

2 June 2022

Hon David Parker, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Aotearoa New Zealand Public Media Bill

Purpose

1. We have considered whether the Aotearoa New Zealand Public Media Bill (the Bill) is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act).
2. We have not yet received a final version of the Bill. This advice has been prepared in relation to the latest version of the Bill (PCO 22581/1.15). We will provide you with further advice if the final version includes amendments that affect the conclusions in this advice.
3. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act. In reaching that conclusion, we have considered the consistency of the Bill with section 19, the right to be free from discrimination. Our analysis is set out below.

The Bill

4. The media landscape in New Zealand is changing rapidly with increasing competition from online content providers and a shift to online platforms for entertainment and for news and current affairs. That landscape will continue to change as technology evolves and the delivery of content changes.
5. In response to these changes, the Government seeks to strengthen the delivery of public media services to New Zealanders, and ensure that all New Zealanders can access relevant and trusted public media content across the platforms they use by –
 - a. better aligning Government investment across platforms, increasing flexibility to respond to future demographic and technological changes, and reducing inefficiencies;
 - b. ensuring a more sustainable long-term funding model; and
 - c. enabling a greater focus on currently under-served and under-represented audiences while continuing to provide for existing audiences.
6. The Government also intends to consider and provide for Māori interests through delivery of public media services.
7. To achieve those objectives, the Bill establishes Aotearoa New Zealand Public Media, as a public broadcaster and autonomous Crown entity, and provides for its objectives, functions, operating principles, and governance. The Bill also dissolves Radio New Zealand and Television New Zealand and provides for transitional arrangements for the transfer of the Crown's provision of public broadcasting from Radio New Zealand and Television New Zealand to Aotearoa New Zealand Public Media.

Consistency of the Bill with the Bill of Rights Act

Section 19 – Freedom from Discrimination

8. Section 19(1) of the Bill of Rights Act affirms that everyone has the right to freedom from discrimination on the grounds of discrimination in the Human Rights Act 1993 (the Human Rights Act).
9. The key questions in assessing whether there is a limit on the right to freedom from discrimination are:¹
 - a. does the legislation draw a distinction on one of the prohibited grounds of discrimination under section 21 of the Human Rights Act; and, if so
 - b. does the distinction involve disadvantage to one or more classes of individuals?
10. Clause 10(1) provides that the board of Aotearoa New Zealand Public Media (the Board) consists of six to nine members. At least two Board members must be appointed who, in the opinion of the Minister of Finance (after consulting with the Minister for Māori Development), are qualified for the appointment, having regard to their knowledge of te ao Māori and tikanga Māori.
11. This provision could be seen as giving rise to indirect discrimination on the basis of race or ethnic origins, because Māori are more likely than non-Māori to have knowledge of te ao Māori and tikanga Māori. This could arguably disadvantage non-Maori in their ability to be appointed as a member of the Board.
12. To the extent that this could be potential discrimination, we consider it to be justified in terms of section 5 of the Bill of Rights Act because it is important that members of the Board have the requisite knowledge to be able to engage with Māori about its relevant strategies and policies, in order to provide for Māori interests through delivery of public media services. We consider this emphasis is necessary to give effect to the Crown's commitment under te Tiriti o Waitangi in a meaningful and practical way.
13. We also note that the requirement does not prevent non-Māori from being appointed, it simply requires at least two members of the total six to nine members to have the relevant knowledge.

¹ See, for example, *Atkinson v Minister of Health and others* [2010] NZHRRT 1; *McAlister v Air New Zealand* [2009] NZSC 78; and *Child Poverty Action Group v Attorney-General* [2008] NZHRRT 31.

Conclusion

14. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.

A handwritten signature in blue ink, appearing to read "Jeff Orr". The signature is stylized and cursive.

Jeff Orr
Chief Legal Counsel
Office of Legal Counsel