

# **Public Broadcasting Foundation (TV 7) Bill**

Member's Bill

## **Explanatory note**

### **General policy statement**

This Bill establishes a body to be known as the Public Broadcasting Foundation to ensure that the New Zealand public has access to quality community programming that reflects the talent and creativity of New Zealanders. This will ensure that the public broadcasting and related digital media responsibilities of the Government are met through an editorially independent medium.

The Bill enshrines in law the view that a public television broadcaster has obligations towards the entire population to provide versatile and varied programming. The audiences for public broadcasting around the world are vast and diverse, they are not elite sections of the population.

The provision of a universally accessible, free public broadcasting media service not driven by commercial interests, directed by an independent governing agency is essential to a healthy and informed democracy. Public broadcasting everywhere plays an important educative and informative role and is considered an essential responsibility of the State to its citizens. It comes at a cost, but is seen as a cost that must be borne. New Zealand must not turn its back on this responsibility.

This is a function of true citizenship that includes reflecting our own culture and stories, and provides the forum for insightful, relevant, and fact-based debates on issues of public interest.

It also means that important New Zealand content is made freely available to all Kiwis in real time. This is a fundamental principle behind public broadcasting. All New Zealanders should be represented by, and be able to receive, public broadcasting content, including news and current affairs across radio, TV, and the Internet.

Public television is even more important in a country such as New Zealand, where our small population means that commercialised television channels simply cannot provide the range of programming that viewers want and should be able to access in the interests of democracy as well as cultural identity.

In radio, New Zealand has a national public network, Radio New Zealand (RNZ), and publicly-funded Maori radio stations. In television, it has two publicly-funded Maori channels (Maori TV and Te Reo) which are performing an important function – but there is no national television service equivalent to RNZ.

TVNZ 7 and (until March 2011) TVNZ 6 offered an important extension to the range of available programmes and schedule diversity. This has been possible only because the two channels have not relied on commercial revenue. This means that decisions about content have been insulated from the pressure to maximise ratings and advertising income.

Pay television cannot satisfy the same needs and cannot replace the role of a public media channel. A combination of broadband, Sky, and access to international product via the Internet does remove the need for public broadcasting.

It is also a nonsense to argue that the State's public television broadcasting obligations are delivered via funding NZ on Air. The programming funded by NZ on Air is increasingly commercially focused and is carried across platforms which are driven by commercial imperatives. NZ on Air performs a worthy function, but in its current form is not a public broadcaster.

TVNZ in its current form is not able to deliver public television broadcasting that New Zealanders want and need. Its corporate values and commercial focus and culture cannot be changed by tinkering. New Zealanders need better in terms of public broadcasting than what can be delivered by what is now effectively a State owned commercial broadcaster.

This Bill requires Television New Zealand to fund the Public Broadcasting Foundation so that the Foundation can provide, through the public media channel, a diverse range of programmes that reflects and develops New Zealand's culture and identity on a broad basis and recognises the diversity in age, gender, ethnicity, and interests within New Zealand society.

It is anticipated that cost savings within TVNZ will enable it to fund the public broadcaster TV 7. It is also anticipated that it, along with other publicly funded broadcasters, will as far as is practicable, share production facilities and other costs.

The requirement for TV 7 to be funded by TVNZ reflects a view that TVNZ, along with other government agencies and entities, should be able to run a lean ship. It should be noted that TVNZ has formerly been New Zealand's public television broadcaster and until recently maintained a charter of public responsibility.

Now that the charter has been stripped from it, TVNZ no longer holds any formal public broadcasting responsibilities and has pursued a commercial course.

It is not the intention of this Bill to create another large bureaucracy. Instead, it is intended to establish a lean, modern, and efficient public broadcaster which will as much as possible share back office services with other broadcasters while remaining editorially independent and governed and operated separately to other broadcasters.

If New Zealand is a country with high ambitions, it needs to ensure that it has a healthy media environment. Public broadcasting is an essential ingredient of this because it provides a range of options not covered by the commercial sector.

Most OECD countries ensure that citizens have access to at least one public television channel. They do so both as a response to market failure and by recognising that public television can contribute to a better informed society because knowledge is a crucial asset for any country in the contemporary world.

### **Clause by clause analysis**

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause. It provides that the Bill comes into force on the day after the date on which it receives the Royal assent.

*Clause 3* states the purpose of the Bill.

*Clause 4* is the interpretation clause. It contains definitions of terms used in the Bill.

*Clause 5* provides that the Act binds the Crown.

*Clause 6* establishes the Public Broadcasting Foundation.

*Clause 7* sets out the functions of the Foundation.

*Clause 8* sets out the powers of the Foundation.

*Clause 9* ensures the editorial independence of the Foundation.

*Clause 10* provides funding for the Foundation.

*Clause 11* requires other public broadcasters to assist the Foundation in achieving the purpose of the Act by making available, as far as is reasonably practicable, any studio or production facilities.

*Clause 12* requires a non-commercial licence providing for nationwide broadcasting, and frequencies for public television broadcasting, to be made available for the Foundation to use free of charge.

*Clause 13* provides that the Foundation is an independent Crown entity for the purposes of the Crown Entities Act 2004.

*Clause 14* provides that the board of directors is the governing body of the Foundation.

*Clause 15* provides for the appointment of directors of the Foundation.

*Clause 16* provides for the appointment of the chairperson of the Foundation.

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Public Broadcasting Foundation (TV 7) Act 2012.

**2 Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent.

**Part 1  
Preliminary provisions**

**3 Purpose**

The purpose of this Act is to—

- (a) facilitate and strengthen public broadcasting by establishing a body to be known as the Public Broadcasting Foundation; and
- (b) provide for the delivery of content that reflects the diversity in New Zealand society and serves wider community interests by facilitating the production and distribution of public media programmes.

**4 Interpretation**

In this Act, unless the context otherwise requires,—

**content** means the audio and visual material screened on any delivery platform, and includes both text and still pictures

**CPI** means the Consumer Price Index (All Groups) published by Statistics New Zealand

**delivery platform** means any technical method for screening content

**Foundation** means the Public Broadcasting Foundation established by **section 6**

**public media** means non-commercial media delivering content that—

- (a) recognises the diversity of New Zealand society (for example, diversity in terms of age, ethnicity, ability, interests, and needs of New Zealanders); and
- (b) is produced to serve its intended audiences instead of serving commercial or government interests

**public media channel** means the television channel formerly known as TVNZ 7, but is now known, after the commencement of this Act, as TV 7

**public money** has the same meaning as in section 2(1) of the Public Finance Act 1989

**Radio New Zealand** means the company that is the State enterprise known as Radio New Zealand Limited

**TVNZ** means the company known as Television New Zealand Limited.

**5 Act binds the Crown**

This Act binds the Crown.

## **Part 2**

### **Public Broadcasting Foundation**

#### *Establishment of Public Broadcasting Foundation*

#### **6 Public Broadcasting Foundation established**

- (1) The Public Broadcasting Foundation is established as a body corporate with perpetual succession.
- (2) The governing body of the Foundation is the board of directors, appointed in accordance with **section 15**.

#### *Functions, powers, and editorial independence of Foundation*

#### **7 Functions of Foundation**

- (1) The principal functions of the Foundation are—
  - (a) to deliver public media programmes in New Zealand through the public media channel; and
  - (b) to facilitate the distribution of public media programmes to other television channels, the Internet, and other telecommunication systems; and
  - (c) to foster public media production in New Zealand and overseas; and
  - (d) to foster links to media in other industries (for example, regional and community television broadcasters, Radio New Zealand, bNet stations, print media, news media, websites, technology developers, artists, and musicians).
- (2) The Foundation may undertake other functions consistent with the purposes of this Act, including (without limitation) fostering the development of the Foundation's broadcasting and related digital media capacity through appropriate training and education.
- (3) In performing its functions, the Foundation—
  - (a) must provide reasonable opportunities for audiences and civic, community, cultural, or citizens' organisations to produce public media programmes for distribution; and
  - (b) may adjust its screen output to reflect future technology changes but it must focus on producing, commissioning, or purchasing screen content from New Zealand and overseas that has a public media character.
- (4) For the purposes of **subsection (3)(b)**, the content must inform, educate, entertain, and be interactive with its audience.

#### **8 Powers of Foundation**

- (1) For the purpose of performing its functions under this Act, the Foundation—
  - (a) has full capacity to carry out or undertake any business or activity, do any act, or enter into any transaction; and
  - (b) for the purposes of **paragraph (a)**, has full rights, powers, and privileges.
- (2) **Subsection (1)** applies subject to—
  - (a) the provisions of this Act and any other enactment; and
  - (b) the general law.

## **9 Editorial independence of Foundation**

- (1) None of the persons specified in **subsection (2)** may direct the Foundation or any director, officer, or employee of the Foundation about—
  - (a) a particular programme:
  - (b) a particular allegation or complaint relating to a particular programme:
  - (c) the gathering or presentation of news or the preparation or presentation of current affairs programmes:
  - (d) editorial or content decisions in respect of programmes:
  - (e) programme standards.
- (2) The persons referred to in **subsection (1)** are—
  - (a) the Minister of Broadcasting:
  - (b) any other Minister:
  - (c) any person acting by or on behalf of or at the direction of any Minister:
  - (d) a director acting without the authority of the board.
- (3) The other provisions of this Act apply subject to **subsection (1)**.
- (4) To avoid doubt, the Foundation is a broadcaster for the purposes of the Broadcasting Act 1989 and a complaint to the Broadcasting Standards Authority may be made in respect of the Foundation.

### *Other provisions relating to Foundation*

## **10 Funding for Foundation**

- (1) TVNZ must, in each financial year or part financial year (as the case requires), pay to the Foundation an amount of not less than \$14 million to enable the Foundation to—
  - (a) perform its functions and duties under this Act; and
  - (b) exercise its powers under this Act.
- (2) The amount specified in **subsection (1)** must be adjusted annually to reflect any movements in the CPI.
- (3) The Foundation may obtain funding from other agencies for, or in connection with, the purposes specified in **subsection (1)(a) and (b)** as long as that funding is made available under terms and conditions that would not compromise the editorial independence of the Foundation or the achievement of the purpose of this Act.
- (4) Without limiting **subsection (3)**, the agencies referred to in that subsection from which additional funding may be obtained by the Foundation include the following:
  - (a) NZ On Air:
  - (b) Te Māngai Paho:
  - (c) Creative New Zealand.

## **11 Other public broadcasters must provide assistance to Foundation**

- (1) A public broadcaster must assist the Foundation in achieving the purpose of this Act by making available, as far as is reasonably practicable, any studio or production facilities under its control.
- (2) In this section, **public broadcaster** means a broadcaster that is funded wholly or partially by public money.



## **12 Non-commercial licence and frequencies to be made available to Foundation**

- (1) A non-commercial licence providing for nationwide broadcasting, and frequencies for public television broadcasting, must be reserved in perpetuity.
- (2) The Foundation may use the non-commercial licence and frequencies referred to in **subsection (1)** free of charge.
- (3) If the Foundation is disestablished, the non-commercial licence and frequencies referred to in **subsection (1)** must be made available free of charge to any other group or body providing a public broadcasting function.

## **13 Application of Crown Entities Act 2004 to Foundation**

The Foundation is an independent Crown entity for the purposes of section 7 of the Crown Entities Act 2004.

### *Board of directors*

## **14 Governing body of Foundation**

- (1) The board has the authority, subject to this Act, to exercise the powers and perform the functions of the Foundation.
- (2) The board has all the powers necessary for carrying out its functions and duties under this Act.

## **15 Appointment of board of directors**

- (1) The board must consist of up to 7 directors appointed by the Governor-General on the recommendation of the House of Representatives.
- (2) A person may be appointed as a director of the board only if the person has the appropriate skills and experience to assist the Foundation to perform its functions
- (3) Without limiting **subsection (2)**, the skills and experience referred to in that subsection must include skills and experience in—
  - (a) the provision of high quality television broadcasting services;
  - (b) the management of public funds granted for creative arts and industry purposes;
  - (c) broadcast journalism.
- (4) At least 3 directors of the board must be appointed on the basis of recommendations from the following groups:
  - (a) non-government organisations and groups contributing funds for the purpose of producing public media programmes being broadcast on the public media channel;
  - (b) the staff engaged to support that channel;
  - (c) organisations formally incorporated for the purpose of representing the interests of the audience served by the public media channel.

## **16 Chairperson of board**

The directors of the board must appoint one of their number, by majority vote, to be chairperson of the board.