

29 August 2018

Hon David Parker, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Broadcasting (New Zealand on Air and Te Māngai Pāho Reporting Requirements) Amendment Bill

Purpose

1. We have considered whether the Broadcasting (New Zealand on Air and Te Māngai Pāho Reporting Requirements) Amendment Bill ('the Bill'), a Member's Bill in the name of Melissa Lee MP, 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 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 s 14 (freedom of expression). Our analysis is set out below.

The Bill

3. The purpose of the Bill is to require New Zealand on Air (the Broadcasting Commission) and Te Māngai Pāho (the Māori Broadcast Funding Agency) to publish quarterly reports and make them public. It amends the Broadcasting Act 1989 ('the principal Act').
4. New Zealand on Air is an autonomous Crown entity responsible for the funding of public-good broadcasting content across television, radio and new media platforms. Te Māngai Pāho is a Crown entity responsible for promoting the Māori language by funding Māori-language programming on television, radio and new media platforms.
5. The Bill provides that the agencies must publish reporting that includes television and radio rating information, online views or clicks, and any other view tracking data; along with the breakdown of associated costs for the funded programming. The Bill is intended to ensure that television shows, visual online media content, and non-music-based radio programming are reported on and tracked, to safeguard public funding of appropriate content and encourage better funding analysis. It aims to ensure that more data is available to the relevant agencies before funding decisions are made (including whether projects are confirmed or renewed).

Consistency of the Bill with the Bill of Rights Act

Section 14 – Freedom of Expression

6. Section 14 of the Bill of Rights Act affirms that everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form. The right has been interpreted as including the right not to be compelled to say certain things or to provide certain information.¹

¹ See, for example, *Slight Communications v Davidson* 59 DLR (4th) 416; *Wooley v Maynard* 430 US 705 (1977).

7. Clause 4 of the Bill amends the Broadcasting Act 1989 and requires the relevant agencies to perform quarterly public reporting. This provision may be seen to limit s 14 of the Bill of Rights Act as it compels the provision of certain information.
8. A provision found to limit a particular right or freedom may nevertheless be consistent with the Bill of Rights Act if it can be considered reasonably justified in terms of s 5 of that Act, which asks if the objective of the provision is sufficiently important to justify limiting freedom of expression. If this is the case, the inquiry is then whether the limitation is rationally connected and proportionate to that objective and the limitation is no more than reasonably necessary to achieve that objective.²
9. We consider the limitations in the Bill are minimal and justified taking into account the objectives of the provisions. These include promoting transparency and accountability to the public for the spending of public funds related to public broadcasting, and the necessity of information-gathering in a regulatory context. Further, it is noted that, in this case, these limitations apply to Crown entities, rather than individuals.
10. For these reasons, we conclude that any limits to the freedom of expression imposed by the Bill are justified under s 5 of the Bill of Rights Act.

Conclusion

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

Jeff Orr
Chief Legal Counsel
Office of Legal Counsel

² *Hansen v R* [2007] NZSC 7 at [123].