [Electoral Commission](https://www.legislation.govt.nz/act/public/1993/0087/latest/DLM308114.html).

**Problem 2 – Lack of Oversight**

It will be easy for the Minister and Board to ignore the Charter while paying lip service to its aspirations. An independent monitor of the ANZPM Board and the Minister is required.

Plans to establish a monitor within MCH are flawed because it will be answerable to the Chief Executive of MCH and the Minister. It will not be capable of independence, and just as importantly, it will not be seen to be independent.

Solution 1 – A Public Media Commission

An Independent Crown Entity with the following powers to:

* monitor ANZPM and its relationship with the Minister.
* issue directives on behalf of the Minister to the ANZPM Board that are compliant with the Charter.
* hear complaints from the public relating to breaches of the Charter, and adjudicate on them.
* report to Parliament annually and whenever required on Charter performance and issues.
* access ANZPM’s finances and recommend annual budgets.
* attend ANZPM Board meetings as advisers.

The Commission should be transparent within its own operations, regularly engaging in public consultations over matters of concern, perception and trust. Rules would ensure confidentiality and commercial sensitivity for ANZPM.

The Commission could be a branch of the Broadcasting Standards Authority, depending on the outcome of the current Regulatory Review.

Members could be nominated to the Minister by various means including:

* Te Mātāwai.
* Civil society – a cluster of organisations such as Consumer NZ, Better Public Media Trust, Children’s Screen Trust, and National Association of Media Educators. Other organisations could be included in the cluster or form a second cluster, such as the Ombudsman, the BSA, NZ On Air, industry guilds, unions, and audience representatives.
* ANZPM staff.

The Minister would retain power to appoint, but for some of the Board’s positions, only from those nominations.

Interim Oversight.

The ANZPM Board will require monitoring from its first decision. We recommend an Interim Oversight Board be established by the Minister for this purpose.

Solution 2 – ANZPM Board members not appointed by the Minister.

The appointments process fails to ensure public media skills for the Board, and focusses the Board too heavily towards its commercial role.

At least two appointments to the Board should be made by someone other than the Minister. That could be a Public Media Commission as described above, or any of the suggested appointment mechanisms described there, including Te Mātāwai, a civil society cluster, or ANZPM staff.

Solution 3 – Allow ANZPM to be monitored by civil society.

Even if there is no official oversight, civil society groups like Better Public Media Trust can monitor the organisation voluntarily. But it is impossible to get necessary information because the OIA allows an exemption for commercial sensitivity. ANZPM will use its commercial activities to shield information from the public, even if it relates to non-commercial activities.

If there is no other oversight, at least an exception for ANZPM, narrowing the OIA’s definition of commercial sensitivity will help civil society fulfil a watchdog role.

**Problem 3 - No clarity over what is commercial and non-commercial**

The Minister has stated ANZPM will preserve all existing non-commercial activities and be not-for-profit. Neither of these are stipulated in the Bill.

*Schedule 1 Transitional, savings, and related provisions* [states](https://www.legislation.govt.nz/bill/government/2022/0146/latest/LMS681019.html) pre-existing services remain commercial-free. But it’s unclear how long a transitional schedule stays in effect.

Technological changes mean ANZPM’s non-commercial services will change over time, most likely from radio to digital, making this clause ineffective and allowing advertising. This clause does not guarantee that listening to ANZPM content will remain non-commercial.

A combined ANZPM news website presents a question over if it is commercial like TVNZ or non-commercial like RNZ. Schedule 1 suggests it should be non-commercial, but how long does that transitional provision last?

Solutions

Commercial services must be defined, leaving everything else to be non-commercial.

Not-for-profit status must be declared as future Boards and Ministers can ignore the intentions of previous governments.

**Problem 4 – Sustainable funding**

“Sustainable long-term funding model” is a government objective, but the Bill does not establish a funding mechanism. This absence suggests funding will continue to be decided each year by the Minister, continuing the problem and perception that Ministers can influence ANZPM.

It is impossible to bind the hands of future governments, but a separate sustainable funding mechanism removes the necessity for future Ministers to decide the ANZPM budget.

Solution 1 - Levy

A levy on ISPs, digital advertising and screen/device sales has gained popularity around the world and in NZ. A new levy could be introduced or the existing Telecommunications Development Levy could be repurposed.

Solution 2 - Ring-fenced Tax

A separate micro-tax, ring-fenced from the general budget exclusively for public media has been successful in Finland since 2013. It is just 0.68 of a percent on all income tax up to €140 per person, and 0.35 of a percent on the revenue of businesses. It raises €508m for Finland’s extensive public media services.

**Specific Improvements**

**5 – Definitions**

*Broadcasting,* describing ANZPM’s main activity, is out of date and too specific. Matching the definition in the Broadcasting Act, is less useful than a word that makes sense with common usage, and is future proofed, like *distribute*. Redefining *broadcasting* to include telecommunications conflicts with industry usage and still limits the activities of ANZPM by excluding:

* Printed material. ANZPM could not release:
	+ - children’s books like the ABC,
		- merchandise for popular programmes like Country Calendar, or
		- hard copy material for hard-to-reach audiences.
* Live performances. ANZPM could not produce:
	+ - music concerts as per Triple J and Radio 1 in the UK,
		- classical music concerts by the Concert Programme.
* It specifies reception by “the New Zealand public” which limits content for audiences outside NZ such as Kiwis living abroad or other international audiences.

Future technologies are likely to be multi-directional, like social media already is, but *broadcasting* is mono-directional from ANZPM to the audience. ANZPM may wish to enable multi-directional content in future. *Engage* should be incorporated into the activities or *distribute* defined to include facilitating multi-directional content.

*Content* is defined as sound and visual images, with a subsequent definition of *visual images* to include alphanumeric text and software. This is confusing and inaccurate.

If *content* must be defined, it should be “includes sound, images, text, performance, artwork, code, algorithms, apps, games and audience content interfaces”. But it is better to leave it undefined so that ANZPM and courts, can apply their own definition.

*Content* is linked to an intention to “inform, enlighten or entertain” and promote products and services. This sub-clause excludes content with other intentions such as to protect, challenge, organise etc. Intentions for the content should be removed from the definition.

**6 – The Charter**

The ANZPM Charter is weak. It uses worthwhile words but lacks coherence and authority. There is much replication with s 10 Objectives and s 11 Functions, which should be edited for clarity.

The Charter must:

* Declare that ANZPM “serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Aotearoa New Zealand”.
* Require ANZPM to give mainstream prominence to niche and minority content, to fulfil public media values and aims of social cohesion.
* List genres to be covered, ensuring Charter performance is assessed against them. The list shouldn’t be exhaustive but is necessary for reporting purposes.
* Not allow occasional content be charged for. This is inconsistent with the ethos of public media.

**7 – Functions**

Much of this section repeats the Objectives and Charter. To avoid confusion, s 7 need only describe actual functions of ANZPM, with a few important functions added:

* power to enter co-productions with international producers,
* to schedule content,
* to promote content, and
* to monitor its own performance.