
Fair Digital News Bargaining Bill

31/10/2023

Submission on Fair Digital News Bargaining Bill 2023

1 **Introduction**

- 1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Fair Digital News Bargaining Bill (**Bill**), which seeks to “enable fair bargaining between New Zealand news media entities and operators of digital platforms to support commercial arrangements for news content”.¹
- 1.2 This submission, prepared with input from the Law Society’s Public Law Committee,² is limited to legal issues and recommendations to improve the clarity of the Bill. It does not comment on policy matters nor express a view on the policy objectives of the Bill.
- 1.3 The Law Society does not wish to be heard in relation to this submission.

2 **Cancellation of registration (clause 18)**

- 2.1 Clause 18(1) of the Bill provides that the Broadcasting Standards Authority (**Authority**) must cancel a news media entity’s registration to participate in the bargaining process if it is satisfied the entity no longer meets the criteria set out in clause 15. However, we note clause 16 also sets out other circumstances in which the Authority must not register a news media entity. We therefore recommend amending clause 18(1) to clarify that the Authority must also cancel a news media entity’s registration if any of the conditions in clause 16 apply. Cancellation in such circumstances should be mandatory.

3 **Registered operators (part 2, subpart 2)**

- 3.1 Subpart 2 of Part 2 empowers the Authority to register an operator of a digital platform (**operator**) so they are required to participate in the bargaining process with a registered news media entity. However, the Bill makes no provision for an operator to apply to be registered, and only allows for news media entities to make such applications.³
- 3.2 It is conceivable that an operator may wish to apply for registration (for example, in conjunction with an application under clause 57 to be exempt from certain aspects of the bargaining process, in order to control the scope and terms on which it is registered). Therefore, we invite the select committee to consider whether the Bill should also allow an operator to apply for registration.

4 **Application of Privacy Act (clause 67)**

- 4.1 Clause 71, which allows the Authority to share information with an overseas regulator or a law enforcement or regulatory agency, states that nothing in that section limits the Privacy Act 2020.⁴ We recommend including a similar provision in clause 67, which empowers the Authority to require a person to supply information, produce documents, or give evidence. Otherwise, at a minimum, the Bill should clarify how clause 67 interacts with information

¹ Explanatory Note of the Bill.

² See the Law Society’s website for more information about this committee: <https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/public-law-committee/>.

³ Clause 21(1).

⁴ Clause 71(5).

privacy principle (**IPP**) 11 (“limits on disclosure of personal information”), in order to avoid disputes about whether IPP 11(1)(e)(i) or (ii) apply.

A handwritten signature in blue ink, appearing to be 'Taryn Gudmanz', written on a light beige background.

Taryn Gudmanz
Vice-President