

Role of the Public Media Funding Commission: Preliminary Discussion Paper

Summary:

Better Public Media Trust represents New Zealand public media audiences, is solely funded by members and has a great deal of expertise on its Board:



- New Zealand's pre-eminent media policy academic – Peter Thompson
- New Zealand's best-known media studies academic – Geoff Lealand
- New Zealand's highest regarded media law academic – Ursula Cheer
- one of New Zealand's first and most prestigious television executives – Allan Martin
- producer of a large NZ On Air funded online public media project – Myles Thomas
- experienced media practitioner on and off screen – Chris Cooper

BPM make the following comments and recommendations:

Name

BPM recommends that the name of the new entity be the **Public Media Commission**

Role and Functions

The proposed role of the Commission to provide independent advice, potentially duplicates the advisory role that MCH already holds. It may have the effect of complicating and confusing advice to the Minister.

Instead the role should be made more specific regarding the type of advice, the nature of the independence and how that advice should be made public:

- the Media Commission's role should be to make public recommendations and independent advice on funding levels for public media organisations and also board appointments to relevant crown entities and companies; as well as advising on the state of the New Zealand media system, government action in the media environment and wider media issues that impact public interest. That independent advice should serve the civic, democratic and cultural interests of the New Zealand public.

Proposed Form

- Members should represent the interests of diverse public media audiences.
- Frequency of meetings requires flexibility to meet needs of various projects.
- Establishing legislation should enable the power to require broad audience information from commercial media organisations, in order to help shape media policy.

Operations

The Commission should:

- Have flexibility to engage in intensive activity as required, including to employ others for short periods.
- Establish and maintain relationships with civic and audience groups as an important part of the public media sector.

This paper was prepared by Peter Thompson, BPM Chair, with input from Ursula Cheer and Myles Thomas.

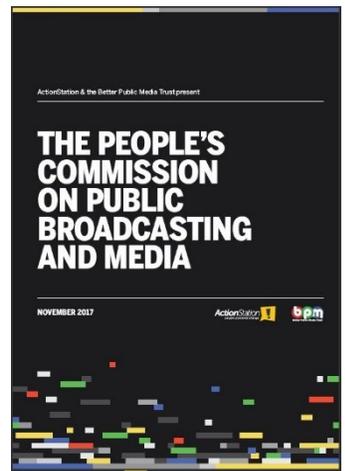
Preamble:

BPM appreciates the opportunity to meet with the Ministerial Advisory Group (hereafter MAG) to discuss the recommendations on the Role of the Public Media Funding Commission. This discussion paper is a preliminary response to the MAG recommendations and we would appreciate the opportunity for a continuing dialogue on this and other public-media related issues.

Better Public Media (formerly the Coalition for Better Broadcasting) is a non-profit independent charitable trust which seeks to promote media arrangements (policy/regulatory, funding, and institutional) which support the civic, democratic and cultural interests of the public in Aotearoa/New Zealand. It receives all its funding from its public members and its board is elected by the membership. Current board members include several of the country's most experienced academic media/communication researchers and media practitioners. It is important to note that BPM is not aligned to any political party (we will engage with any policy actors willing to promote public media goals) and has no vested interest in any particular media institution (although some board members do work in the media sector, their commitments do not conflict with BPM's objectives).

BPM's recent activities have included sponsoring the [People's Commission on Public Broadcasting and Media](#), commissioning independent research into audience attitudes towards public service media and funding, hosting [public forums on media policy](#), and making submissions on a range of media policy processes, including:

- The Ministry for Culture & Heritage's [Content Regulation in a Converged World](#) consultation;
- The BSA's [revised Codes of Practice](#),
- NZ On Air's [new funding model](#);
- MBIE's [Radio Spectrum Management](#) consultation, and
- The Commerce Commission's deliberations on [the NZME/Stuff](#) and [Vodafone-Sky](#) merger applications.



Board members have previously held positions on the steering group of the MCH-initiated [Civics & Media Project](#), advised the Office of Film & Literature Classification, undertaken commissioned [work for the MCH](#), the [Broadcasting Standards Authority](#) and NZ On Air, chaired the working group which helped [revise the TVNZ Charter](#), and been appointed as chair of the [Ethics Committee of the Public Relations Institute of New Zealand](#).

As such BPM would like to consider itself a clear, independent voice which champions the public interest in respect to New Zealand media.

Context of the Public Media Funding Commission Proposal

BPM concurs with the MAG's findings that:

- The level of public media funding in New Zealand is very low relative to other countries of comparable GDP and population.
- The scope of interventions to support public media in New Zealand is limited in comparison to other countries, including the absence of local content quotas, advertising caps, and overseas/cross-media ownership controls.

BPM's understanding is that the original rationale for the Public Media Funding Commission in the [Labour Party's manifesto](#) stemmed at least in part from the need to insulate funding arrangements for public interest media from the desultory dispositions of successive governments toward particular

institutional arrangements for public media. In other words, the over-riding policy rationale was to ensure that adequate funding for public media arrangements could be sustained beyond the 3-year term of any future incoming government.

There are several contextual considerations which need to be noted in discussing the rationale for this proposal:

- a) Previous attempts to revitalize public service broadcasting provisions by Labour-led governments between 1999-2008 (specifically the TVNZ Charter and the TVNZ 6 and 7 channels) were compromised by inter-ministerial disagreements about the level of appropriate funding commitments¹. This serves to highlight the fact that even within governments ostensibly supportive of public media, the prioritization of resources is subject to intra-cabinet contestation which can potentially circumscribe policy objectives.
- b) After regaining office in 2008, the incoming National-led government redirected the TVNZ Charter funds to NZ On Air (to establish the now-defunct Platinum Fund). This required no legislative change because the Charter legislation (repealed in 2011) made no specific commitment to funding levels. Meanwhile, the funding allocation for TVNZ 6 and 7 was also discontinued, partly because the original \$79m allocation for these only covered 2007-12. This serves to illustrate the potential of successive administrations to remove funding allocations for public media implemented by their predecessors, especially when these have no statutory basis (note the repeal of the TVNZ Charter required an amendment to legislation but this did not stipulate any funding commitment).
- c) The previous three National-led administrations imposed budget austerity across multiple portfolios. This saw Radio New Zealand's funding frozen between 2008 through to budget 2017 despite a 2007 KPMG report suggesting that it was already under-funded by up to \$7m per annum for its (then) current radio services. A campaign to unfreeze RNZ's funding (backed by BPM, Action Station and independent campaigner Jo Bond) saw a petition of over 32,000 signatures submitted to Parliament and a subsequent submission to the Commerce Committee which included an RNZ internal report and other feedback suggesting that the funding freeze had resulted in some deleterious impact on RNZ services and morale. Interestingly, the arguments presented were not accepted by the RNZ board chair, and subsequent Commerce Committee discussion revealed that the MCH had largely based its advice on RNZ's funding needs on the RNZ board's own assessment of its needs. Given that public sector media board appointments are primarily determined by the government of the day, this does raise questions about the extent to which the assessment of required funding levels of public media institutions is subject to political inhibition (i.e. the tacit pressure on ministerial advisors and/or public media boards to ensure funding recommendations align with budget imperatives, even when this is liable to compromise public service functions).



¹ Māori Television was arguably an exception here but this has to be understood in the context of a parallel set of policy considerations which stem historically from legal rulings obliging the Crown to make provision to promote and protect Te Reo through broadcast media.

- d) There has been overt opposition from the private commercial media sector² to non-contestable public subsidy of public sector broadcasters, even when directed toward public media not directly competing for advertising revenue or substitutable audience share. Opponents of public media often contend that state intervention distorts the market or gives public media providers a disproportionate advantage over their commercial counterparts, even when the services being supported are distinctive and aimed at providing content forms or appealing to audience demographics unattractive to commercial providers. However, in the NZ context, such considerations are secondary to the over-riding concern of commercial media and the independent content production sector to ensure any public media funding remains contestable and hence available to them. This underlines the importance of ensuring that public media funding advice is insulated from vested commercial interests.
- e) The contemporary context of media convergence has seen a blurring of boundaries between previously discrete media sectors and a disruption of traditional value chains and business models, particularly those dependent on advertising (not least because of the impact of online intermediaries such as Google and Facebook on content navigation and discovery architectures). In a context where the opportunity costs of providing commercially unattractive genres are increasing and margins are becoming increasingly squeezed, the demand for public subsidy both from within the broadcast sector and other media areas (e.g. print news) have increased. Although NZ On Air's revised funding model makes some provision for online distribution, the enduring requirements for co-investment and guaranteed audience reach still restrict its capacity to fund a full range of content genres because its lack of vertical integration renders it dependent on third party platforms for distribution. It is telling that, despite the previous government's insistence that the content from the discontinued TVNZ 6 & 7 would still be made available through contestable funding, only *two* TVNZ 7 programmes survived (*Back Benchers* on Prime and *Media 3/Media Take* on TV3- later MTS)- and NZ On Air itself recently discontinued the funding for these. Without a dedicated non-commercial public service platform to guarantee distribution (especially in prime time), NZ On Air's contestable funding is effectively subject to commercial gatekeeping, and many content proposals which offer public value without commercial viability are declined. This is a critical reason why the MAG's recommendation for the *Joint Innovation Fund* which earmarks content funding for distribution via RNZ but commissions the content on a contestable basis via NZ On Air is an important development³.
- f) There has also been occasional opposition to public media funding arrangement from actors within the public media sector. For example, the direct funding of the TVNZ Charter was not welcomed by NZ On Air (while TVNZ quietly lobbied for NZ On Air's contestable fund to be directly allocated to the Charter). There is also evidence that some TVNZ managers unhappy with the TVNZ Charter misallocated funding (e.g. combining Charter and NZ On Air funds against direct ministerial instructions and using Charter money to outbid Sky for the rights to the Beijing Olympics) and were

² For example, Mediaworks has previously called for RNZ's funding to be reduced to help compensate for the commercial radio sector's downturn in revenues; a similar disposition toward funding public media is also evident in Mediaworks' more recent public opposition to RNZ+. Although reflecting rational self-interest on one level, it is difficult to see how the private broadcasting sector can reasonably object to public funding of a non-commercial public television channel primarily dedicated to providing the kinds of content they themselves refuse to commission or schedule (especially if the RNZ+ model includes provision for content sharing with the commercial sector).

³ BPM was interested to note that the Joint Innovation Fund is very similar to a model identified in a 2017 discussion paper by Peter Thompson on options for public media funding and institutional settings, and also outlined in BPM's previous submission to the MAG earlier in 2018.

comfortable with the discontinuation of TVNZ 7. In contrast, RNZ's board and management appeared to accept the fiscal constraints of the funding freeze despite the pressure of maintaining its radio operations at the same time as expanding its online presence. These examples point to the potential tension between the imperative to fulfil public service obligations at the same time as remaining in favour with the government. They also illustrate why one cannot assume that state media institutions are politically neutral levers of policy delivery. Their own institutional agendas can deflect how readily allocated funds align with the intended outcomes.

The issues briefly outlined above provide the context which helps explain why the proposal for a Public Media Funding Commission is important. The next section will comment more specifically on the MAG's recommendations on the role of the Commission.

Name of Commission

The MAG has recommended that the new entity be called the Media Commission. In most respects the name is secondary to the actual function, but BPM would note that dropping the terms 'Public' and 'Funding' from the original name implies a shift in the scope of its intended remit. Insofar as the remit envisaged does extend beyond a focus on evaluating the adequacy of funding arrangements for public media, and a concern for the overall shape and health of the media ecology then this can be justified. However, caution is required in the deletion of 'public' in the name, lest this denote a dilution of Commission's primary function in promoting media arrangements able to provide for the civic, democratic and cultural interests of the New Zealand public. BPM would therefore recommend retaining the term 'public'.

Commission's Role and Functions

The indication that the proposed Commission would provide 'high level' oversight and commentary on the NZ media system is welcome, but the scope and focus of its remit may need further clarification. 'High level' policy advice generally implies taking a broad overview rather than addressing specific policy details on a more 'granular' level. This may be entirely appropriate given that specific policy arrangements are the primary responsibility of the government and its respective ministerial portfolios. However, it may be necessary to more clearly demarcate the division of labour between the Commission and the Ministry for Culture and Heritage (and other relevant Ministries).

If the focus on 'high level' advice precludes more detailed assessments of the specific provisions for particular public media services (e.g. the level of appropriation required by RNZ+) then this could potentially leave a 'blind-spot' in the Commission's intended purview. BPM does note, however, that the MAG's recommendation that the Commission provide advice on the efficacy of government interventions- including funding- would imply a more specific level of advice.

BPM would also suggest that the Commission make recommendations or provide input on the appointments of board members to relevant state sector companies and Crown entities.

BPM naturally welcomes the Commission's recommended role in providing an independent voice on the state of the media (although we would note that BPM, other civic-based based media NGOs such as Kids on Screen and also the academic research community already contribute to this aim and, indeed,



offer significant research expertise). The term ‘independence’ presumably implies *independent from government*, although for the reasons noted in the earlier discussion of contextual issues, it is equally important that the Commission be independent from *commercial media interests* and indeed, potential vested interests within public media institutions (including regulators and funding agencies). In practice of course, formal independence generally implies that operational matters are undertaken at arm’s-length from cabinet. The process of appointing

the Commission, setting its terms of references/annual work programme, determining the level of funding and its proximity to other government department or media institutions (public or private) are all potential vectors of political influence or bureaucratic/regulatory ‘capture’ that could compromise independence.

BPM nevertheless supports the principle of the Commission’s independence, but would recommend that the *purpose* of independence be explicitly identified in terms of ensuring that the Commission’s advice serve the *civic, democratic and cultural interests of the New Zealand public* in respect to the provision of media services. It is also important that the deliberations of the Commission not be confined to the parameters of what incumbent policy-makers and industry actors currently deem to be politically or economically ‘realistic’. Although that should not be taken to mean the Commission should make proposals that are unattainable, its role must include some capacity to question received policy wisdom- and explore whether other options might be feasible (for example, BPM welcomes the PWC report commissioned by the MAG which confirmed that New Zealand’s public media provisions are quite limited in comparison to those in other countries with comparable economies and populations).

BPM therefore agrees with the MAG’s recommendation that the Commission consider public media in the context of the whole media system. Insofar as public media provisions are vehicles for delivering policy outcomes, their scope and efficacy are inevitably shaped by the conditions in the wider media ecology, including factors such as New Zealand’s limited economy of scale for local content production, limited regulatory frameworks, high level of market concentration and private financialized shareholding, and increasing pressure on local media operators stemming from convergence and disruptions to traditional value chains. In such an environment, BPM would take the view that the propensity for market failures is intensified and that the need for commensurate public service media provisions, far from being redundant, becomes even more vital.

In respect to the Commission’s role in providing ‘future-facing’ reports on innovations and trends in the media sector, and advising on the efficacy of government interventions on funding, BPM is generally supportive. We would, however, recommend that the new Commission’s policy recommendations and reports be made publicly available as well as provided to the relevant ministers.

This may require some clarification about the respective responsibilities for commissioning media sector research across the BSA, OFLC, and NZ on Air as well as relevant Ministries. One possibility here is that the Commission’s role might focus on *identification of gaps* in media policy sector knowledge where there is a need for further research. The Commission might help coordinate and advise on research undertakings or commissioning by other public sector institutions.

In advising on the efficacy of government media policy interventions and funding, BPM would suggest that a key function of the Commission here should include advising on the *adequacy* of regulatory arrangements and public media funding levels, not only the efficacy of the existing arrangements. We would also recommend that the Commission’s role includes making recommendations on policy options to safeguard public standards, journalistic integrity and the media’s ‘Fourth Estate’ functions.

Proposed Form of the Commission

The issue of what ‘independence’ means in practice has already been discussed above.

The MAG recommendations on the institutional structure of the Commission suggests something with greater formal standing than an advisory group but with less official stature and scale (and ongoing expenses) than a permanent Officer of Parliament or Crown Entity is preferred. On this basis, the Commission would operate with a part-time membership periodically convening to advise on specific media policy matters, drawing on the Ministry for Culture and Heritage personnel for secretarial support and (presumably) infrastructure. On that point, it is worth noting that the kind of work the Commission engages in may not fit neatly with a highly structured arrangement for monthly or bi-monthly meetings by a part-time board. Some contingency arrangements for more frequent/intensive meetings may therefore be necessary.

In regard to the establishing legislation, BPM has several questions. Firstly, if the Commission’s function operates at a level lower than a Crown Entity or Officer of Parliament then it would be helpful to clarify what functions if any, would require an Act of Parliament as opposed to being convened on the same level as the current MAG. From the description here, it seems the Commission will not be directly responsible for collecting and disbursing public media funding; nor would it have any direct power to influence government budget allocations or the work of other public sector agencies. The legislation would therefore seem to be premised on the need to secure its on-going funding and function over a period and to prevent any future government from immediately closing it down.



The Commission’s primary role would therefore appear to be supplying analysis and evidence to provide the government with an independent justification for providing adequate funding and regulatory support for public media policy. While BPM is naturally supportive of such a role, it should be noted that this does not preclude the possibility of a future government unsympathetic to public media ignoring the Commission’s recommendations, removing its funding, or (if it has a statutory basis) abolishing it through a repeal of legislation. In this regard, the Commission’s effectiveness may still depend on whether the government of the day remains sympathetic to public media

provisions. If future governments are indifferent (or more sympathetic to the views of industry actors opposed to public media) then even legislation may not be sufficient to secure the Commission’s effectiveness in the medium-to-long term.

However, there is one important function identified under the operational section of the MAG discussion document which would justify legislation: The power to request (or, better, *require*) information to enable the analysis of media trends is very important, especially in a rapidly-changing environment where private sector media have become increasingly reluctant to divulge even basic data on their revenues, customer base and market share. The growth of media operators owned by private equity firms and thus exempt from the disclosure requirements of companies traded on public exchanges is another factor here. The Commission’s role would be restricted were it unable to gauge market trends based on

accurate media data, and legislating to ensure access to relevant data on all media activities is important.

In regard to membership, the recommendation of a core membership of 5-7 persons is sensible, if only because boards of expanded numbers may prove increasingly difficult to coordinate. BPM is also fully supportive of the proposal to ensure that the membership include persons with Māori/ Pasifika media practices, although one caveat here is the need to coordinate any ensuing advice related to Māori or Pasifika media with other relevant ministries and governance entities (e.g. Te Puni Kōkiri or Te Mātāwai). BPM also notes that the role of the Commission in representing the broad interests of the New Zealand public might require consideration of the particular needs of other audience constituencies, including other ethnic minorities, children, people with disabilities, and the regions.

BPM also acknowledges the importance of including members with knowledge of media industry practices, although experience of public service media seems to us more vital than commercial media experience (although both would be valuable). We are however, concerned that there is no mention of the importance of including members from NGOs or civic groups which can represent *public audience interests* (including, for example, BPM, Kids on Screen, or Public Good). There is also a good argument for considering members of the academic research community with relevant media policy expertise, particularly if research needs to be designed and conducted (it is worth noting that the Education Act actually requires the tertiary sector to act as critic and conscience of society).

These points raise an additional and crucial question about the appointment process and constitution of the Commission membership. Apart from the aforementioned issue concerning whether appointments made directly by Cabinet might constitute a vector of political influence liable to compromise the Commission's independence, there is a need to clarify precisely *whose interests* the members of the Commission are intended to represent. There is a fundamental difference in fiduciary alignment between a person appointed to the Commission represent the civic, democratic and cultural interests of the wider public (where any prior media stakeholder experience serves to enable them to contribute to the Commission's primary public function) and a person appointed to the Commission with the expectation that they represent the interests and the agendas of their preferred stakeholder constituency and seek to shape the Commission's priorities accordingly.

BPM would strongly recommend that the composition of the Commission needs to ensure all members are committed to serving the broad public interest in respect to media services. That is not to suggest there should be no consultation with stakeholder groups representing particular constituencies, including the private commercial sector- but the appointment of members needs to minimise the likelihood of vested interests and ensure that members have no conflicting obligations to private stakeholders.

Media Commission Operations

BPM is broadly supportive of the MAG's recommendations on the Commission's operations. The part-time arrangement is not problematic, but there may need to be provision for members to engage in periods of more intensive activity, rather than just periodic meetings (perhaps with some flexibility for the secondment of additional temporary members according to the particular task in hand).



BPM has no firm view on the funding level of the Commission, although presumably this would be negotiated at the same time as the annual work programme. It may be useful to specify how this funding would be allocated (e.g. is it secured through Vote Arts, Culture & Heritage?).

BPM supports the proposal to establish and maintain relations with the public media sector and the media sector more broadly, although there needs to be recognition that the development of proximate relationships to actors within the media sector may engender a vector of influence or regulatory capture whereby Commission members inadvertently come to define policy issues through the perspective of industry. BPM would recommend that stakeholder engagement include civic and audience groups in addition to those in the media sector.

Finally, BPM strongly supports the need for independent public discussion on the state of the New Zealand media, the appropriate level of public media funding and other trends in the media sector. This aligns very well with BPM's ongoing efforts to promote public media and we would be very keen to contribute to the work of any future Commission.