

1 March 2002

SUBMISSION

To: The Maori Affairs Select Committee

On: The Maori Television Service Bill

Kei te rangatira tena koutou.

**Kua mihi nga mate i runga i o tatou nei marae, ko taku he tautoko, moe mai ra koutou. Ka huri mai ki te ao marama ki nga kaupapa e whai ake nei tena tatou katoa. Na ratou te kii ko tou ringa ki nga rakau a te Pakeha ko te pouaka whakaata tera. Hei aha hei taonga kawae i te reo me nga tikanga ki nga whakatipuranga hou
Kia ora mai tatou katoa.**

Introduction

1. This submission is from the Screen Producers and Directors Association of New Zealand (SPADA).
2. SPADA is the foremost screen production industry organisation representing film and television producers and directors in New Zealand. We have over 280 company and individual members. Our mission statement is to be *the leading advocate for a robust screen production industry which strives to enhance the diversity of screen culture in New Zealand.*
3. This submission has been approved by SPADA's Executive, a board annually elected by its members, and has been prepared after member consultation. SPADA's Chief Executive Jane Wrightson and President Nicole Hoey wish to appear before the Committee. Our contact details are below.

Comment

4. We support the introduction of the Maori Television Service. Our submission provides comments and suggestions on two main areas of the Bill.
 - (a) Governance and Accountability: We note that the Service is neither subject to the Public Finance Act nor the Companies Act and that the proposed body corporate structure is unique. We also note that the owners of the Service and its assets are not specified in the Bill. We understand that the reason for not being subject to the aforementioned Acts is for the process to be a full partnership of the Crown with Maori. This means that governance and accountability issues are critical and we urge that the Select Committee look at these issues in depth and satisfy itself that the partnership goals have been achieved but not at the expense of transparency, accountability and efficiency.
 - (b) Editorial freedom and our concerns that the Service is not adequately protected from editorial intervention.

Section 8(1): Functions of the Service

5. We note that a *broad viewing audience* is envisaged in s8(1). We understand the complexities of this issue but nevertheless query the possible contradiction between this requirement and that of s8(2)(a): *to ensure that the programmes broadcast by the Service during prime time consist mainly of programmes in te reo Maori*. Given that the issue will always be hotly debated we wonder if the governing legislation for the Service should be so prescriptive.

Section 10: Independence of Service

6. We note with concern that programme standards (related to editorial, not technical matters, in accordance with s4 of the Broadcasting Act 1989) have not been specifically excluded from potential directives to the Service from the Minister or the College. Programme standards are a broadcaster matter with the Broadcasting Standards Authority being the final arbiter. We strongly suggest that excluding programme standards from directives is included as a protection for the independence of the Service and its management. This is a traditional media freedom (cf. clause 33(1)(a) of the Television New Zealand Bill).
7. We urge that this section be reworded to:

10(1) The responsible Ministers, the College and a director acting without the authority of the board must not direct the Service *or any of its subsidiaries or any officer or employee of the Service or its subsidiaries*, in respect of –

- (a) specific programmes; or
- (b) the gathering, preparation or presentation of news or current affairs programmes; or
- (c) *programme standards*

Section 14(4)(a): Changes in Composition of College

8. This section prescribes the process of adding members to the College. To ensure that the role of the Service as a broadcaster, with all the attendant complexities, is respected, we suggest that any further organisations seeking to join the College should be required to show that they can add value by having a demonstrated interest in broadcasting.

Section 18(b): Remuneration for College Members

9. In the interest of normal accountability processes, we suggest that reimbursing and other payments to College members must be approved by the College chairperson and the chairperson's by the chief executive of the organisation which is administering the payments.

Section 20: Resolution of Disagreement

10. We agree that a Ministers/ College dispute resolution clause should be included but we are concerned that no timeframe for a process MOU is stipulated. The Service could suffer considerable disadvantage and delays not of its making (but for which it may well be blamed) should a dispute escalate.

11. We suggest that a time frame of one month be specified and that if this is not achieved, that mediation and arbitration options under the Arbitration Act 1996 apply.

Section 21: Kaitiaki Trust

12. We note that there is no timeframe specified for the transfer of the UHF right from the Trust to the Service. We suggest, for the avoidance of doubt, that this section is amended to:

S21(2) The Kaitiaki Trust must execute a transfer of the right referred to in subsection (1) to the Service within one week of notification by the chairperson of the College.

Sections 24 – 26: Appointment of Directors

13. We note that there are no provisions preventing the removal from office of directors for editorial reasons (cf. s33(1)(2) of the TVNZ Bill). This is an important and traditional freedom for media company directors. We strongly suggest that the following is included as a new section:

s27 Editorial Independence

No director of the Service may be removed for any reason relating to –

- (a) a particular programme or a particular allegation or a particular complaint; or
(b) the gathering or presentation of news or the preparation or presentation of current affairs programmes; or
(c) programme standards

Section 34(1): Non-compliance by a director re conflict of interest

14. We note that if a conflict of interest has not been disclosed, the decision taken by the Board stands. In the interests of good governance we suggest that this provision be strengthened, perhaps to reflect that any such failures are quantified (without revealing personal details) in the Service's annual report.

Section 44: Immunity of directors and employees

15. We note that a director of the Service is not personally liable for the Service and its functions and powers. If we have understood the intent correctly this seems to be considerably weaker than requirements on directors operating under the Companies Act. It does not seem to be in the interests of good governance.
16. We suggest that the Bill makes clear that directors have the same accountabilities as set out in the Financial Reporting Act (which reinforces, in particular, the principle that it is the directors' responsibility to ensure that financial statements are prepared in accordance with GAAP and that non-compliance may result in significant penalties being imposed against each director).

Section 50(1)(j) Contents of the Statement of Intent

17. We agree with the provisions of this section. However we note that performance targets do not refer to qualitative and quantitative measures. We believe that public qualitative measures, in particular, are vital for transparency and accountability. We are making the

same submission on the TVNZ Bill and suggest that, for the avoidance of doubt, this section reads

“The other qualitative and quantitative performance targets and measures by which the performance of the Service and its subsidiaries may be judged”.

Section 56 Amendments to Statement of Intent

18. Directives from the Minister and the College are a serious matter and in are the public interest. There is the potential for too much secrecy with the current wording.
19. We urge that s34 of the TVNZ Bill is considered and that new subsections 56(3) and (4) are introduced to this Bill:

(3) Every direction given under section 55 must be accompanied by a statement of the estimated expenditure to be incurred and revenue to be secured or forgone by the Service

(4) Every direction and its accompanying statement of expenditure and revenue must be signed by the chairperson of the College and presented by the Minister to the House of Representatives and notified in the Gazette within 12 sitting days.

20. We agree with the output agreement, annual report and related entity provisions set out in sections 58 – 68. We note and agree that the Service is subject to the provisions of the Public Audit Act.

Sections: 77-79 Amendments to Other Acts

21. We note with considerable concern that the Service is not clearly included in the Official Information Act 1982 schedules. We strongly urge, for the avoidance of doubt, that this is rectified by the inclusion of a new s80 (cf. TVNZ Bill Schedule 1):

*Official Information Act 1982 (1982 no 156)
Insert in Part II of the First Schedule, in its appropriate alphabetical order the words “Maori Television Service and its subsidiaries”*

Schedules 1 – 2

22. We agree with the procedural provisions set out in these schedules.

Other Comment

23. We note that operational funding for the Service will come directly from the Crown and that programme funding will come from Te Mangai Paho. Should there be additional requirements on NZ On Air for funding of English language programming for the Service, we strongly urge that funding for NZ On Air must be increased to compensate for this new entrant into the market place. The level of NZ On Air funding is already under considerable threat and a new television operation supported by the Government must receive new programme money to fund it. Existing funds are already insufficient to provide for adequate levels of local content.

Summary of SPADA's Recommendations:

24. We urge that a new subsection 10(1) is **introduced**:

10(1) The responsible Ministers, the College and a director acting without the authority of the board must not direct the Service or any of its subsidiaries or any officer or employee of the Service or its subsidiaries, in respect of –

(a) specific programmes; or

(b) the gathering, preparation or presentation of news or current affairs programmes;
or

(c) programme standards

25. We suggest that s14(4)(a) is **amended** to require any further organisations seeking to join the College to show that they can add value by having a demonstrated interest in broadcasting.
26. We suggest that s18(b) is **amended** to provide that reimbursing and other payments to College members must be approved by the College chairperson and the chairperson's by the chief executive of the organisation which is administering the payments.
27. We suggest that s20 dealing with disputes between the Minister and the College is **amended** to specify a time frame of one month and that if this is not achieved, that mediation and arbitration options under the Arbitration Act apply.
28. We strongly urge that a new s27 be **introduced** as follows:

s27 Editorial Independence

No director of the Service may be removed for any reason relating to –

(a) a particular programme or a particular allegation or a particular complaint; or

(b) the gathering or presentation of news or the preparation or presentation of current affairs programmes; or

(c) programme standards

29. We suggest that a new s21(2) be **introduced** as follows:

S21(2) The Kaitiaki Trust must execute a transfer of the right referred to in subsection (1) to the Service within one week of notification by the chairperson of the College.

30. We suggest that s34(1) be **amended** to provide that any failures by directors to report conflicts of interest are quantified (without revealing personal details) in the Service's annual report.
31. We suggest that s44 be **amended** or **clarified** so that directors have the same accountabilities as set out in the Financial Reporting Act (which reinforces, in particular, the principle that it is the directors' responsibility to ensure that financial statements are prepared in accordance with GAAP and that non-compliance may result in significant penalties being imposed against each director).
32. We urge that s50(1)(j) dealing with SOI measures is **amended** as follows: *'The other qualitative and quantitative performance targets and measures by which the performance of the Service and its subsidiaries may be judged'*.

33. We urge that new subsections 56(3) and (4) are introduced to this Bill for directives to the Service:

(3) Every direction given under section 55 must be accompanied by a statement of the estimated expenditure to be incurred and revenue to be secured or forgone by the Service

(4) Every direction and its accompanying statement of expenditure and revenue must be signed by the chairperson of the College and presented by the Minister to the House of Representatives and notified in the Gazette within 12 sitting days.

34. For the avoidance of doubt, we suggest a new s80 is **introduced** as follows:

Official Information Act 1982 (1982 no 156)

Insert in Part II of the First Schedule, in its appropriate alphabetical order the words "Maori Television Service and its subsidiaries"

35. Any requirement for NZ on Air funding must be accompanied by an additional allocation to NZ On Air.

Thank you for the opportunity to comment.

Yours sincerely

Jane Wrightson
Chief Executive