

Aotearoa New Zealand Public Media Bill

Government Bill

As reported from the Economic Development, Science and Innovation
Committee

Commentary

Recommendation

The Economic Development, Science and Innovation Committee has examined the Aotearoa New Zealand Public Media Bill and recommends by majority that it be passed. We recommend all amendments by majority.

Introduction

This bill would create a new public media entity—Aotearoa New Zealand Public Media (ANZPM)—as an autonomous Crown entity. The bill would provide for the new entity’s objectives, functions, and governance, along with transitional arrangements. Radio New Zealand (RNZ) and Television New Zealand (TVNZ) would become subsidiaries of ANZPM and eventually be disestablished. All staff, property, assets, and liabilities would transfer to ANZPM on commencement.

The bill is an omnibus bill that would repeal the Radio New Zealand Act 1995 and the Television New Zealand Act 2003. It would also make consequential amendments to a number of other Acts.¹

ANZPM would provide public media services for New Zealand, which could include broadcast radio, linear television (that is, traditional television broadcasting over air-waves or satellite), and digital media services such as streaming.

¹ The bill would amend the Broadcasting Act 1989, the Civil Defence Emergency Management Act 2002, the Copyright Act 1994, the Crown Entities Act 2004, the Finance Act (No 2) 1992, the Income Tax Act 2007, the Official Information Act 1982, the Ombudsmen Act 1975, and the Radiocommunications Act 1989.

The establishment of ANZPM is intended to help:

- ensure public media keeps up with rapidly changing media systems
- increase efficiency in public media provision
- develop a more sustainable long-term funding model for public media provision.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We had one concern with clause 22, the review clause, which we discuss later in this commentary.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Broadcasting is not an appropriate term for the goals of ANZPM

The bill as introduced uses the term “broadcasting” to describe how ANZPM would deliver content to its audiences. We heard from submitters that the term is outdated, and not in line with the goals of a future-focused media entity.

Submitters suggested that the term used to describe how audiences receive content from ANZPM should be platform-neutral (that is, not specific to linear models such as television or radio) and described in clear, simple terms.

We agree that ANZPM should not be restricted to linear content models such as television or radio. On this basis, the bill should not use language that suggests that television or radio is dominant, or prioritised over other means of providing content.

We therefore recommend replacing the term “broadcast” with “provide” throughout the bill. Further, we recommend defining “provide” in clause 4 to include “broadcasting, selecting, commissioning, and producing content”. For consistency, we also recommend that references in the bill to ANZPM as a “public broadcaster” or similar be amended to “public media entity”.

We believe these changes would more clearly reflect the intent that ANZPM would provide a wide range of content across a wide range of platforms. We consider that the changes would also more effectively enable ANZPM to fulfil its charter obligations, as they would remove the limitation that the narrow definition of broadcasting would place on the entity.

Editorial independence from Ministers could be strengthened

We are concerned that the bill as introduced would not provide strong enough protections for the editorial independence of ANZPM. Submitters were particularly concerned about Ministers seeking to influence ANZPM on editorial matters. We believe that the bill needs stronger provisions to prevent any interference from Ministers to ensure the public’s trust.

To this end, we recommend various amendments, discussed below.

Editorial matters include ones relating to content decisions

Clauses 15(3) and 15(5) of the bill as introduced stipulate that the Minister would not be able to give direction to ANZPM for any reason related to “broadcasting, selecting, commissioning, or producing particular content”.

We are concerned that itemising a selected list of ANZPM’s activities that the Minister may not give direction on could be interpreted as exhaustive. That is, that the clause could be read to mean that the Minister could give direction on other matters related to content and editorial decisions.

For that reason, we recommend amending clause 4 to define “editorial matters” and “editorial independence”, and to adjust the definition of “content”. We consider that using these broader terms and stating their non-exhaustive definitions in clause 4 would strengthen the editorial independence of ANZPM.

We recommend that “editorial matters” be defined to include:

- any content or advertising
- any allegation or complaint relating to content or advertising
- the gathering or presentation of news or current affairs content
- responsibility for the standards administered under the Broadcasting Act 1989.

These changes mean the bill would include the same protections currently in RNZ’s and TVNZ’s legislation. We believe these changes will help to clarify that ANZPM is protected from all the same possible means of influence that RNZ and TVNZ currently are.

Ministers must perform their duties in accordance with ANZPM’s editorial independence

We consider that public trust in public media is vital to its success. Public media entities must be free of perceived or actual government influence and their governing legislation must ensure that editorial independence is firmly maintained. This includes ensuring that Ministers exercise their relevant powers in a way that respects editorial independence.

We recommend inserting new clause 10A(2) to clarify the responsibility of Ministers related to editorial independence. New clause 10A(2) would make it clear that Ministers must exercise the powers granted by this legislation in a way that is consistent with ANZPM’s editorial independence.

Direction by Ministers

We are concerned that the bill as introduced is not specific enough as to who the Minister may not direct in relation to editorial matters. Clause 15(3) states “The Minister may not give a direction to Aotearoa New Zealand Public Media (or any of its members, subsidiaries, or employees).”

We believe this is too narrow. For example, it is unclear whether the Minister could give direction on editorial matters to contractors or consultants, or other people connected to ANZPM.

We therefore recommend replacing current clause 15(3) with new clause 10B. New clause 10B clarifies that a direction about any editorial matter could not be given to any of ANZPM's board members, subsidiaries, employees, or any other person connected with ANZPM.

Clause 104 of the Crown Entities Act 2004 states that Ministers may give a direction to autonomous Crown entities to have regard to a government policy. We think it is appropriate in some contexts for Ministers to be able to give directions to Crown entities in order for the Government to advance its policy goals—as long as those directions do not relate to editorial matters or ANZPM's delivery of its charter. However, we believe that editorial independence is crucial to the success of public media entities, and thus requires its own strong protections.

Ministers adding functions could cause confusion

In the bill as introduced, clause 15(2) would allow Ministers to add to the functions of ANZPM in accordance with section 112 of the Crown Entities Act.

Carrying out the charter is deemed to be a statutorily independent function. Therefore, if the responsible Minister added a function to the charter, it could be seen to be compromising that statutory independence. Any direction to ANZPM to add a function to its charter under clause 15(2) would therefore not be allowable under clause 15(3).

Ministers having the ability to add functions is relatively common for autonomous Crown entities. Section 122 of the Crown Entities Act specifies that Ministers may do so where it is provided for in an entity's establishing legislation.

However, we consider it inappropriate for a Minister to be able to add functions to a public media entity. Such directions are unlikely to be compatible with other provisions protecting ANZPM's editorial independence.

Suggestions for strengthening editorial independence

To ensure clear and robust editorial independence and public confidence in ANZPM, we recommend removing clause 15 (which sets out the Minister's role) and inserting instead new subpart 1A.

New subpart 1A brings together the existing and recommended new clauses in the bill that collectively provide for ANZPM's editorial independence from Ministers. These clauses are:

- 10A(1) which would affirm that ANZPM is editorially independent from the Government
- 10B which would prevent Ministers, or any person acting on behalf of a Minister, from giving directions on any editorial matter to any person connected with ANZPM, including but not limited to employees, contractors, or consultants

- 10C which would affirm that carrying out ANZPM's charter is a statutorily independent function
- 10D which would prevent Ministers from removing members of ANZPM's board for any reason related to editorial matters.

Requiring ANZPM to counter misinformation may be overly restrictive

Clause 11(2)(k) in the bill as introduced would require ANZPM to “foster critical thought, counter misinformation, and promote informed and many-sided debate.”

We are concerned that having a publicly owned broadcaster decide what is classified as “misinformation”, in order to counter it, might lead to unforeseen and unintended outcomes. In particular, requiring ANZPM to counter what it determines to be misinformation might affect its ability to provide impartial and balanced current affairs content. The phrase could also erode public faith in ANZPM, as it could be seen as stifling debate and reducing the diversity of views provided.

We recommend amending clause 11(2)(k) to remove the phrase “counter misinformation”. We also recommend amending clause 13(1)(a) to add “accuracy” as an operating principle of ANZPM. We think that this would balance the need for ANZPM to promote a diversity of viewpoints as well as provide reliable and factually accurate content.

ANZPM's charter should be clear in the bill

The bill as introduced includes clauses 11, 12, and 13, which together compose the charter of ANZPM. Clause 11 states the entity's objectives, clause 12 its functions, and clause 13 sets out its operating principles.

We heard the view that the bill as introduced does not identify clearly enough the clauses that make up the charter. Some submitters questioned the clarity of the charter, which also may indicate that the charter is not clearly identifiable in the bill as introduced.

We consider that the basic objectives, functions, and operating principles of ANZPM should be clear to all. Therefore, we recommend inserting clause 10E to make it clear that clauses 11, 12, and 13 compose ANZPM's charter. We consider that new clause 10E would help to clarify which clauses compose the charter, which in turn would make reviewing ANZPM easier in future.

ANZPM's charter should require it to provide content that stimulates and supports artistic expression

We heard from submitters that ANZPM should play a role in providing content that supports artistic expression. Submitters told us that public media entities had the opportunity to commission and provide a wide variety of content. The content ANZPM provides should support and reflect the artistic diversity of the media sector.

We agree with submitters that ANZPM should reflect the media sector and artists who create content for different audiences. We recommend inserting new clause 12(1)fa so that it would be a charter function for ANZPM to support and stimulate artistic diversity.

ANZPM's charter should be inclusive of children and disabled people

The bill as introduced would require ANZPM to ensure that content and services are available to New Zealanders of all ages, genders, abilities, and ethnicities.

Submitters expressed concern that not explicitly requiring ANZPM to serve certain audiences would mean that they would be excluded. Submitters suggested that a number of groups should be explicitly mentioned in the charter, including children and young people, and disabled people.

We consider that a public media entity should serve many different audiences, including ones that have been underserved in the past. However, we consider that the charter should not be overly prescriptive, and should enable ANZPM to determine how it could best serve traditionally underserved audiences. In particular, we see it as crucial to long-term success to allow for alterations in the approach to media provision that would support future technological developments and demographic changes.

Therefore, we recommend removing and replacing clause 11(2)(h)(ii) to explicitly include disabled people and children and young people as audiences who ANZPM would be required to serve. We also recommend amending clauses 12(1)(h)(i) and (ii), and 13(1)(d)(i) and (ii) to include a similar statement.

Making it clear that ANZPM's primary purpose is to provide public media content

We heard that the primary purpose of ANZPM is intended to be to provide public media services for New Zealand. Some submitters were concerned that ANZPM's ability to earn commercial revenue might divert resources away from its public media mandate. Others suggested that ANZPM should not be able to earn commercial revenue, and should focus solely on providing public media.

We consider it appropriate for ANZPM to earn some commercial revenue. Commercial revenue could reduce the financial burden on the taxpayer. It could also enable the entity to provide a broader range of content than it could with government funding alone. We believe that commercial media entities (such as TVNZ) are capable of fulfilling public media goals, and providing vital information to the public.

On balance, we think that it should be clearer in the bill that providing public media services is ANZPM's primary purpose. Therefore, we recommend amending clause 11(1) to specify that ANZPM's primary objective is to serve the public interest as a public media entity.

Some of ANZPM's content will be advertising-free, and most should be free of charge

Submitters expressed concern that the bill as introduced could allow ANZPM to charge audiences for content that is currently provided free by either RNZ or TVNZ. We also heard that submitters wanted a large amount of the new entity's content to be advertising-free, as RNZ is now.

We agree that ANZPM should provide most of its content free of charge to audiences. This should include when it is first provided, and when it is available more widely after premiering. However, we also think that the entity should be able to earn revenue from advertising.

We recommend amending clause 13(1)(e) to specify that ANZPM should provide content predominantly free of charge, including when it is first provided. We also recommend inserting clause 13(1)(ea) to make clear that some content would be provided free of charge and free of advertising, as is the case with RNZ now.

ANZPM's requirement to collaborate could be clearer

Clause 17 as introduced would require ANZPM to collaborate with the Māori media entities and other media entities. We are concerned that this clause would not set a clear enough expectation for ANZPM in relation to its collaboration with other media entities. Some submitters shared our concern, and suggested that clause 17 should specify how and with whom the entity should collaborate.

We believe that the requirement to collaborate should be clearer, but do not believe it should be overly prescriptive. We think that the purpose of the requirement to collaborate, and the expectation this clause places on ANZPM, should be clarified.

Therefore, we recommend removing clause 17 and inserting clause 14(1)(c). This change would make clear that collaboration would be for the purpose of helping to support the capability, capacity, and sustainability of the broader media sector. ANZPM's duty to collaborate would apply only where it is consistent with ANZPM's delivery of its charter and with section 51 of the Crown Entities Act.

It would also clarify that it would be the board's responsibility to ensure that ANZPM is generally operating in accordance with this duty in delivering its functions.

We also recommend inserting new clause 15(2). New clause 15(2) would provide that the requirement to collaborate with the wider media sector is not a specific authorisation under Part 2 of the Commerce Act, prohibiting restrictive trade practices.

This would help to clarify that any collaboration should not involve anything that would breach the Commerce Act (such as allocating markets or enabling cartel-like behaviour).

ANZPM's potential effect on competition in the media sector

We heard from submitters the view that the bill as introduced could distort the media market, and lead to a decrease in competition. Some submitters suggested that

ANZPM's ability to earn commercial revenue alongside its annual funding would mean that it could financially outperform private media entities. For example, ANZPM could use its additional commercial revenue to pay journalists more, or offer lower rates to advertising firms than private media entities.

We believe that ANZPM should work alongside the private media sector. ANZPM should be one part of a diverse media system, which offers New Zealanders a wide range of current affairs and entertainment options.

As noted above, we think that ANZPM should not be unduly constrained from earning commercial revenue in order to deliver public media content to all New Zealanders. However, we do not want ANZPM to act in a way that adversely affects competition in, or the plurality of, the media sector. We note that ANZPM is intended to be a public media entity, with the earning of commercial revenue secondary to its public media goals.

We recommend amending clause 14(1)(c)(ii) so that ANZPM's board would be required to ensure that ANZPM takes account of existing services in the media sector. For example, the board would consider existing services when deciding whether to begin delivery of a new service, or whether to produce content in-house.

This new clause would help ensure that ANZPM considers the effects of any decisions that could have an adverse effect on the sustainability and capacity of the wider media sector. It would also not constrain its delivery of the charter, or its ability to earn commercial revenue to support that.

Application of the Commerce Act

The bill as introduced does not clearly state whether the Commerce Act 1986 as a whole would apply to ANZPM's operations. We are concerned that this ambiguity could affect the new entity's ongoing operations.

The purpose of the Commerce Act is to promote healthy competition in markets for the benefit of consumers. We believe that, given ANZPM's likely size and market power, it is important to be clear that the Commerce Act should apply to ANZPM's ongoing operations.

Therefore, we recommend inserting new subpart 4, clause 15. New clause 15(1) specifies that the Commerce Act would apply to ANZPM's ongoing operations.

Periodic review of ANZPM's charter

The bill as introduced would require the House of Representatives to periodically review ANZPM and its performance of its charter. We note that legislating what a future House of Representatives must do binds future Parliaments to a set process. To bind a future Parliament means to restrict it from doing something, or to require it to do something. Binding future Parliaments is constitutionally unusual, and we consider that it should be avoided where possible.

We recommend amending clauses 22(1) and 22(4)(a) to require that the charter be periodically reviewed, but not to specify that this must be done by the House of Representatives.

We consider that this would avoid binding future Parliaments, while still setting an expectation that ANZPM's charter will be regularly reviewed. For instance, the Minister or Manatū Taonga could commission an independent review of ANZPM's charter and table the review in Parliament.

Transition from RNZ and TVNZ to ANZPM

We have some concerns about how the transition from RNZ and TVNZ to ANZPM would be executed. In particular, we wish to make clear:

- when and how RNZ and TVNZ would be required to submit their final annual reports under the Public Finance Act 1989
- how employment matters, such as redundancy payments and collective employment agreements, would be addressed
- what would happen to the assets and liabilities of TVNZ and RNZ.

We discuss some suggested amendments below.

Transfer of assets and liabilities

We consider that the bill as introduced could be clearer about what would happen to RNZ's and TVNZ's liabilities. There could be some confusion about what happens to any liabilities held by RNZ and TVNZ. The bill as introduced does not specifically mention liabilities in Schedule 1, clause 6. Liabilities are instead provided for under Schedule 1, clause 7 of the bill as introduced.

To avoid confusion, we recommend inserting new clauses 5A, 5B, and 5C into Schedule 1.

New clause 5A would make clear that all of RNZ's and TVNZ's assets and liabilities would be transferred to ANZPM. New clause 5B explicitly states that the transfer would not affect any international agreements to which RNZ or TVNZ is a party. New clause 5C would protect the legal position of ANZPM under any existing agreements that RNZ or TVNZ were a party to prior to commencement.

We also recommend amending the definition of "international agreement" in clause 2 of Schedule 1.

Employment of RNZ and TVNZ staff

We note some concern about whether the employment agreements of RNZ and TVNZ staff would be affected by the changes proposed in the bill. We also wondered about the appointment of a chief executive of ANZPM, since TVNZ and RNZ each has their own chief executive.

We would like the transition period to be as smooth as possible, with minimal disruption to the services New Zealanders expect from public media entities. This includes maintaining sufficient skilled staff to ensure that services continue to be provided.

We note that the purpose of clause 11(2) of Schedule 1 is to make sure that the transfer of employees from RNZ and TVNZ to ANZPM on commencement does not trigger technical redundancy. We recommend inserting new clause 11(3) in Schedule 1. This new clause would ensure that the terms and conditions of an employment agreement remained the same, consistent with the purpose of clause 11(2). The new clause ensures the terms remain the same even if the tier had changed under the new organisational structure as a result of the position of the new chief executive of ANZPM.

We also recommend inserting new clause 14A in Schedule 1, which would make sure that the collective employment agreements for each entity's staff continued. New clause 14A means that existing TVNZ staff would retain their current collective employment agreements and existing RNZ staff would maintain theirs after the creation of ANZPM.

Redundancy of staff after merging

The creation of ANZPM would likely result in a new organisational structure as a result of the merging of RNZ and TVNZ staff. Clause 14 as introduced sets out restrictions on entitlements to redundancy payments as a result of the restructuring. However, the bill also does not state clearly whether the redundancy payments would only apply to this proposed restructuring, or any future ones.

We believe the bill should be clear on how redundancy would work for existing staff at TVNZ and RNZ. Specifying a sunset date for the restriction on redundancy payments would give certainty to existing staff, and clarify the financial liability of ANZPM in the future.

Therefore, we recommend amending clause 14 of Schedule 1 to replace clause 14(1). New clause 14(1) would make clear that the restriction on any redundancy payments would have a sunset date of 30 June 2026. It would also make clear that the restriction on redundancy payments would only apply to restructuring caused by this legislation.

This would allow ANZPM to restructure RNZ and TVNZ with more confidence in staffing, and to manage long-term liabilities.

Existing advertisement-free services must remain so

The bill as introduced would require ANZPM's services that are similar or the same as those currently provided by RNZ to remain commercial-free if ANZPM continues to provide those services. We heard that the bill as introduced does not contain strong enough assurances that advertisement-free services would continue.

We agree with submitters that protections should be stronger to ensure RNZ's existing commercial-free services remain commercial-free for as long as they are delivered. To do this, we recommend replacing clause 8 of Schedule 1.

New clause 8 would specify the services that RNZ currently provides that must remain commercial-free. This would also prevent existing RNZ services from carrying advertising for ANZPM's commercial services.

These services include RNZ Concert, RNZ National, and RNZ Pacific in both English and Pacific languages. New clause 8 also specifies RNZ's website URL and the existing RNZ app as services that must remain commercial-free for as long as they are provided by ANZPM.

Final annual reports of TVNZ and RNZ

We consider that TVNZ and RNZ should have to present final annual reports to the House in accordance with the Public Finance Act 1989 if they are subsumed into ANZPM. Financial scrutiny of publicly owned entities such as RNZ and TVNZ is crucial to maintaining public trust in them. However, the bill as introduced does not make clear under which provision of the Public Finance Act this should be done.

We recommend inserting new clause 10A in Schedule 1. This would make clear that the specified date for the end of the reporting period is 28 February 2023, for the purposes of reporting under the Public Finance Act. The end of the reporting period refers to when TVNZ and RNZ would cease to be subject to the requirement to provide an annual report.

Existing Freeview shares transferring to ANZPM

Currently, operation and ownership of Freeview television in New Zealand is a joint venture between New Zealand's public broadcasters and Warner Brothers. We explored how RNZ's and TVNZ's ownership of shares in Freeview Limited would be transferred to ANZPM.

Clause 4(1) of Schedule 1, as introduced, deals with the transfer of shares in companies owned by RNZ and TVNZ, including Freeview. Since Freeview is jointly owned by public and private companies, the clause needs to reflect that only RNZ and TVNZ's shares would transfer.

Therefore, we recommend amending clause 4(1) of Schedule 1 to make clear that only shares owned by RNZ and TVNZ (a pre-commencement media company) would be transferred to ANZPM.

TVNZ and RNZ should be the same legal person as ANZPM for tax purposes

We believe that the bill as introduced is not specific enough about how TVNZ, RNZ, and the new ANZPM would be treated for tax purposes. We recommend inserting new clause 7(1) in Schedule 1 to specify that they would be treated as the same legal person for the purposes of all Inland Revenue Acts.

We also recommend inserting new clause 7(2) to make clear that the continuity provisions of the Income Tax Act 2007 would apply as if no change in ownership had occurred. This would ensure that no tax losses or imputation credits would be lost because of the establishment of ANZPM.

National Party differing view

National members do not accept that the Economic Development, Science and Innovation Committee has been able to effectively scrutinise the financials behind the Aotearoa New Zealand Public Media Bill. As a result, we cannot in good conscience support the RNZ/TVNZ merger on the simple basis financials revealed to us indicate the cost to taxpayers will be upwards of \$6+ billion over the next 30 years in addition to the upfront costs of \$370 million revealed in Budget 2022.

The merger of RNZ and TVNZ into a “media monolith”, ANZPM, will have massive implications for the wider commercial media sector, for advertisers, for consumers of content, and for the public of New Zealand forced to pay for its existence.

Editorial independence has been somewhat strengthened by the select committee process; however, the lack of assurance over the culture of the new entity, over how the rule of law may be undermined by so many overriding clauses relating to workers’ rights, contract rights, and competition law is staggering. It is unacceptable that, in addition to the lack of access to the unredacted Strong Public Media Business Case, the Treasury’s Regulatory Impact Analysis team determined that this proposal is exempted from the requirement to provide a regulatory impact statement and that while the bill was still being considered by the select committee after submissions, new information came to light as part of the Half Year Economic and Fiscal Update 2022 that, “there is a risk that the actual return [of ANZPM Revenue] in funding to the Crown may need to be lower than assumed in the fiscal forecasts, to ensure ANZPM’s financial viability and ability to deliver on public media outcomes”. This means the ongoing funding to the entity will have to be increased and, further, ANZPM has been assessed as being required to pay tax, reducing its internal revenue-sourcing capacity. We also find it ludicrous the Strong Public Media Establishment Board never appeared before the committee considering the bill or entered any submission to the process, forcing members to rely on the advice by the officials of the Ministry for Culture and Heritage, Manatū Taonga, who are spearheading the merger and wider Government media sector plans.

National members took heart that the former Prime Minister asked Cabinet Ministers to re-think their portfolio plans ahead of an expected 2023 pre-election ministerial reshuffle. With the announcement of the Prime Minister’s resignation and the imminent appointment of a new Cabinet, National members hope this merger is not a part of the new Prime Minister’s agenda and that whoever holds the broadcasting portfolio will stop this unnecessary merger. As a recession is now expected in 2023 with the cost of living soaring for New Zealand households, this spending to create a merger that is not required should be at the top of the chopping block in the Government’s line of wasteful and unjustified policies that have no warranted basis for continuance while our country battles an economic storm.

The entire saga behind the Labour Government’s plans for the media sector has been nothing but embarrassing, with multiple Ministers, countless reviews and working groups and millions of dollars in wasted spending all behind a pall of a lack of openness and transparency. Simply lining the pockets of consultants. National members

wonder how much better off RNZ might be if just the cost of the consultants involved with ANZPM went to fund their efforts to deliver on the RNZ Charter instead of this media circus.

In closing, National members turn to the words of Koi Tū: The Centre for Informed Futures at the University of Auckland, "...this bill, which will be a cornerstone of the sector for some decades, is so incomplete and raises so many issues that it would be unsafe to enact it in its present form". National members agree with Koi Tū and National believes the only appropriate course of action is to cease this bill in its tracks and to allow RNZ and TVNZ to continue in their present form. Questions over the future of the media landscape need to go back to square one after years of incompetence and bungling by Labour as they have time and time again through their merger attempts and meddling in public media sparked the undermining of trust in public and wider media institutions at large.

National has pledged to reverse this merger of RNZ and TVNZ. It is not needed, it is not justified, it is unsafe, it is detrimental to the media landscape of New Zealand, and, above all, it is dangerous to our democracy.

This bill must be withdrawn by the Minister.

Appendix

Committee process

The Aotearoa New Zealand Public Media Bill was referred to the committee on 26 July 2022. We invited the Minister for Broadcasting and Media to provide an initial briefing on the bill. He did so on 22 September 2022.

We called for submissions on the bill with a closing date of 8 September 2022. We considered submissions from 913 interested groups and individuals. We heard oral evidence from 86 submitters at hearings in Wellington.

We received advice on the bill from the Ministry for Culture and Heritage. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

Jamie Strange (Chairperson)

Glen Bennett

Naisi Chen

Hon Judith Collins (until 19 October 2022)

Barbara Kuriger (from 19 October 2022)

Melissa Lee

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon Willie Jackson

Aotearoa New Zealand Public Media Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Aotearoa New Zealand Public Media Act **2022**.

2 Commencement

This Act comes into force on **1 March 2023**.

5

Part 1

Preliminary provisions

3 Purpose

The purpose of this Act is to—

- (a) establish Aotearoa New Zealand Public Media as a public ~~broadcaster~~ media entity and provide for its objectives, functions, operating principles, and governance; and
- (b) dissolve RNZ and TVNZ; and
- (c) provide for transitional arrangements for the transfer of the Crown's provision of public ~~broadcasting~~ media from RNZ and TVNZ to Aotearoa New Zealand Public Media. 5

4 Interpretation

In this Act, unless the context otherwise requires,—

Aotearoa New Zealand Public Media means the Crown entity established by **section 8** 10

~~**broadcasting** means transmitting or making available content, whether or not encrypted, by radio waves or other means of telecommunication for reception by the New Zealand public by means of receiving apparatus~~

Charter has the meaning given in **section 43 10E** 15

~~**content** means sounds or visual images, or a combination of sounds and visual images, intended to—~~

- (a) ~~inform, enlighten, or entertain; or~~
- (b) ~~promote the interests of any person; or~~
- (c) ~~promote any product or service~~ 20

content means sounds or visual images, or a combination of sounds and visual images, intended to inform, educate, or entertain, but does not include advertising

editorial independence means independence in relation to editorial matters

editorial matters includes matters related to— 25

- (a) any content or advertising; or
- (b) any allegation or complaint relating to content or advertising; or
- (c) the gathering or presentation of news or the preparation or presentation of any current affairs content; or
- (d) responsibility for standards administered under the Broadcasting Act 1989 30

provide includes to broadcast, select, commission, and produce content, and includes to transmit programmes made on the demand of a particular person for reception only by that person

RNZ means the Crown entity company Radio New Zealand Limited 35

TVNZ means the Crown entity company Television New Zealand Limited

visual image includes a visual image consisting predominantly of—

- (a) alphanumeric text; or
- (b) alphanumeric text and software.

Compare: 1995 No 52 ss 8B(5), 13; 2003 No 1 s 28; 2003 No 21 s 10

- 5 Tiriti o Waitangi/Treaty of Waitangi** 5
- In order to recognise and respect the Crown’s responsibility to give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi,—
- (a) **section 10(3)** requires that at least 2 board appointments are made after consulting the Minister for Māori Development and having regard to an appointee’s knowledge of te ao Māori and tikanga Māori: 10
 - (b) **sections 11(1)(b), (2)(c), (d), and (e), 12(1)(c), (d), (e), and (2)(a)(ii), and 13(1)(b)** set out Charter objectives, functions, and operating principles in relation to te reo Māori or Māori:
 - (c) **section 14(1)(b)** requires the board to ensure that Aotearoa New Zealand Public Media engages with Māori about relevant strategies and policies: 15
 - (d) ~~**section 17(1)** requires Aotearoa New Zealand Public Media to collaborate~~ **section 14(1)(c)** requires certain collaboration with Māori media entities (and other media entities) ~~where this is financially responsible and consistent with the Charter:~~ 20
 - (e) **section 21(1)** requires the annual report to include an assessment of the extent to which Aotearoa New Zealand Public Media—
 - (i) ~~is fulfilling~~ carrying out its Charter; and
 - (ii) is engaging with Māori about relevant strategies and policies; and
 - (iii) is collaborating with Māori media entities (and other media entities). 25
- 6 Transitional, savings, and related provisions**
- The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms.
- 7 Act binds the Crown** 30
- This Act binds the Crown.

Part 2

Aotearoa New Zealand Public Media established

Subpart 1—Aotearoa New Zealand Public Media established

- 8 Aotearoa New Zealand Public Media established**
Aotearoa New Zealand Public Media is established. 5
- 9 Aotearoa New Zealand Public Media is Crown entity**
- (1) Aotearoa New Zealand Public Media is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.
 - (2) The Crown Entities Act 2004 applies to Aotearoa New Zealand Public Media except to the extent that this Act expressly provides otherwise. 10
- 10 Board**
- (1) The board of Aotearoa New Zealand Public Media consists of not fewer than 6, and not more than 9, members.
 - (2) The persons appointed must, collectively, as agreed with the Minister of Finance having regard to their financial management skills or experience, have the appropriate skills, knowledge, or background to assist Aotearoa New Zealand Public Media to ~~perform~~ carry out its Charter. 15
 - (3) At least 2 persons must be appointed who, in the opinion of the responsible Minister (after consulting the Minister for Māori Development), are qualified for appointment having regard to their knowledge of te ao Māori and tikanga Māori. 20
 - (4) This section does not limit section 29 of the Crown Entities Act 2004.
 - (5) When removing a board member under section 37 of the Crown Entities Act 2004, the responsible Minister must consult the Minister of Finance.

Subpart 1A—Editorial independence 25

10A Editorial independence

- (1) Aotearoa New Zealand Public Media is editorially independent from the Government.
- (2) Ministers must exercise or perform the powers, duties, and functions conferred or imposed by this Act (or by the Crown Entities Act 2004) in a manner that is consistent with Aotearoa New Zealand Public Media's editorial independence. 30
Compare: 1995 No 52 s 11(2); 2003 No 1 s 28(1), (2); 2003 No 21 s 10

10B No ministerial directions about editorial matters

No Minister (nor any person on behalf of, or at the direction of, a Minister) may give a direction about any editorial matter to Aotearoa New Zealand Pub- 35

lic Media (or to any of its members, subsidiaries, or employees or, to avoid doubt, to any other person connected with Aotearoa New Zealand Public Media (for example, its contractors or consultants)).

10C Statutorily independent function

(1) For the purposes of section 113 of the Crown Entities Act 2004, carrying out the Charter is a statutorily independent function. 5

(2) **Subsection (1)** does not apply for any other purposes of the Crown Entities Act 2004 (for example, section 73(3) (which relates to ability to delegate)).

Compare: 1995 No 52 s 13(1), (3); 2003 No 1 s 28(1), (3); 2003 No 21 s 10

10D No removal of members about editorial matters 10

The Minister may not remove a member of Aotearoa New Zealand Public Media or any of its subsidiaries for any reason connected to any editorial matter.

Compare: 1995 No 52 s 13(2); 2003 No 1 s 28(2)

Subpart 2—Charter 15

10E Charter

The Charter of Aotearoa New Zealand Public Media consists of its objectives, functions, and operating principles (*see sections 11 to 13*).

11 Objectives

(1) The ~~purpose~~ primary objective of Aotearoa New Zealand Public Media is to serve the public interest as a public media entity in order to contribute to— 20

- (a) a strong and distinctive New Zealand identity; and
- (b) valued, visible, and flourishing te reo Māori and tikanga Māori; and
- (c) an inclusive, enriched, and connected society; and
- (d) a healthy, informed, and participative democracy. 25

(2) To achieve the primary objective, Aotearoa New Zealand Public Media's objectives are to—

Strong and distinctive New Zealand identity

- (a) reflect, represent, and help to shape the development of New Zealand's unique identity and culture: 30
- (b) provide shared experiences that contribute to a sense of citizenship and national identity:

Valued, visible, and flourishing te reo Māori and tikanga Māori

- (c) reflect the contribution of te ao Māori to a unique New Zealand identity and culture: 35

- (d) promote understanding and use of te reo Māori and tikanga Māori among all New Zealanders:
- (e) promote the telling of Māori stories to all New Zealanders:
Inclusive, enriched, and connected society
- (f) reflect, include, and serve New Zealand's diverse society, languages, and cultures: 5
- (g) support children's and young people's—
 - (i) emotional, physical, and mental well-being:
 - (ii) creativity, learning, and development:
 - (iii) social participation and sense of belonging: 10
- (h) ensure that content and services are available and accessible to—
 - (i) all regions and communities; and
 - ~~(ii) New Zealanders of all ages, genders, abilities, and ethnicities:~~
 - (ii) disabled people, children and young people, and people of all ages, genders, and ethnicities: 15
- Healthy, informed, and participative democracy*
- (i) support all New Zealanders to be informed and engaged citizens who participate fully in society:
- (j) build awareness of the world and of New Zealand's place in it:
- (k) foster critical thought, ~~counter misinformation,~~ and promote informed and many-sided debate: 20
- (l) support freedom of thought and expression.

12 Functions

- (1) The functions of Aotearoa New Zealand Public Media are to ~~broadcast (and select, commission, or produce)~~ provide freely available, accessible, and high-quality public media content across all genres that informs, ~~enlightens, educates,~~ and entertains, including content that— 25
 - (a) is predominantly and distinctively of New Zealand:
 - (b) covers events of national significance:
 - (c) is in, or uses, te reo Māori: 30
 - (d) promotes tikanga Māori:
 - (e) reflects Māori history, experiences, and perspectives to a wide audience:
 - (f) appeals to, and engages, a wide audience:
 - (fa) stimulates, supports, and reflects the diversity of artistic and cultural expression: 35
 - (g) caters for tastes, interests, and perspectives not catered for elsewhere:

- (h) reflects the needs and experiences of ~~New Zealanders~~—
 (i) ~~of all ages, genders, abilities, and ethnicities; and~~
 (i) disabled people, children and young people, and people of all ages, genders, and ethnicities:
 (ii) people from all regions and communities: 5
- (i) is regional, national, and international news and information that is—
 (i) reliable and accurate; and
 (ii) comprehensive, impartial, and balanced.
- (2) Aotearoa New Zealand Public Media also has the following functions:
- (a) in relation to content it holds (or content held on its behalf),— 10
 (i) to preserve and enable access to content that reflects New Zealand’s history:
 (ii) to enable iwi, hapū, and Māori entities to have access to content by and about themselves, and to ensure that that content is preserved: 15
- (b) 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):.
- ~~(e) to perform any additional function that the responsible Minister adds in accordance with section 112 of the Crown Entities Act 2004 (see section 15(2)).~~ 20
- 13 Charter Operating principles**
- (1) ~~The Charter of Aotearoa New Zealand Public Media is to perform its functions, while acting consistently with its objectives and operating in accordance with the following principles:~~ operating principles of Aotearoa New Zealand Public Media for the purpose of **section 14(1)(a)** are— 25
- (a) demonstrating editorial independence, impartiality, accuracy, and balance, particularly when ~~broadcasting~~ providing factual content or news and current affairs: 30
- (b) ensuring that Māori perspectives are reflected in the development and delivery of content and services for and about Māori, including by providing opportunities for Māori participation:
- (c) representing and reflecting the diversity of New Zealand’s communities:
- (d) striving to understand, engage, and serve ~~New Zealanders of all ages, genders, abilities, ethnicities, regions, and communities:—~~ 35
 (i) all regions and communities:

- (ii) disabled people, children and young people, and people of all ages, genders, and ethnicities:
- (e) ensuring that its content is ~~broadcast~~ provided predominantly free of charge, including when it is first provided (see also section 16):
- (ea) ensuring that some of its content is provided free of charge and without advertising or sponsorship, other than advertisements that are intended only to promote its own services, or content on its own services (see also clause 8 of Schedule 1): 5
- (f) identifying and working to address any areas where ~~public broadcasting is~~ public media content provided by Aotearoa New Zealand Public Media is not— 10
 - (i) easily accessible; or
 - (ii) meeting the needs of New Zealand’s diverse communities:
- (g) ensuring 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: 15
- (h) ensuring that the means of ~~broadcasting~~ providing content and services aligns with audience preferences and needs:
- (i) innovating and taking creative risks: 20
- (j) aiming for the highest standards of quality and integrity.
- ~~(2) For the purposes of section 113 of the Crown Entities Act 2004, carrying out the Charter is a statutorily independent function.~~
- (2) Aotearoa New Zealand Public Media must ensure, to the extent that it is reasonably able to do so, that each of its Crown entity subsidiaries also acts consistently with subsection (1) to the extent that it is applicable to the subsidiary. 25

Subpart 3—Board’s role

14 Additional collective duties of board

- (1) The board must ensure that Aotearoa New Zealand Public Media— 30
 - ~~(a) acts in accordance with its Charter; and~~
 - (a) acts in a manner consistent with the operating principles in section 13; and
 - (b) engages with Māori about relevant strategies and policies; and
 - (c) for the purpose of supporting the capability, capacity, and sustainability of the media sector, and only to the extent that it is consistent with carrying out the Charter and with section 51 of the Crown Entities Act 2004,— 35

- (i) collaborates with Māori media entities and other media entities; and
 - (ii) takes account of services provided elsewhere in the sector.
- (2) The duties in **subsection (1)**—
 - (a) apply in addition to the duties of the board in sections 49 to 52 of the Crown Entities Act 2004, and (for example,—
 - (i) the duty in section 49 to act in a manner consistent with its objectives and functions; and
 - (ii) the duty in section 50(c) to collaborate with other public entities where practicable); and
 - (b) are collective duties owed to the responsible Minister for the purposes of section 58 of that Act.

Compare: 2020 No 52 s 19

~~Subpart 4 — Minister's role~~

- 15 Minister's role** 15
- (1) ~~In relation to Aotearoa New Zealand Public Media, the responsible Minister must exercise or perform the powers, duties, and functions conferred or imposed by this Act (or by the Crown Entities Act 2004) in a manner that is consistent with the Charter.~~
 - (2) ~~The Minister may, in accordance with section 112 of the Crown Entities Act 2004, add to the functions of Aotearoa New Zealand Public Media (if the additional function is consistent with the Charter).~~ 20
 - Editorial independence*
 - (3) ~~The Minister may not give a direction to Aotearoa New Zealand Public Media (or any of its members, subsidiaries, or employees) for any reason relating to broadcasting, selecting, commissioning, or producing particular content.~~ 25
 - (4) ~~For example, the Minister must not give a direction in respect of—~~
 - (a) ~~any content; or~~
 - (b) ~~any allegation or complaint relating to content; or~~
 - (c) ~~the gathering or presentation of news or the preparation or presentation of any current affairs content; or~~ 30
 - (d) ~~standards administered under the Broadcasting Act 1989.~~
 - (5) ~~The Minister may not remove a member of Aotearoa New Zealand Public Media or any of its subsidiaries for any reason relating to broadcasting, selecting, commissioning, or producing particular content.~~ 35
 - (6) ~~For example, the Minister must not remove a member for any reason relating to—~~
 - (a) ~~any content; or~~

- ~~(b) any allegation or complaint relating to content; or~~
- ~~(c) the gathering or presentation of news or the preparation or presentation of any current affairs content; or~~
- ~~(d) the responsibility of Aotearoa New Zealand Public Media or any of its subsidiaries for compliance with standards administered under the Broadcasting Act 1989.~~ 5

~~Compare: 1995 No 52 s 13(1), (2); 2003 No 1 s 28(1), (2); 2003 No 21 s 10~~

Subpart 4—Application of Commerce Act 1986

15 Commerce Act 1986 applies

- (1) Aotearoa New Zealand Public Media is an instrument of the Crown in respect of the Government of New Zealand engaged in trade to which the Commerce Act 1986 applies. 10
- (2) The duty in **section 14(1)(c)** is not a specific authorisation for the purpose of section 43 of the Commerce Act 1986.

Subpart 5—Duties 15

16 Duty to ~~broadcast~~ provide content free of charge

- (1) If there is a charge for content ~~on its first broadcast~~ the first time it is provided, Aotearoa New Zealand Public Media must subsequently ~~broadcast~~ provide it free of charge.
- (2) The subsequent ~~broadcast~~ provision of the content must be within a time period that is reasonable given the nature of the content and the circumstances. 20

~~**17 Collaboration with media entities**~~

- ~~(1) Aotearoa New Zealand Public Media must, if doing so is consistent with the Charter and with section 51 of the Crown Entities Act 2004, collaborate with Māori media entities and other media entities.~~ 25
- ~~(2) The duty in **subsection (1)** is in addition to the duty in section 50(c) of the Crown Entities Act 2004 to collaborate with other public entities where practicable.~~

Guidance note

~~Section 51 requires a Crown entity board to ensure that the entity operates in a financially responsible manner.~~ 30

18 Regard to relevant Crown funding policies

Aotearoa New Zealand Public Media must, when carrying out the Charter, have regard to the funding policies adopted by the Broadcasting Commission

(NZ On Air) and Te Reo Whakapuaki Irirangi (the Māori Broadcasting Funding Agency).

Compare: 1989 No 25 s 39A

19 No duty to ensure subsidiary does not perform Aotearoa New Zealand Public Media's functions 5

Section 97(g) of the Crown Entities Act 2004 does not apply to Aotearoa New Zealand Public Media.

Guidance note

Section 97(g) requires a Crown entity parent to ensure (to the extent that it is reasonably able) that each of its subsidiaries does not perform any of the parent's statutorily independent functions. 10

Compare: 1995 No 52 s 13(3); 2003 No 1 s 28(3)

Subpart 6—Reporting and review

20 Supply of information and statements to Ministers

- (1) The board of Aotearoa New Zealand Public Media must supply to the Minister of Finance any information relating to the financial performance of the entity that that Minister requests as if the request were a request made by the responsible Minister under section 133 of the Crown Entities Act 2004 (and section 134 of that Act applies). 15
- (2) When Aotearoa New Zealand Public Media provides any of the following under the Crown Entities Act 2004 to the responsible Minister, Aotearoa New Zealand Public Media must also provide it to the Minister of Finance: 20
 - (a) a statement of intent (or a draft or an amended statement of intent);
 - (b) a statement of performance expectations (or a draft or an amended statement of performance expectations). 25
- (3) The Minister of Finance may comment in relation to matters of financial performance on a statement of intent or a statement of performance expectations (whether draft, final, or amended) under the Crown Entities Act 2004 in the same way as the responsible Minister.

21 Reporting 30

- ~~(1) Aotearoa New Zealand Public Media must include in its annual report required by section 150 of the Crown Entities Act 2004 an assessment of the extent to which Aotearoa New Zealand Public Media—~~ 35
 - ~~(a) is fulfilling its Charter; and~~
 - ~~(b) is engaging with Māori about relevant strategies and policies (see **section 44(1)(b))**; and~~
 - ~~(c) is collaborating with Māori media entities and other media entities under **section 47**.~~

- (1) Aotearoa New Zealand Public Media must include in its annual report required by section 150 of the Crown Entities Act 2004 an assessment of the extent to which Aotearoa New Zealand Public Media is carrying out its Charter and performing its additional duties under **section 14**.
- (2) ~~In making the assessment~~ assessing the extent to which Aotearoa New Zealand Public Media is carrying out its Charter, Aotearoa New Zealand Public Media must take into account—
- (a) research relating to a representative selection of members of the public; and
 - (b) the measures, if any, it has taken as a result of the research.
- (3) For the purposes of **subsection (2)(a)**, Aotearoa New Zealand Public Media must undertake or obtain the research on a regular basis, but at least once a year.
- Compare: 1995 No 52 s 8D
- 22 Review of Charter**
- (1) ~~The House of Representatives must periodically review the Charter and Aotearoa New Zealand Public Media's performance of the Charter.~~
- (1) The Charter, and the extent to which Aotearoa New Zealand Public Media is carrying out the Charter, must be periodically reviewed.
- (2) The first review must be undertaken and completed as soon as practicable after the date that is 5 years after the commencement of this Act.
- (3) A subsequent review must be undertaken and completed as soon as practicable after the fifth anniversary of the later of the dates specified in **subsection (4)**.
- (4) For the purposes of **subsection (3)**, the dates are—
- (a) the date on which ~~the select committee that reviews the Charter~~ any select committee presents its report to the House of Representatives;
 - (b) the date on which any subsequent legislation that amends the Charter comes into force.
- Compare: 1995 No 52 s 8C

Part 3

Amendments to other enactments

- 23 Amendments to and revocations of other enactments**
- Amend or revoke the enactments specified in **Schedule 2** as set out in that schedule.
- 24 Repeals**
- The following Acts are repealed:

- (a) Radio New Zealand Act 1995 (1995 No 52):
- (b) Television New Zealand Act 2003 (2003 No 1).

Schedule 1

Transitional, savings, and related provisions

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Part 1

Provisions relating to this Act as enacted

Overview of transitional arrangements

1 Overview of transitional arrangements

- (1) This schedule transitions the Crown's provision of public ~~broadcasting media~~ from 2 Crown entity companies to 1 autonomous Crown entity. 5
- (2) This clause is only a guide to the general scheme and effect of this schedule.

2 Interpretation

In this schedule, unless the context otherwise requires,—

commencement date means the day on which this Act comes into force under **section 2**, namely **1 March 2023** 10

dissolution date means the date set under **clause 17 of this schedule**

international agreement means an agreement that is not governed by New Zealand law and that is—

- (a) with an international party; and 15
- (b) with a pre-commencement media company; and
- (c) ~~that is~~ in force immediately before the commencement date

pre-commencement media company means RNZ or TVNZ

pre-commencement subsidiary means one of the following ~~subsidiaries of the pre-commencement media companies:~~ 20

- (a) Freeview Limited:
- (b) Freeview Television Limited:
- (c) NZOOM Limited:
- (d) TVNZ International Limited:
- (e) TVNZ Investments Limited: 25
- (f) Sound Archives Nga Taonga Korero Limited-

property—

- (a) means every type of property; and

(b) includes money, and every type of estate and interest in property rights means all rights, powers, privileges, and immunities, whether actual, contingent, or prospective.

Subpart 1—On and after commencement date

- | | | |
|-----------|---|----|
| 3 | Shares in pre-commencement media companies transferred to Aotearoa New Zealand Public Media | 5 |
| (1) | On the commencement date, all shares in the pre-commencement media companies are transferred to Aotearoa New Zealand Public Media. | |
| (2) | Section 96 of the Crown Entities Act 2004 does not apply in relation to that transfer. | 10 |
| (3) | Section 84 of the Companies Act 1993 applies. | |
| 4 | Shares in pre-commencement subsidiaries transferred to Aotearoa New Zealand Public Media | |
| (1) | On the commencement date, all shares in the pre-commencement subsidiaries <u>that are owned by a pre-commencement media company</u> are transferred to Aotearoa New Zealand Public Media. | 15 |
| (2) | Section 96 of the Crown Entities Act 2004 does not apply in relation to that transfer. | |
| (3) | Section 84 of the Companies Act 1993 applies. | |
| 5 | Directors: no compensation for loss of office | 20 |
| (1) | The directorships of the directors of the pre-commencement media companies cease on the commencement date. | |
| (2) | See section 91 of the Crown Entities Act 2004, which provides that no compensation is payable. | |
| 5A | <u>Property, rights, and liabilities transferred to Aotearoa New Zealand Public Media</u> | 25 |
| (1) | On the commencement date,— | |
| (a) | <u>all property belonging to a pre-commencement media company vests in Aotearoa New Zealand Public Media; and</u> | |
| (b) | <u>all rights, liabilities, contracts, entitlements, and engagements of a pre-commencement media company become the rights, liabilities, contracts, entitlements, and engagements of Aotearoa New Zealand Public Media; and</u> | 30 |
| (c) | <u>all information and documents held by a pre-commencement media company are held by Aotearoa New Zealand Public Media; and</u> | 35 |
| (d) | <u>all money payable to or by a pre-commencement media company becomes payable to or by Aotearoa New Zealand Public Media; and</u> | |

- (e) anything done, or omitted to be done, or that is to be done, by or in relation to a pre-commencement media company is to be treated as having been done, or having been omitted to be done, or to be done, by or in relation to Aotearoa New Zealand Public Media; and
- (f) proceedings, inquiries, and investigations under any enactment that may be commenced, continued, or enforced by or against a pre-commencement media company or in relation to a pre-commencement media company may instead be commenced, continued, or enforced by or against or in relation to Aotearoa New Zealand Public Media without amendment to the proceedings; and
- (g) a matter or thing that could, but for this clause, have been done or completed by a pre-commencement media company may be done or completed by Aotearoa New Zealand Public Media.
- (2) The transfer of information from a pre-commencement media company to Aotearoa New Zealand Public Media under **subclause (1)(c)** does not constitute an action that is a breach of information privacy principle 8 or 11 within the meaning of the Privacy Act 2020.
- (3) **Subclause (1)** does not, by itself, affect any of the following matters:
- (a) any decision made, or anything done or omitted to be done, by a pre-commencement media company in relation to the performance or exercise of its functions, powers, or duties under any enactment;
- (b) any proceedings commenced by or against a pre-commencement media company;
- (c) any other matter or thing arising out of a pre-commencement media company's performance or exercise, or purported performance or exercise, of its functions, powers, or duties under any enactment.
- (4) In any instrument relating to any matter referred to in **subclause (1)**, a reference to a pre-commencement media company must be read as a reference to Aotearoa New Zealand Public Media.
- (5) However, this clause does not apply to a matter relating to an international agreement (see **clauses 5B and 18**).
- Compare: 2010 No 116 s 134; 2011 No 5 s 72; 2016 No 14 s 144; 2017 No 17 Schedule 1 cl 8; 2019 No 50 Schedule 1 cl 3; 2022 No 30 Schedule 1 cl 10
- 5B Transfers do not affect international agreements**
- (1) Any international agreement continues as if this Act had not been passed and the ownership of the pre-commencement media companies and pre-commencement subsidiaries had not changed under **clauses 3 and 4**.
- (2) Any international agreement continues in force, but—
- (a) the board of Aotearoa New Zealand Public Media is not in breach of its collective duties if the agreement is inconsistent with the Charter; and

- (b) Aotearoa New Zealand Public Media or a pre-commencement media company may continue, until the dissolution date, its obligations under the agreement despite any inconsistency with the Charter.
- (3) **Clauses 15 and 16** (which relate to other references) also do not apply.
- 5C Effect of transfers** 5
- Nothing effected or authorised by this subpart—
- (a) places a pre-commencement media company, Aotearoa New Zealand Public Media, or any other person in breach of an agreement or a confidence or makes any of them liable for a civil wrong; or
- (b) entitles a person to terminate or cancel an agreement or to accelerate the performance of an obligation or to impose a penalty or an increased charge; or 10
- (c) places a pre-commencement media company, Aotearoa New Zealand Public Media, or any other person in breach of an enactment, a rule of law, or a provision of an agreement that prohibits, restricts, or regulates the assignment or transfer of property or the disclosure of information; or 15
- (d) releases a surety wholly or in part from any obligation; or
- (e) invalidates or discharges an agreement or a surety.
- Compare: 2011 No 5 s 75; 2016 No 14 s 144; 2019 No 50 Schedule 1 cl 16; 2022 No 30 Schedule 1 cl 28 20
- 6 ~~Land and property transferred to Aotearoa New Zealand Public Media Registers~~**
- (1) ~~On the commencement date, the following are transferred to Aotearoa New Zealand Public Media from the pre-commencement media companies:~~ 25
- (a) ~~all land and interests in land:~~
- (b) ~~all other property except for property consisting of contractual rights under an international agreement.~~
- (2) ~~In any instrument relating to any property referred to in **subclause (1)(a) and (b)**, a reference to a pre-commencement media company must be read as a reference to Aotearoa New Zealand Public Media.~~ 30
- (3) The Registrar-General of Land or any other person charged with keeping books or registers is not required to change, in those books or registers or in any document, the name of a pre-commencement media company to Aotearoa New Zealand Public Media solely because of this ~~clause~~ **subpart**. 35
- (4) If Aotearoa New Zealand Public Media presents an instrument and a certificate referred to in **subclause (5)** to a Registrar or another person, the presentation of that instrument is, in the absence of proof to the contrary, sufficient evidence that the property is vested in Aotearoa New Zealand Public Media.

- (5) For the purposes of this clause, the instrument need not be an instrument of transfer, but must—
- (a) be executed (or purport to be executed) by Aotearoa New Zealand Public Media; and
 - (b) relate to property held by a pre-commencement media company immediately before the commencement date; and
 - (c) be accompanied by a certificate by Aotearoa New Zealand Public Media that the property became vested in it by virtue of the provisions of this Act.

Compare: 2011 No 5 s 76

7 ~~Ownership changes do not affect international agreements, etc~~

- (1) ~~All of the following continue as if this Act had not been passed and the ownership of the pre-commencement media companies and pre-commencement subsidiaries had not changed under **clauses 3 and 4**:~~

- (a) ~~an international agreement:~~
- (b) ~~the completion of a matter or thing that relates to an existing right, interest, title, immunity, duty, status, or capacity (a **legal position**), including, for example,—~~
 - (i) ~~a contract to which a pre-commencement media company is a party;~~
 - (ii) ~~contractual obligations owed by, and owed to, a pre-commencement media company;~~
- (c) ~~the right to commence a proceeding that relates to an existing legal position;~~
- (d) ~~the completion of a proceeding commenced or in progress before the commencement date;~~
- (e) ~~shareholder continuity for the purposes of the Income Tax Act 2007.~~

- (2) ~~Any international agreement or other contract in force on the commencement date continues in force, but—~~

- (a) ~~the board of Aotearoa New Zealand Public Media is not in breach of its collective duties if the agreement or contract is inconsistent with the Charter; and~~
- (b) ~~Aotearoa New Zealand Public Media or a pre-commencement media company may continue, until the dissolution date, its obligations under the agreement or contract despite any inconsistency with the Charter.~~

- (3) ~~In any instrument relating to any matter referred to in **subclause (1)**, a reference to a pre-commencement media company must be read as a reference to Aotearoa New Zealand Public Media.~~

7 Tax treatment

- (1) For the purposes of the Inland Revenue Acts (as defined in section 3(1) of the Tax Administration Act 1994), Aotearoa New Zealand Public Media must be treated as the same person as each of RNZ and TVNZ.
- (2) The continuity provisions of the Income Tax Act 2007, as defined in section YA 1 of that Act, apply as if this Act had not been passed and the ownership of the pre-commencement media companies and pre-commencement subsidiaries had not changed under **clauses 3 and 4.**

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8 Pre-existing services to be commercial-free

- (1) ~~If a service is the same, or substantially the same, as a commercial free service provided by RNZ before the commencement date, Aotearoa New Zealand Public Media must provide it in a commercial free manner.~~

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- (2) ~~In this clause, —~~

~~commercial free —~~

- (a) ~~means free of charge and without advertising or sponsorship; but~~

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- (b) ~~to avoid doubt, does not include advertising by Aotearoa New Zealand Public Media of Aotearoa New Zealand Public Media's own services~~

~~service does not include a service that is a means of transmission (such as radio itself).~~

- (1) Aotearoa New Zealand Public Media must, when providing any of the following services, provide them free of charge and without advertising or sponsorship:

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- (a) radio services known as the FM Concert Programme or RNZ Concert:

- (b) radio services known as National Radio or RNZ National:

- (c) the international service to the South Pacific in both English and Pacific languages:

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- (d) website services on www.rnz.co.nz:

- (e) the RNZ app.

- (2) This clause does not apply to any advertisements that are intended to promote services, or content on services, that are referred to in this clause.

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Compare: 1995 No 52—~~8B~~ ss 8, 8B

9 Public Works Act 1981 does not apply to land transfer

Nothing in sections 40 to 42 of the Public Works Act 1981 applies to the transfer of land and interests in land from the pre-commencement media companies to Aotearoa New Zealand Public Media under this Act, but if section 40 or 41 of that Act applied to transferred land or interests in land before the commencement date then that section will, after the transfer, apply to the land or

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interests in land (as if the pre-commencement media companies were the Crown and the land had not been transferred under this Act).

10 Commerce Act 1986 does not apply to transfers of shares and assets

Parts 2 and 3 of the Commerce Act 1986 do not apply to the transfers of shares and ~~assets~~ property in the pre-commencement media companies and in the pre-commencement subsidiaries to Aotearoa New Zealand Public Media. 5

10A Final annual report for entities that cease to be subject to requirement to provide annual report

28 February 2023 is the specified date for the purposes of the application of section 45K(1)(b) of the Public Finance Act 1989 to TVNZ and RNZ. 10

Employees

11 Employees of pre-commencement media companies

(1) On the commencement date,—

- (a) the employment of the chief executives of the pre-commencement media companies ceases; and 15
- (b) the employment of the other employees of the pre-commencement media companies is transferred to Aotearoa New Zealand Public Media.

(2) For the employees of the pre-commencement media companies who transfer under **subclause (1)(b)**,—

- (a) employment by Aotearoa New Zealand Public Media is on the same terms and conditions as their employment with the pre-commencement media company; and 20
- (b) employment does not cease and they are not entitled to any compensation relating to the transfer; and
- (c) employment is continuous for the purposes of the Holidays Act 2003, the Parental Leave and Employment Protection Act 1987, and the Kiwi-Saver Act 2006 (as provided in **clause 12**); and 25
- (d) **clause 13** applies if they are members of the Government Superannuation Fund.

(3) An employee's tier must be treated, for the purpose of subclause (2)(a), as the same if the tier is lower only as a result of the new position of the chief executive of Aotearoa New Zealand Public Media. 30

12 Employment continuous for purpose of certain enactments

(1) The employment of an employee to whom this clause applies is to be treated as continuous for the purposes of— 35

- (a) entitlements under the following provisions in Part 2 of the Holidays Act 2003:

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- (i) subpart 1 (annual holidays); and
 - (ii) subpart 3 (public holidays and alternative holidays); and
 - (iii) subpart 4 (sick leave and bereavement leave); and
 - (iv) subpart 5 (family violence leave); and
 - (b) entitlements to leave under the Parental Leave and Employment Protection Act 1987; and 5
 - (c) the KiwiSaver Act 2006.
 - (2) For the purpose of **subclause (1)(a)**,—
 - (a) the period of employment of the employee that ends with the commencement date ~~on which the employee moves to the new position~~ must be treated as a period of employment with Aotearoa New Zealand Public Media for the purpose of determining the employee's entitlement to annual holidays, sick leave, bereavement leave, and family violence leave; and 10
 - (b) the chief executive of Aotearoa New Zealand Public Media must not pay the employee for annual holidays, or alternative holidays, not taken before the commencement date ~~on which the employee moved to the new position~~; and 15
 - (c) the chief executive of Aotearoa New Zealand Public Media must recognise the employee's entitlement to— 20
 - (i) any sick leave, including any sick leave carried over under section 66 of the Holidays Act 2003, not taken before the commencement date ~~on which the employee moved to the new position~~; and
 - (ii) any annual holidays not taken before the commencement date ~~on which the employee moved to the new position~~; and 25
 - (iii) any alternative holidays not taken or exchanged for payment under section 61 of that Act before the commencement date ~~on which the employee moved to the new position~~; and
 - (iv) any holidays not taken before the commencement date ~~on which the employee moved to the new position~~ in relation to which there was an agreement between the employee and the pre-commencement media company under section 44A or 44B of that Act. 30
 - (3) For the purpose of **subclause (1)(b)**, the period of employment of the employee by the pre-commencement media company that ends on the commencement date ~~on which the employee moves to the new position~~ must be treated as a period of employment with Aotearoa New Zealand Public Media. 35
 - (4) For the purpose of **subclause (1)(c)**, the employment of the employee by Aotearoa New Zealand Public Media after the commencement date ~~in the new~~

~~position~~ is not new employment within the meaning of that term in the Kiwi-Saver Act 2006.

Compare: 2020 No 40 s 91

13 Government Superannuation Fund members

- (1) A person who, immediately before the commencement date, is an employee of a pre-commencement media company and a contributor to the Government Superannuation Fund under Part 2 or 2A of the Government Superannuation Fund Act 1956 is, for the purposes of that Act, deemed to be employed in the Government service so long as that person continues to be an employee of Aotearoa New Zealand Public Media. 5 10
- (2) The Government Superannuation Fund Act 1956 applies to the person in all respects as if that person's service as an employee were in the Government service.
- (3) For the purposes of applying the Government Superannuation Fund Act 1956 under **subclause (1)**, controlling authority, in relation to that employee, means— 15
 - (a) the pre-commencement media company; or
 - (b) Aotearoa New Zealand Public Media.

Compare: 2003 No 1 s 33

14 Other restrictions on redundancy payments 20

- ~~(1) This clause applies to a notice of termination by reason of redundancy that is the first redundancy for a particular employee of Aotearoa New Zealand Public Media after the commencement date.~~
- (1) This clause applies to a notice of termination by reason of redundancy that is—
 - (a) received by a particular employee to whom **clause 11(1)(b)** applied on the commencement date; and 25
 - (b) received before 30 June 2026; and
 - (c) the first redundancy for that employee after the commencement date.
- (2) An employee of Aotearoa New Zealand Public Media who receives a notice to which this clause applies is not entitled to a redundancy payment if, before the employee's employment has ended, the employee— 30
 - (a) is offered and accepts another position as an employee ~~in~~ of Aotearoa New Zealand Public Media that—
 - (i) begins before, on, or immediately after the date on which the employee's preceding position ends; and 35
 - (ii) is on terms and conditions of employment (including redundancy and superannuation conditions) that are no less favourable; and
 - (iii) is on terms that treat service in either position as if it were continuous service; or

- (b) is offered an alternative position as an employee ~~in~~ of Aotearoa New Zealand Public Media that—
- (i) begins before, on, or immediately after the date on which the employee's preceding position ends; and
 - (ii) is a position with comparable duties and responsibilities to those of the employee's preceding position; and
 - (iii) is in substantially the same general locality or a locality within reasonable commuting distance; and
 - (iv) is on terms and conditions of employment (including redundancy and superannuation conditions) that are no less favourable; and
 - (v) is on terms that treat service in either position as if it were continuous service.
- (3) **Clauses 12 and 13** apply to an employee who (being an employee to whom **subclause (2)(a)** applies) is moving from ~~+~~ one position to another position in Aotearoa New Zealand Public Media.
- (4) This clause overrides Part 6A of the Employment Relations Act 2000.

Compare: 2020 No 40 s 88

14A Collective agreements

- (1) This clause applies to a collective agreement (within the meaning of section 5 of the Employment Relations Act 2000) that is in force, and to which a pre-commencement media company is a party, immediately before the commencement date.
- (2) On and after the commencement date, the collective agreement continues, and Aotearoa New Zealand Public Media is treated as a party to the collective agreement in place of the pre-commencement media company, by virtue of this subpart.
- (3) If a collective agreement contains terms or conditions that apply before the commencement date only to a particular pre-commencement media company, those terms or conditions—
- (a) apply only to people who, immediately before the commencement date, were parties to the agreement or covered by those terms or conditions;
 - (b) must be offered by Aotearoa New Zealand Public Media to employees who, immediately before the commencement date, would have been offered those terms or conditions—
 - (i) unless the parties to the agreement agree otherwise; or
 - (ii) until the agreement expires or otherwise ceases to have effect.

- (4) A collective agreement that covers some but not all employees of a pre-commencement media company continues after the commencement date to cover only those employees.

Compare: 2022 No 30 Schedule 1 cl 15

~~References~~ Other references

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15 Consequential changes to references

- (1) After the commencement date, if an instrument or other thing refers to a pre-commencement media company and that reference is no longer appropriate because functions were transferred to Aotearoa New Zealand Public Media on the commencement date, the reference must be read as a reference to Aotearoa New Zealand Public Media. 10
- (2) After the commencement date, if an instrument or other thing refers to employees of a pre-commencement media company and that reference is no longer appropriate because those employees have been transferred, the reference must be read as a reference to the employees of Aotearoa New Zealand Public Media. 15
- (3) After the commencement date, if an instrument or other thing refers to employees of a pre-commencement media company and that reference is no longer appropriate because functions were transferred to Aotearoa New Zealand Public Media, the reference must be read as a reference to the employees who carry out the relevant functions at Aotearoa New Zealand Public Media. 20

16 Consequential changes to references to chief executives

- (1) After the commencement date, if an instrument or other thing refers to a chief executive of a pre-commencement media company and that reference is no longer appropriate because the employment of that chief executive has ceased, the reference must be read as a reference to the chief executive of Aotearoa New Zealand Public Media. 25
- (2) If an instrument or other thing refers to a chief executive of a pre-commencement media company and that reference is no longer appropriate because functions were transferred to Aotearoa New Zealand Public Media, the reference must be read as a reference to the chief executive of Aotearoa New Zealand Public Media. 30

Compare: 1988 No 20 s 30I; 2020 No 40 Schedule 9 cl 3

Setting dissolution date for pre-commencement media companies

17 Setting dissolution date 35

- (1) The board of Aotearoa New Zealand Public Media may set as the dissolution date any date before **1 March 2028**.
- (2) The dissolution date must be set no later than 3 months before the dissolution date.

Subpart 2—On and after dissolution date

18 International agreements

On the dissolution date, property that consists of contractual rights under any international agreement that remains in force is transferred to Aotearoa New Zealand Public Media from the pre-commencement media ~~company~~ companies.

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- ~~(2) See **clause 7(1) and (3)** (international agreement continues in force; references to be read as references to Aotearoa New Zealand Public Media).~~

19 Pre-commencement media companies to be removed from companies register

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- (1) As soon as is reasonably practicable on or after the dissolution date, the Registrar of Companies must remove the pre-commencement media companies from the companies register.
- (2) In this clause, **companies register** means the register of companies incorporated in New Zealand that is kept under section 360(1)(a) of the Companies Act 1993.

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Schedule 2

Amendments to other enactments on commencement date

s 23

Part 1

Amendments to Acts

5

Broadcasting Act 1989 (1989 No 25)

Replace section 39A with:

39A Funding and commissioning policies

The Commission and Te Reo Whakapuaki Irirangi must, in carrying out their respective functions under this Act, each have regard to—

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- (a) the funding policies adopted by the other; and
- (b) the commissioning policies of Aotearoa New Zealand Public Media.

~~In section 44(1A), replace “Radio New Zealand Limited” with “Aotearoa New Zealand Public Media”.~~

Repeal section 44(1A).

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Civil Defence Emergency Management Act 2002 (2002 No 33)

In Schedule 1, Part A, replace “Radio New Zealand Limited and Television New Zealand Limited” with “Aotearoa New Zealand Public Media”.

Copyright Act 1994 (1994 No 143)In section 50(1), definition of **archive**, replace paragraph (a)(iii) and (iv) with:

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- (iii) the sound and film archives maintained by Aotearoa New Zealand Public Media; or

Replace section 56(5) with:

- (5) This section does not apply to the sound and film archives maintained by Aotearoa New Zealand Public Media or the film archive maintained by the New Zealand Film Archive Incorporated.

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In section 57(1), replace “Radio New Zealand Limited” with “Aotearoa New Zealand Public Media”.

In section 57(2), replace “Television New Zealand Limited” with “Aotearoa New Zealand Public Media”.

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Repeal section 57A.

Crown Entities Act 2004 (2004 No 115)

In Schedule 1, Part 2, insert in its appropriate alphabetical order:

Crown Entities Act 2004 (2004 No 115)—continued

Name	Exemption from acquisition of financial products, borrowing, guarantee, and derivative rules				Exemption from section 165 (net surplus payable to Crown)
	s 161	s 162	s 163	s 164	
Aotearoa New Zealand Public Media	✓	✓	✓	✓	✓

In Schedule 2, repeal the items relating to Radio New Zealand Limited and Television New Zealand Limited.

Finance Act (No 2) 1992 (1992 No 127)

Repeal section 2 and the cross-heading above section 2.

Income Tax Act 2007 (2007 No 97)

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In Schedule 36, Part A, insert in its appropriate alphabetical order:

Aotearoa New Zealand Public Media

In Schedule 36, Part A, repeal the items relating to Radio New Zealand Limited and Television New Zealand Limited.

Official Information Act 1982 (1982 No 156)

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In Schedule 1, insert in its appropriate alphabetical order:

Aotearoa New Zealand Public Media

In Schedule 1, repeal the items relating to Radio New Zealand Limited and Television New Zealand Limited.

Ombudsmen Act 1975 (1975 No 9)

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In Schedule 1, Part 2, insert in its appropriate alphabetical order:

Aotearoa New Zealand Public Media

In Schedule 1, Part 2, repeal the items relating to Radio New Zealand Limited and Television New Zealand Limited.

Radiocommunications Act 1989 (1989 No 148)

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In section 2(1), insert in its appropriate alphabetical order:

Aotearoa New Zealand Public Media has the meaning given in **section 4** of the Aotearoa New Zealand Public Media Act **2022**, and includes any subsidiary within the meaning of section 5 of the Companies Act 1993

In section 2(1), repeal the definition of **Radio New Zealand**.

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In the heading to section 174, replace “**Radio New Zealand Limited**” with “**Aotearoa New Zealand Public Media**”.

In section 174(2), (3), and (5), replace “Radio New Zealand” with “Aotearoa New Zealand Public Media”.

Radiocommunications Act 1989 (1989 No 148)—*continued*

In section 175(1), replace “Radio New Zealand” with “Aotearoa New Zealand Public Media”.

In section 177(1), replace “Radio New Zealand” with “Aotearoa New Zealand Public Media”.

In section 178(1), replace “Radio New Zealand” with “Aotearoa New Zealand Public Media”. 5

Part 2**Amendments to and revocations of secondary legislation****Copyright (General Matters) Regulations 1995 (SR 1995/146)**

Replace regulation 5A(a) with:

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(a) Aotearoa New Zealand Public Media:

Radio New Zealand (Assets) Order 1992 (SR 1992/220)

Revoke.

Television New Zealand (Assets) Order 1994 (SR 1994/62)

Revoke.

15

Television New Zealand (Separation of Transmission Business) Order 2003 (SR 2003/323)

Revoke.

Legislative history

23 June 2022

Introduction (Bill 146–1)

26 July 2022

First reading and referral to Economic Development, Science and Innovation Committee