

The Television New Zealand Charter: Rethinking Deregulated Broadcasting.

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Abstract: In the decade of the 1990s New Zealand operated one of the most deregulated broadcasting environments in the world. A National-led government signalled to the Board of the public broadcaster Television New Zealand (TVNZ) in the middle of the decade that the next step was privatisation and to prepare the organisation for sale. However, an incoming Labour administration in 1999 announced a policy shift away from the neo-liberal approach of privatisation and deregulation that successive governments had pursued since 1984. Labour's broadcasting policy acknowledged the cultural importance and democratic role of the medium and pledged not to sell TVNZ or any of its main constituent parts, TV1, TV2 and Broadcast Communications Ltd (BCL). Restructured as a Crown-owned company (CROC), TVNZ's 'public service' role was outlined in a Charter which was formally implemented in March 2003. Yet this was accompanied by demands that TVNZ's commercial strength and profitability be maintained and the value of the Government's asset not diminished and these factors have clearly restrained the changes ushered in by the Charter. An October 2005 memorandum written by TVNZ's then Chief Executive Ian Fraser to his Board noted that after more than two and a half years experience with the Charter TVNZ had not measured any significant increase in viewer satisfaction and had not noted any marked public conviction that the company was more of a public broadcaster than before it was introduced. This paper examines the TVNZ Charter and questions the public policy approach that assumed TVNZ could satisfy the often conflicting demands of being both a commercially successful and a chartered public service broadcaster. It argues that the TVNZ Charter is an example of flawed public policy formulation and implementation.

Keywords: TVNZ, Charter, Re-regulation.

In December 2005 a memorandum to the Board of public broadcaster Television New Zealand (TVNZ) from its Chief Executive Ian Fraser was obtained by the Green Party. Using information from the memo the party issued a press release on the thirteenth of that month titled 'Fraser bombshell shows TVNZ giving lip service to Charter' (Kedgley, 2005b, p.1). Green Party Broadcasting Spokesperson Sue Kedgley M.P., claimed that the memorandum showed 'that the man who was at the helm of TVNZ believed that its current mixed model is failing to deliver on its charter goals because they are essentially incompatible with its commercial priorities'.

The TVNZ Charter was the Labour Party's main broadcasting policy initiative to re-think deregulated broadcasting and deliver 'public service' goals after it came to power in 1999. It signalled a significant change to the New Zealand experiment in broadcasting which was ushered in by a Labour government in the late 1980s. That experiment in deregulating the sector and relying on the market to provide for consumers' wants and needs in broadcasting had been hailed as the policy approach that other nations would follow. However, New Zealand's gambit was not taken up by others and the nations to whom the country had traditionally compared its broadcasting

system, Australia and Britain, loosened rather than abandoned regulation as a policy tool.

By 1999 the Labour Party, responding to public criticism of New Zealand television, signalled that if returned to power it would look to intervening in the broadcasting marketplace. Its 1999 election policy manifesto stated that broadcasting 'is not something to be just left to the market' (Labour Party, 1999, p.2). In what has been described as Labour's new 'third way' approach (Thompson, 2000) it looked to balance new right economics with a traditional Labour Party emphasis on social democratic concerns. In broadcasting the party looked to restore some 'public service' goals for the public television service TVNZ with its main tool the imposition of a 'Charter' which would spell out a series of goals for the broadcaster. After nearly four years of discussion, consultation and contention over the text of the charter it was formally implemented in 2003.

Outside of the Government's coalition there was little political support for the Charter and just before the September 2005 election the main opposition party stated that it would be scrapped by a National-led government (Unattributed, 2005, p.1). National Party spokesperson Georgina Te Heu Heu stated with regard to the Charter, that she had 'a sense that most New Zealanders think we haven't got what we bargained for' (Ibid). Media commentators were also of the view that the Charter had not satisfied policy or public expectations. Thompson stated that despite the Charter's directives to TVNZ to 'feature a wide range of content reflecting New Zealand's cultural diversity and to set industry standards of programme quality' the 'pre-Charter proportions of light entertainment and 'reality' shows on TV one and TV2 have not radically changed' (Thompson, 2005, p.88). In their review of television serving regional needs in New Zealand, Fountaine, Comrie and Cheyne comment that despite TVNZ's Charter pledging that it would bring 'programmes that reflect the regions to the nation as a whole', these 'plans have come to nothing' (Fountaine, Comrie & Cheyne, 2005, p.101). And Debrett comments that 'without increased funding and relaxation of government demands for a dividend, TVNZ will remain primarily a conduit for consumer-oriented programming in which its Charter directive – *to provide comprehensive, impartial, authoritative and in-depth coverage and analysis of news and current affairs in New Zealand* – will be all but impossible' (Debrett, 2005, p.81).

It could be argued that criticism of a public policy by a government's political opponents and by academics critical of consumer-driven television does not prove a case of public policy failure. The judgement of success or failure in public policy is always highly subjective with a government always claiming the former whilst its critics without fail claiming the latter. However, when the public bureaucrat charged with implementing the policy advises his Board that by a number of measures his public company was not transforming itself according to Charter directives and, indeed, that the signs were 'that in many important respects we have made a U-turn and are retracing our steps back to where the "journey" began' (Fraser, 2005, p.2), this can be viewed as evidence that the policy implementation process has failed. Furthermore, when the Minister in charge of the sector then picks up on one of the alternative options offered in the same memorandum by the chief executive of TVNZ to

achieve the goals which were meant to be achieved by the Charter then the signs are that the policy is being abandoned by its government promoters.¹

In his memorandum Ian Fraser outlines a number of reasons why TVNZ was failing to implement the Charter. He describes government funding to achieve Charter objectives as 'more or less static' for the current financial year and this was a key reason why the level of local content the company would achieve in the coming year would be 'no more than the local content we were achieving prior to the introduction of the Charter' (Ibid, p.2). At this level he added it is hard for his company to sustain the argument that the level of local content is a Charter difference that differentiates TVNZ from its competitors. Further the company had not measured 'any significant increase in viewer satisfaction – nor any marked public conviction, after more than two and a half years experience with the Charter, that we are more of a public broadcaster than we were before it was introduced' (Ibid, p.2).

In the light of static Charter funding and an anticipated fall in advertising revenue the company believed it had to re-focus on maximum commercial performance and protect the market shares of its channels from competitive erosion. Fraser was clearly stating that in choosing between the commercial health of TVNZ and pursuing Charter programming goals, the company's competitive commercial position would be its first priority.

The policy Conundrum

TVNZ was structured by the government in the late 1980s for the new era of deregulation with a built-in conundrum. As a State-Owned Enterprise it was required under the State-Owned Enterprises (SOE) Act to be 'as profitable and efficient as comparable businesses that are not owned by the Crown'.² At the same time it was expected, although not legislatively required under the 1989 Broadcasting Act, to continue its public service responsibilities. As spelled out by the Government these included a requirement to 'reflect and develop the New Zealand identity and culture by obtaining, commissioning, and broadcasting a range of programmes to inform, educate and entertain' and to ensure that the New Zealand public have access to a 'range of programmes which will cater in a balanced way for the varied interests of different sections of the community'.³

The two sets of demands have been characterised as placing TVNZ in the position of being both public service 'priest' and commercial 'prostitute'. In the struggle between the two conflicting demands it was never doubted which of them would prevail. Under the deregulation of television broadcasting in New Zealand, no regulatory body or legislative edict existed to demand, monitor and police the public service responsibilities of the public broadcaster until the

¹ See Cumming, Geoff. (2006) 'Free digital TV on the way', *N.Z.Herald*, 25 Feb. p.1. In this article Broadcasting Minister Steve Maharey is quoted as saying that the government was 'pretty much settled' on an option outlined by the former Chief Executive Ian Fraser in his memo to the TVNZ Board in which TV One and Two would operate much as they do now, maintaining high audience share and generating 'substantial commercial revenue'. Two new non-commercial digital channels run by the company could provide on the first, high-end international documentaries, re-runs of *One News* and minority programmes with high local content and on the other children's programming and serious drama and arts at night.

² State-Owned Enterprises Act (1986), Part 1, Principles, Section 4(a).

³ The quoted statements are taken from a "Public Statement" issued by the Office of the Minister of Broadcasting (1988), *Government Decisions on Implementing Broadcasting Policy Reform*, Public Service Broadcasting Objectives, paragraphs 14(b) & 14(d), p.6. August 30.

Charter was introduced in February 2003. At the time the deregulation legislation was passed the Government clearly indicated that the prime requirement under the SOE Act was commercial success with the goals of fulfilling cultural needs and reflecting New Zealand's identity and culture as subsidiary considerations.

Horrocks has commented that it 'was striking to watch TVNZ (which operated the two most popular channels in New Zealand) adapt to this new rule so rapidly and relentlessly' (Horrocks, 2004, p.58). TVNZ, a historically 'pseudo' public broadcasting entity which had always been reliant to some degree on commercial revenue, set about 'purging itself of public service concerns' (Ibid, p.58) and transfiguring to a 'ratings-driven' internal culture. There were 50 senior management changes within the company in its first two years under the new prescription⁴ and staff in public service production areas such as documentary and children's programming were among the quarter of TVNZs workforce shed from the payroll in the eighteen months following the company becoming a State-Owned Enterprise.⁵ TVNZ management took pride in the speed and thoroughgoing nature of the transformation of the broadcaster to an industrial model selling audiences to advertisers (Spicer, Powell and Emmanuel, 1996; Mounter, 1991). One senior manager⁶ stated at the time that it was 'a matter of changing the old public broadcasting formula – which is to educate, entertain and inform – to a more successful business plan' (Nissen, 1989, p.9).

Although TVNZ management saw their role focussed on commercial success their Board chairperson for the start of the deregulatory era, Brian Corban, expressed the view that he would know if the company had become too commercially-focussed 'if the balance between majority and minority interest had been lost – if the reflection of New Zealand's identity and culture, including reflection of the regions, had been lost (Drinnan, 1989, p.7). His Minister, Jonathan Hunt, also believed that public service values would be part of the new order: 'The positive aspect of the (broadcasting deregulation) legislation...is the long-term protection of public service broadcasting in its widest sense' (Smith, 1989, p.8)

However, for fifteen years from 1988 until the Charter was enacted in 2003, 'any vestiges of public broadcasting were strictly secondary to commercial imperatives' (Norris, 2005, p.1). Treasury officials were influential in setting TVNZ's financial targets and business leaders who knew little about television dominated the Board and guided the company on strict commercial principles. Power within the management structures of the company was also rearranged. The programme schedulers assumed far greater power over programme producers (Horrocks, 2004, p.59) with ratings the measure of a programme's value and the audience regarded as the 'consumers' of TVNZ's 'product' rather than information or entertainment-seeking 'citizens'. Financially TVNZ was very successful 'positioning its two channels to retain the majority of market share and becoming indistinguishable from wholly commercial television stations' (Comrie & Fountaine, 2005, p.104). Its executives from the mid-1990s also sought to maximise the company's value as a National-led coalition

⁴ Figures given at a seminar by David Nicholson, TVNZ Public Affairs Manager, at Auckland University, 18 March 1992.

⁵ See Drinnan, John. (1990) '420 TV jobs cut in 18months', *The Dominion* 25 May.

⁶ Reg Russ, Managing Director of TVNZ's Avalon studios.

government signalled that privatisation would be the next stage for the public television broadcaster.

The formula which was so successful for TVNZ against its privately-owned rival TV-3, was less successful among sections of the general public who experienced commercial and promotional content of up to 25 per cent of any programming hour in prime-time and the dominance of populist entertainment programming. Debrett argues that by the middle of this decade 'public disenchantment with the state of television was beginning to surface' (Debrett, 2004, p.17). She quotes a poll published by the *National Business Review* in 1996 which found that two-thirds of viewers were dissatisfied with what they were being offered on television. The prime complaint cited was the lack of quality educational programmes.

The Labour party began to take note of dissatisfaction with the public television model it had put in place. The disappearance of public service programming led the party to include in its 1993 election manifesto a promise to establish a Charter for TVNZ and review its obligations to pay a dividend (Comrie & Fountaine, 2005, p.105). These pledges were repeated in Labour's 1996 and 1999 manifestos although what was not clearly enunciated was how the Charter would be accommodated within the bosom of a commercially-driven broadcaster. The oft-quoted example by Labour politicians of a Charter model was Radio New Zealand but public radio was non-commercial and entirely publicly funded and so freed from the need to attract advertising and sponsorship with its attendant influence on what was programmed. Although the Labour Party appeared to enter the 1999 election campaign with a broadcasting policy which indicated a radical departure from the deregulation model pursued with such vigour in the late 1980s, it had not resolved the conundrum of meshing public service content with the State-Owned Enterprise commercially-driven programming dominating the schedules on TVNZ.

A 'Third Way' Policy Approach

Thompson has characterised the policy approach taken by the Labour-led government when it came to power in 1999 as 'Third Way', a combining of traditional social democratic social policy concerns with neo-liberal economic policies (Thompson, 2000, 2003, 2004). As he points out, this melding of agendas from the traditional left and right wings of the political spectrum does not lead to a smooth synthesis. In practice the core economic policies provide the policy blueprint and the pursuit of social, cultural, and democratic goals are pursued within confined spaces, or around the margins, after 'market imperatives have been accommodated' (Thompson, 2003, p.20). It may even be erroneous to portray 'Third Way' as a new policy paradigm but merely see it as a modification or even a negation of traditional left of centre political ideology from more ambitious times.

'Third Way', however, does have a descriptive utility in outlining what the new Labour government tried to achieve after the 1999 election. Its rhetoric indicated that it would seek to redress some of the distortions that had occurred in social and cultural policy under the free market economic policies of the 1980s and 1990s. At the same time its overriding concern was to ensure New Zealand's continued economic success as the party had not questioned its belief that the policies it enacted in the 1980s had paved the way for economic growth and a more 'modern' economy. Importantly as well, key advising officials in Treasury and other branches of the state bureaucracy had not

changed their view and still approached policy formulation and implementation within a neo-liberal economic framework. This was clear in papers from government ministries on the subject of broadcasting where there was the 'conflating of notions of public good with economic efficiency' (Thompson, 2003, p.20).

Thus the incoming Labour government's broadcasting policy was formulated in an environment of considerable constraint. Although it had indicated its intention to give public service considerations greater weight within TVNZ, principally through the introduction of a Charter, in reality this was to be achieved by sacrificing only a portion of its dividend and by some supplementary direct grant funding. Even when TVNZ, in a move signalling its release from a purely commercial model, was restructured from a State-Owned Enterprise to a Crown-Owned Company (CROC) in early 2003, it was still required to pay a dividend to its government shareholder. Thus the economic ground rules for the broadcaster were still in place and it was still reliant on advertising revenue earned in a competitive marketplace for the substance of its funding.

The changes to broadcasting proposed by the Government in its 1999 broadcasting manifesto were implemented very slowly even though they were to be very limited. Aside from TVNZ's Charter, the manifesto also outlined plans to limit the level and spread of advertising, particularly around children's programming, to introduce local content quotas and encourage the growth of regional television (Labour Party, 1999). Very little progress has been made on any of these issues whilst the Charter was not enacted until after the Labour-led government gained a second term in 2002. Implementation proved to be fraught with obstacles.

Policy Implementation 'Failure'

Gosling notes that a stream of social science research has focused on why public policy implementation fails to realise policymakers' expectations (Gosling, 2004, p.102). This has drawn on evaluation research which has compared actual consequences to intention. The general tenor of the research highlights the obstacles facing successful implementation as it is a political process that has to reconcile divergent values, organisational cultures, individual preferences and preferred approaches. Some researchers believe that successful public policy implementation is not possible. After evaluating Californian state legislation expanding community-based care and treatment for the mentally ill, Bardach concluded that the obstacles to responsive implementation are such that governments have to be far more circumspect about undertaking policy initiatives at all as the outcome is likely to drift far from expectations (Bardach, 1977).

In seeking to identify the elements of successful public policy implementation, Mazmanian and Sabatier (1983) offer five conditions that they believe are necessary. These are clear and consistent policy objectives; a sound theory of causal linkages; the assignment of tasks to agencies sympathetic with the underlying policy goals together with sufficient resources and legal authority; support given by constituency groups to the implementation effort and public support that continues throughout the process of implementation. These five conditions are evaluated with respect to the TVNZ Charter.

By its nature the political process tends to work against clarity when policy objectives are enunciated as this could divide support. Policy framed in broad, expansive and perhaps, ambiguous language allows those affected to read into the policy their own particular perspective. It also allows the policy framers to equivocate and avoid sparking oppositional forces to action or upsetting political allies. These motives are often identified by the language used to express the policy. The TVNZ Charter is replete with unexceptionable statements which although designed to appeal to the broadest possible constituency do not provide clearly delineated objectives able to be measured by a set of performance criteria. For example, the Charter requires TVNZ to 'strive always to set and maintain the highest standards of programme quality and editorial integrity' and to 'seek to extend the range of ideas and experiences available to New Zealanders'⁷. However, some of the statements in the Charter were still seen as too prescriptive for TVNZ who produced their own shorter, watered down version of the Charter during the phase of public submissions (Hayward, 2003, p.116). This omitted several potentially expensive clauses explicitly requiring history and natural history programming, educational programming, regional coverage and the development of a code of ethics for advertising around children's programmes. The company also wished to considerably dilute clauses like that requiring it to 'invest in and promote the film and television industry' and suggested it merely read 'promoting the talents and creativity of New Zealanders'. On the statement concerning Maori programming, TVNZ wished to alter this clause to omit explicit references to coverage of current Maori issues, Maori history and Maori programming designed to promote the language and culture to all New Zealanders⁸.

Although TVNZ did not succeed in getting these changes into the Charter, the final document still provides little that can be demonstrably measured. Furthermore, the government 'left the rather problematic task of developing methods of gauging how effectively the Charter's principles are being fulfilled to TVNZ' (Thompson, 2004, p.88). This meant that the reluctant agency subject to the public policy could draw up its own criteria as to whether it was successfully implementing that policy. TVNZ proposed plans for telephone surveys, focus groups, electronic panels and other systems of collating feedback on the Charter from the public but the results of this assessment, if it has ever been carried out, have not been released into the public domain.

The second condition proposed for successful public policy implementation is a 'sound theory of causal linkages'. It might be argued that one merit of the deregulation of broadcasting was its clear linkage to a developed theory and causal chain of effects. In contrast, the Charter was a response to the deleterious effects of deregulation but carried out within the political-economic framework set up by the previous policy. It sought not to overturn the existing theoretical construct but carry out 'adjustments' to it. Rather than a clear set of measurable policy aims it proposed a broadly stated policy 'wish-list' with no model or previous example of where a public service Charter had been retrospectively imposed on a commercially-driven broadcaster. The policy did not fundamentally address the issue as whether the

⁷ The TVNZ Charter <http://corporate.tvnz.co.nz/tvnz_detail/0,2406,111535-244-257,00.html>

⁸ See Minister of Broadcasting, *TVNZ Charter-revised draft and next steps*, 15 January 2001.

tensions between the need to return a commercial dividend and compete with commercial rivals as well as perform a significant role as a Chartered public service broadcaster could be successfully resolved.

These tensions may have had a chance of resolution if the third condition had been met and the policy implementation had been assigned to a sympathetic agency with sufficient resources to carry it out. TVNZ was less-than-sympathetic to the Charter's underlying policy goals. Their response to the draft Charter was to try and modify it in a manner that would emasculate its potential impact. The organisation had so effectively adjusted to the demands of operating in a deregulated market environment that its chief executive stated at the time the Charter was drafted that 'to achieve the paradigm shift, you'd need inside TVNZ a neutron bomb' (Thompson, 2004, p.79). The minister charged with pushing the Charter through, Marian Hobbs, was to remark after she had left the portfolio that she faced deep hostility from within TVNZ: 'They thought they could cosset me and bring me round to their way of thinking and when I didn't they decided to campaign' (Comrie & Fountaine, 2005, p.108). She described the fight as 'dirty' with staff 'scathing' and remembered that some of them turned their backs on her when she visited TVNZ (Ibid, p.108).

In his memorandum to the TVNZ Board in October 2005, chief executive Ian Fraser stated that since the Charter came into effect the government had funded TVNZ about \$15 million a year for Charter purposes. However, this sum was insufficient to allow the company to sustain its levels of what might be considered 'Charter programming'. He said that the company found itself 'in a contracting environment, less able to sustain the opportunity costs that flow from scheduling a "Charter programme"' (Fraser, 2005, p.2). In 2002 TVNZ had estimated the costs of Charter implementation to be \$20-50million a year and one media commentator suggested that a meaningful implementation of the Charter with significant changes to primetime schedules would require government subsidies of between \$30 and 40 million a year (Norris, 2001, p.9). If these figures are to be accepted then the TVNZ argument that it was profoundly under-resourced to achieve Charter aims had merit.

Mazmanian and Sabatier believe that when constituency groups support an agency's mission and devote their resources toward generating political support for implementing the policy consistent with it, then the task of realising policy objectives is greatly improved (Mazmanian & Sabatier, 1983). Yet TVNZ can be viewed as a public broadcaster essentially in name only which has never had the public attachment accorded to other public broadcasters such as the BBC and the ABC (Cocker, 1994). In Britain and Australia significant public lobbies have emerged whenever government policy has threatened the status of the public broadcasters. In New Zealand TVNZ has never enjoyed this support from a public who have found it difficult to distinguish between its services and those of its commercial rivals. During the formulation and implementation of the Charter, few voices were raised in support of TVNZ as a chartered broadcaster. The more dominant news about the Charter was negative as private television interests and political opponents decried the perceived waste of public monies. As for Mazmanian and Sabatier's fifth condition for the successful implementation of public policy, that public support would continue throughout the process of implementation, Ian Fraser's memorandum comment that TVNZ had failed to measure any public satisfaction with the organisation as a chartered public service broadcaster

highlights a failure to convince the public that the company's Charter initiatives were worthy of support.

Conclusion

The TVNZ Charter is the most significant policy initiative the Labour-led government elected in 1999 has undertaken to address shortcomings with the deregulation of broadcasting. Portrayed as a rethinking of deregulated broadcasting, the Charter was characterised as ushering in a dramatic return to public service principles and programming for the public television broadcaster. Its significance, however, is as an example of compromised 'Third Way' public policy formulation and implementation where the conundrum of demanding social and cultural goals from an organisation primarily structured to return commercial dividends in a competitive market to its Government shareholder was not satisfactorily resolved. The policy implementation process was further flawed as it sought, first, to impose policy objectives which were not clear, consistent and measurable. Second, they were imposed with inadequate financial resources on an agency unsympathetic with the underlying policy goals. Third, they were not grounded in a sound theory of causal linkages. Fourth, they were unsupported by strong interest group activity and, finally there was a noticeable lack of public support through the implementation process.

The announcement by the Minister of Broadcasting in February 2006 that TVNZ's TV One and TV Two would operate much as they do now, maintaining high audience share and generating 'substantial commercial revenue' would indicate that enforcing the Charter on these services has been abandoned (Cumming, 2006, p.1). Instead the Minister is 'pretty much settled' on a new option where two new non-commercial digital channels run by the company could provide many of the Charter goals. In the continuing reinvention of the country's public television service to better serve the needs of the New Zealand public the Charter presently stands as yet another false dawn.

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