



SUBMISSION OF THE FREE SPEECH UNION ON THE MEDIA REFORM PROPOSALS

INTRODUCTION

1. The Free Speech Union (“the FSU”) is a registered trade union with a mission to fight for, protect, and expand New Zealanders’ rights to freedom of speech, conscience, and intellectual inquiry. We envision a flourishing New Zealand civil society that values and protects vigorous debate and the expression of dissenting ideas.
2. We submit this response to the Ministry for Culture & Heritage regarding proposed Media Reform, specifically, *Draft Proposal Four: Modernising professional media regulation*. We oppose the proposed amendments to media regulation in New Zealand, as they would expand State control over the media landscape.

SUMMARY OF SUBMISSION

3. This submission addresses concerns about the proposal to expand regulatory coverage to include all professional media in New Zealand, warning that such an expansion could undermine free speech by increasing state control over content creation. It advocates for a narrower definition of 'Professional Media' and recommends focusing regulation solely on traditional broadcasters, with a high threshold to avoid impacting smaller entities. The submission also opposes an expanded role for the regulator, emphasising self-regulation through independent bodies, and calls for a reduction or elimination of mandatory levies that could subtly influence editorial independence.

SUBMISSION

Expanding Regulatory Coverage to include ‘Professional Media’

4. The proposal aims to modernise the broadcasting standards regime to include all professional media operating in New Zealand, not just broadcasters. This would extend regulatory coverage to a broader range of media forms, including online platforms and other content creators that may not have been subject to traditional broadcasting regulations.
5. The concern with expanding regulatory coverage is that it could have a chilling effect on free speech. By broadening the scope of regulation to include a wider variety of media, content creators and distributors may feel discouraged from freely expressing their views. This expansion could increase the risk of state intervention in media content, ultimately stifling the diversity of voices and viewpoints essential for a healthy public discourse.

Recommendations:

- Narrow the scope of regulatory coverage significantly. Focus regulation only on traditional broadcasters, maintaining the status quo in this regard.
- If expansion is unavoidable, implement a clear and high threshold for what constitutes 'Professional Media' to prevent inadvertently including individuals or smaller entities. This threshold could be based on a significantly higher income or audience reach than initially proposed
- Explicitly exclude online platforms that primarily host curated content but allow user interaction or discussion forums from mandatory regulation to protect spaces for public discourse.

Defining 'Professional Media'

6. The proposal defines 'Professional Media' as organisations that commission, produce, or directly pay for media content and distribute it as their primary business. This definition is intended to exclude social media and other online platforms that host user-generated and non-curated content, such as search engines and social media platforms. However, as outlined in the Interim Regulatory Impact Statement (RIS), the definition could be broadened to include overseas-based media companies with a business presence in New Zealand, such as global streaming platforms like Netflix, Amazon Prime Video, Apple TV, and Disney+.
7. The concern lies in the vagueness of the definition of 'Professional Media,' which requires further refinement. An overly broad or poorly defined category could inadvertently include individuals or smaller entities, subjecting them to regulatory standards and complaints processes. This could discourage content creators from expressing diverse opinions freely, as they may fear the potential for regulatory scrutiny or backlash. A more precise definition is necessary to ensure that the scope of regulation remains appropriate and does not unduly stifle free speech.

Recommendations:

- Adopt a highly precise and narrow definition of 'Professional Media' that clearly distinguishes between professional content creators with a primary business purpose and other forms of media or individuals.
- Explicitly state in the legislation or regulatory framework that individuals and small, independent content creators are not considered 'Professional Media' unless they voluntarily opt-in.
- Ensure the definition is technologically neutral but avoids capturing the mere hosting or distribution of content created by others, as emphasised in the RIS regarding the exclusion of user-generated content platforms.

Revising the Role of the Regulator

8. The proposal suggests a revised role for the regulator, currently the BSA, with a greater focus on ensuring positive system-level outcomes and less involvement in resolving audience complaints about media content. Under this proposal, the regulator would guide and develop media standards in

collaboration with the industry. It would also serve as a "backstop" for complaints resolution, handling unresolved complaints from media organisations not part of self-regulatory bodies. Additionally, the regulator would hold the right to appeal decisions made by industry bodies regarding complaints.

9. While these standards are not expected to differ significantly from existing broadcast standards, applying them across a wider range of media could be seen as a form of control. The "backstop" function still leaves the door open for state intervention in content matters. Furthermore, while intended for quality assurance, the right of appeal could introduce an additional layer of state oversight on media content decisions, raising concerns about potential restrictions on free expression.

Recommendations:

- Limit the regulator's role primarily to education, research, and facilitating the development of industry-led codes of practice.
- Reject the "backstop" function for individual complaints resolution by the state regulator. Instead, strongly emphasise and support genuine self-regulation through independent industry bodies like the Media Council, making membership and participation more attractive and effective.
- If a "backstop" is deemed absolutely necessary, strictly limit its scope to systemic failures of self-regulatory bodies rather than individual content complaints, and ensure the regulator's intervention is procedural rather than substantive on content matters
- Reject the proposal for the regulator to have the right to appeal decisions made by industry bodies regarding complaints. This introduces an unnecessary layer of state oversight and undermines the independence of self-regulatory bodies.

Potential for Content Standards

10. The proposal suggests that protecting media independence and freedom of expression should be a core focus when developing content standards. While this intention is clear, the very act of setting standards that apply across all professional media raises concerns about potential limitations on free speech. Standards related to accuracy, fairness, or decency could be interpreted as a form of control over what can be said, potentially restricting the scope of expression.
11. The focus should shift towards regulating the manner of delivery rather than the content itself. By doing so, we can ensure that media outlets maintain their independence while also safeguarding the right to free speech, avoiding unnecessary state interference in the content shared with the public.

Recommendations:

- Content standards should be primarily developed and administered by independent industry self-regulatory bodies, with a strong emphasis on protecting freedom of expression within their codes. The state regulator's role, if any, should be limited to endorsing these industry-led standards to ensure a baseline understanding of expectations.
- Focus regulatory efforts on the manner of content delivery (e.g., transparency about funding, clear labelling of opinion pieces) rather than the substance of the content itself.
- Resist the urge to create new, broad content standards applicable across all professional media. Rely on existing standards developed by sector-specific bodies that have a nuanced understanding of the media they regulate.

Leveraging Self-Regulatory Bodies

12. The proposal suggests that complaints should first be directed to the relevant media organisation and then to industry self-regulatory bodies, such as the Media Council for members. While this approach may appear to involve less direct state intervention, concerns arise regarding the standards and processes of these self-regulatory bodies. There is a question as to whether they adequately protect freedom of expression and ensure impartiality in handling complaints.
13. Additionally, print media may voluntarily submit to the Press Council, raising further questions about the consistency and inclusivity of these self-regulatory frameworks. The reliance on self-regulation could lead to discrepancies in how media organisations address complaints, potentially undermining the protection of free speech across the industry.

Recommendations:

- Strengthen and empower existing self-regulatory bodies like the Media Council through resources and recognition in the legislative framework.
- Promote and incentivise membership in these self-regulatory bodies for a wider range of media organisations. This could involve offering certain benefits or exemptions from more stringent state regulation for members who adhere to robust, independently overseen codes.
- Ensure the standards and processes of self-regulatory bodies are transparent and include robust mechanisms for protecting freedom of expression and ensuring fair and impartial handling of complaints. This could involve independent oversight of these bodies.
- Rather than mandatory state backstops for complaints, encourage the development of clear, accessible, and independent arbitration or mediation processes within the self-regulatory framework for unresolved disputes.

The Broadcasting Levy

14. The proposal suggests that if it proceeds, further work will be required to address the future of the broadcasting levy, considering the increased role and membership fees of industry self-regulatory bodies. This would necessitate a reevaluation of how the levy is structured and its potential impact on the media landscape.
15. Although primarily a funding issue, any mandatory levy could be seen as an indirect form of state influence over the media. By imposing a levy, the state could exert subtle pressure on media organisations, potentially shaping their behaviour and editorial independence, even if the intention is not to directly control content.

Recommendations:

- If the regulatory scope is narrowed and the state regulator's role is limited, the rationale for a broad mandatory levy diminishes. The levy should be reconsidered and potentially significantly reduced or eliminated, particularly for media organisations that are members of effective self-regulatory bodies.
- If a levy is retained for a smaller regulatory function, ensure it is transparent, proportionate, and clearly ring-fenced for specific, minimal regulatory activities that do not involve content control.
- Avoid using the levy as a means to fund an expanded state regulatory role or to indirectly influence media content decisions. The funding for self-regulatory bodies should primarily come from their membership fees to maintain independence.