



**NZ Equity Submission to the
Commerce Select Committee
on the
Television New Zealand Amendment Bill 2009
July 2010**

New Zealand Equity and the Media, Entertainment & Arts Alliance

NZ Actors' Equity is an autonomous part of the Media, Entertainment & Arts Alliance and is the industrial and professional organisation representing performers who work in New Zealand's entertainment industries.

New Zealand Equity (NZ Equity) welcomes the opportunity provided by the NZ Parliament Commerce Select Committee to comment upon the Television New Zealand Amendment Bill 2009.

1. Public Broadcasting

During the 20th century, broadcasting established itself as the most pervasive, invasive medium. It projects, influences and reflects values and opinions to an extent greater than any other medium.

In that context, the role of public broadcasting is a crucial one, ensuring universal access, diversity of programming and catering to niche interests. Public broadcasting is a critical public good that delivers important cultural, social and democratic dividends to all New Zealanders and empowers audience members to be citizens not simply consumers. Conversely, commercial free-to-air broadcasters are in the business, not of broadcasting programs, but of producing audiences. Their role is to sell advertising space and to that end their success is measured in the extent to which they are able to maximise audiences, earn revenue and deliver returns to shareholders. Commercial broadcasters therefore seek to attract the largest audiences at the lowest cost.

Government involvement in public broadcasting therefore is necessary to ensure that New Zealanders have access to the diverse slate of programming that cannot be delivered through commercial imperatives alone.

Public broadcasting contributes to the development of values within the community and creates a sense of national purpose and identity. TVNZ has a vital and on-going role, freely accessible for all New Zealanders, to deliver diverse high quality programs that reflect the national identity and that inform the nation, free from political or private sector influence. TVNZ should be obliged on behalf of the nation to set standards and take risks and, in so doing, enhance broadcasting standards as a whole.

NZ Equity acknowledges that the dual mandate currently within the charter is unworkable. The solution to this is not to remove the public broadcasting remit but to remove the commercial directive.

The Bill and its proposal to replace the current charter so fundamentally undermines the role of public broadcasting in this country as to make it unrecognisable as public broadcasting. This will make it, for all intents and purposes, the only English speaking country and only OECD country to not have a public television broadcasting system.

NZ Equity believes that this Bill is comparable to the deregulation of the broadcasting sector in the 1980s which removed the nation's ability to regulate television to ensure the presence of local content on our screens. This move fundamentally undermined New Zealand's ability to develop regulations to ensure a national cultural presence on the most pervasive medium in the world.

2. Amendments relating to the functions of TVNZ

NZ Equity makes the following comments about the specific amendments being put forward in the Bill.

“The functions of TVNZ are to be a successful national television and digital media company”

The use of the word “successful” is vague, unspecific and unquantifiable. How is success to be measured – through ratings, revenue, cultural output, how it is viewed by New Zealanders, its contribution to national life?

NZ Equity believes that stripped down to its fundamental, TVNZ needs to deliver a national television and digital media broadcasting service that serves the varied interests and informational needs and age groups within New Zealand society, including tastes and interests not generally catered for by other national television broadcasters.

“...providing a range of content and services on a choice of delivery platforms...”

NZ Equity asserts that it is one thing to “present a range of content and services on a choice of delivery platforms” it is another to actually deliver content that fulfills public services ideals – that is diverse content that caters to niche audiences, minority interests and material that would not be produced under a broadcasting system subject to inherent market failure. On this NZ Equity agrees with the Peter Thompson when he writes:

“The fact that audiences may be able to access content through a variety of new media forms has no bearing whatsoever on the continuing need to ensure that the content includes a diverse range of quality programming capable of fulfilling key civic and cultural outcomes.”

“and maintaining its commercial performance”

NZ Equity believes this to be incompatible with the basic notion of a public broadcaster and should be removed. Public broadcasting costs money and should not be influenced by commercial imperatives. Public broadcasting must be cost effective and efficient in delivering on its functions but it should not be commercial by nature. Public goods are not profit-making exercises - they deliver nation and community building outcomes.

“is relevant to, and enjoyed and valued by, New Zealand audiences”

NZ Equity again believes this to be vague and unspecific. NZ Equity supports the retention of many of the charter elements that go towards producing a diverse range of content critical to a public service function including:

- *feature programming across all genres that informs, entertains, and educates New Zealand audiences;*
- *strive always to set and maintain the highest standards of programme quality and editorial integrity;*
- *provide shared experiences that contribute to a sense of citizenship and national identity;*
- *ensure in its programmes and programme planning the participation of Maori and the presence of a significant Maori voice;*
- *feature programming that serves the varied interests and informational needs and age groups within New Zealand society, including tastes and interests not generally catered for by other national television broadcasters;*
- *maintain a balance between programmes of general appeal and programmes of interest to smaller audiences;*
- *seek to extend the range of ideas and experiences available to New Zealanders;*
- *play a leading role in New Zealand television by setting standards of programme quality and encouraging creative risk-taking and experiment;*

NZ Equity acknowledges that TVNZ may not have been fulfilling these goals – many of which are basic tenants of the concept of public broadcasting. This was due to two issues – the commercial remit built into the charter (contradictory and hostile to the basic notions of public broadcasting) and its lack of adequate funding. NZ Equity recommends that the commercial function be removed and funding be boosted. With respect to funding, NZ Equity refers the committee to Peter Thompson’s analysis “The Demise of the TVNZ Charter”¹ that details the costs in establishing a public broadcaster and concludes that New Zealand can indeed afford to fund a public service broadcast service.

At a minimum though, NZ Equity recommends that TVNZ must be obliged to provide local content relevant to niche and minority interests and material that is culturally significant but will not be produced under conditions purely determined by commercial interests.

“encompasses both New Zealand and international content and reflects Māori perspectives”

The role of TVNZ should be fundamentally one that focuses on providing New Zealand content and a New Zealand perspective on the world. International content is ably delivered to New Zealanders by the rest of the commercial broadcasting sector. Requiring TVNZ to provide international content is antithetical to the notion of providing a New Zealand voice through public broadcasting and must be removed.

NZ Equity supports the Screen Director Guild of New Zealand submission to retain the following function regarding supporting New Zealand talent.

¹ <http://www.scoop.co.nz/stories/HL0903/S00356.htm>

“support and promote the talents and creative resources of New Zealanders and of the independent New Zealand film and television industry.”

NZ Equity notes that shifting funding from TVNZ to NZ on Air to assist in the creation of local content will not guarantee that the content will be screened at times that New Zealanders will see this content. This is why an effective public service charter remains vital. NZ on Air is not a broadcaster. With TVNZ’s new commercial focus, local content made for niche and minority audience serving the social and cultural needs of New Zealanders will be poorly programmed and left to falter in non-primetime slots. The model of local content production and delivery being proposed with TVNZ and NZ On Air is therefore one being set up to fail and will be used to justify future cuts to local content.

TVNZ Archives

NZ Equity cannot support the proposals being put forward in this Bill with respect to TVNZ archived works.

The Government through the Broadcasting Corporation of NZ and its predecessors entered into binding contracts with performers up to 27 May 1989. These rights were freely entered into by both New Zealand and non-New Zealand citizens and are ongoing. The Government is now seeking to retrospectively vary these contracts by legislation and alter the contracted rights of performers and other creative contributors. NZ Equity asserts that this a serious breach of fundamental contractual rights.

This Act raises the serious issue of sovereign risk not just for performers but all New Zealand citizens and non-New Zealand citizens for that matter. The implication of this Bill is that no-one entering into a contract with the NZ Government can be sure that in 20 years time the government will simply legislate to vary retrospectively one’s right under contract.

The retrospective acquisition of property rights that this Bill represents is far from just. The level of \$300 per half hour is a pittance and an insult to the creative work of New Zealand performers and other creators.

Further the scheme seeks to enable rights holders to re-gain a right (albeit an altered one) only if they register. This is unacceptable. TVNZ knows who the rights holders are since they hold the contracts for the material produced. If they, for some reason do not hold the contracts any longer, they can easily figure out who the rights holders are by looking at the credits of the television programs themselves. It is unreasonable to expect the multitude of performers and other rights holders to step forward and register for each and every program in which they appeared. The contracted rights already exist and are known.

Additionally, NZ Equity disputes the Minister's assertion in his First Reading speech that there will be "no direct commercial gain to TVNZ." This is untrue since TVNZ will sell advertising around the screening of this material. Simply because a program is screened free to air does not mean that TVNZ does not make a commercial gain or is free to consumers. They pay in advertising time, which is a key revenue stream for TVNZ.