



# Television New Zealand Amendment Act 2011

Public Act 2011 No 52  
Date of assent 22 July 2011  
Commencement see section 2

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## 5 Interpretation

- (1) Section 4 is amended by inserting the following definitions in their appropriate alphabetical order:

“**content** means the audio and visual material screened on any delivery platform by TVNZ in carrying out its functions, and includes both text and still pictures

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

“**digital media** means any digital technology by which content is produced and screened

“**programme**—

“(a) means sounds or visual images, or a combination of sounds and visual images, intended to—

“(i) inform, enlighten, or entertain:

“(ii) promote the interests of any person:

“(iii) promote any product or service; but

“(b) does not include visual images, whether or not combined with sounds, that consist predominantly of alphanumeric text

“**screen** means to make content available on any delivery platform

“**services** means any means by which content is compiled and screened”.

- (2) Section 4 is amended by repealing the definition of **TVNZ** and substituting the following definition:

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

## 6 New section 12 substituted

Section 12 is repealed and the following section substituted:

### “12 Functions of TVNZ

- “(1) The functions of TVNZ are to be a successful national television and digital media company providing a range of content and services on a choice of delivery platforms and maintaining its commercial performance.

- “(2) In carrying out its functions, TVNZ must provide high-quality content that—

- “(a) is relevant to, and enjoyed and valued by, New Zealand audiences; and
  - “(b) encompasses both New Zealand and international content and reflects Māori perspectives.
- “(3) TVNZ’s services must include the provision of channels that are free of charge and available to audiences throughout New Zealand.”

**7 Sections 22 and 23 repealed**  
Sections 22 and 23 are repealed.

**8 Powers of shareholding Ministers**

- (1) Section 27 is amended by repealing subsection (1) and substituting the following subsection:
- “(1) The shareholding Ministers may, by written notice to the TVNZ board, determine the amount of dividend to be paid by TVNZ to the Crown in respect of any financial year or years.”
- (2) Section 27(3) is amended by omitting “objectives and”.

**9 Shareholding Ministers must not give certain directions**

- (1) Section 28(1) is amended by repealing paragraphs (a) to (c) and substituting the following paragraphs:
- “(a) any programme or other content; or
  - “(b) any allegation or complaint relating to a programme or other content; or
  - “(c) the gathering or presentation of news or the preparation or presentation of any current affairs programme or content; or
  - “(d) standards administered under the Broadcasting Act 1989.”
- (2) Section 28(2) is amended by repealing paragraphs (a) to (c) and substituting the following paragraphs:
- “(a) any programme or other content; or
  - “(b) any allegation or complaint relating to a programme or other content; or
  - “(c) the gathering or presentation of news or the preparation or presentation of any current affairs programme or content; or

- “(d) the responsibility of TVNZ or any of its subsidiaries for compliance with standards administered under the Broadcasting Act 1989.”
- (3) Section 28 is amended by inserting the following subsection after subsection (2):
- “(2A) This section applies regardless of the type of delivery platform TVNZ uses to deliver any programmes or other content.”

*Amendments relating to archived programmes*

**10 New Part 4A inserted**

The following Part is inserted after section 29:

**“Part 4A**

**“TVNZ archived works**

**“Subpart 1—Preliminary provisions**

**“29A Interpretation**

In this Part, unless the context otherwise requires,—

**“archived work—**

- “(a) means a programme made by the Broadcasting Corporation of New Zealand or its predecessors—
- “(i) on or at any time before 27 May 1989; and
  - “(ii) held in the TVNZ Archive; and
  - “(iii) in which TVNZ now holds sole copyright; and
- “(b) includes an archived work that comprises a series of episodes

**“chief executive** means the chief executive of the department of State that is, with the authority of the Prime Minister, responsible for the administration of this Act

**“episodes** means the series of episodes that make up an archived work

**“Māori Television Service** means the service established by the Māori Television Service (Te Aratuku Whakaata Irirangi Māori) Act 2003

**“Minister** means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Part

“**NZ On Screen** means the Internet site established by the charitable trust NZ On Screen Trust to screen content

“**person with an interest in an archived work**—

“(a) means a person, or the estate of a person,—

“(i) contracted for one of the categories listed in clause 1(a) to (d) of Schedule 3 for the purpose of making an archived work; or

“(ii) who is within the category referred to in clause 1(e) of Schedule 3; but

“(b) excludes an employee of the Broadcasting Corporation of New Zealand or its predecessors

“**reviewer** means a person appointed as a member of a panel of reviewers under section 29L for the purposes of subpart 4

“**scheme** means the scheme provided for by subpart 3

“**screen** has the same meaning as in section 4

“**TVNZ Archive** means the archive that is a wholly owned subsidiary of TVNZ

“**TVNZ Archived Works Fund** and **Fund** mean the fund that must be established under section 29G.

#### “29B Purpose of this Part

The purpose of this Part is to enable TVNZ to screen archived works in accordance with the provisions of this Part while also providing a fair and reasonable process to recognise, by compensatory payments made under subpart 3, the rights that persons with an interest in an archived work would have had, but for this Part.

#### “Subpart 2—Screening of archived works

“*TVNZ’s right to screen archived works*

#### “29C Archived works may be screened

“(1) Provided that TVNZ complies with the requirements of this Part, it may—

“(a) screen an archived work on as many occasions as it considers appropriate, but only on or by—

“(i) the channels that TVNZ owns at any time:

“(ii) the TVNZ Ondemand Internet site:

- “(iii) agreement between TVNZ and the provider of a delivery platform for the supply of content:
  - “(b) grant the Māori Television Service the right to screen an archived work under any arrangement agreed between that service and TVNZ:
  - “(c) enter into an arrangement with NZ On Screen in respect of a work that has previously been screened by TVNZ or the Māori Television Service under this section.
- “(2) An archived work—
- “(a) must be screened under this section free of charge to the viewer; but
  - “(b) must not be—
    - “(i) screened between the hours of 6 pm and 10.30 pm on any day of the week on channels TV1 and TV2 of TVNZ; or
    - “(ii) subject to a licence that is sold for profit by TVNZ to screen on any other platform (though this is without prejudice to TVNZ recovering its reasonable costs in making the work available for screening on another platform).

**“29D Rights of persons with interest in archived work to cease**

- “(1) This section applies only to rights in respect of an archived work that are—
- “(a) contractual rights; or
  - “(b) rights arising under the Copyright Act 1994, other than—
    - “(i) moral rights; or
    - “(ii) performers’ rights.
- “(2) The rights of a person with an interest in an archived work—
- “(a) are not infringed if the archived work is screened in accordance with section 29C; and
  - “(b) are substituted by the rights provided for by the rest of this Part.
- “(3) To avoid doubt, any rights of a person with an interest in an archived work continue in relation to that work if, and to the extent that, that work is screened other than as provided for by section 29C.

“Subpart 3—Scheme

“*Overview of subpart*

“**29E Overview of scheme under this subpart**

- “(1) In order to promote the purpose of this Part, TVNZ must ensure that—
- “(a) notices of the screening of archived works are given in accordance with section 29F; and
  - “(b) the scheme provided for in this subpart is administered in such a way as to meet the obligations arising under this subpart.
- “(2) The obligations are to—
- “(a) ensure that the Fund is established and money paid into it, in accordance with section 29G; and
  - “(b) ensure that the contingency account required by section 29H is established and, in a financial year, that a sum is paid into it that is equal to no less than 10% of the total sum held in the Fund; and
  - “(c) assess the entitlement of persons and make payments in accordance with section 29K.

“*Notices of screening of archived works*

“**29F Notices advising that archived work to be screened**

- “(1) TVNZ must give public notice advising that an archived work is to be screened and inviting persons with an interest in a specified archived work to register to participate in the scheme.
- “(2) The public notice must include—
- “(a) details of the archived work to be screened; and
  - “(b) the date on which the work is first to be screened, which must not be earlier than the date that is 4 months after the date of this public notice; and
  - “(c) information about the scheme set up under this subpart and how a person with an interest in the specified archived work may register to participate in the scheme under section 29I; and
  - “(d) the date by which a person must register, which may be any time up to 1 month after the date on which—
    - “(i) the archived work is first screened; or

- “(ii) if the archived work comprises a series of episodes, the last episode of the series is first screened.
- “(3) A public notice must be published at least once—
  - “(a) on an Internet site or other delivery platform operated by TVNZ; and
  - “(b) in each major metropolitan newspaper in New Zealand; and
  - “(c) in any relevant industry or guild publication.
- “(4) TVNZ must also ensure that the information required by subsection (5) accompanies—
  - “(a) the first screening of an archived work; or
  - “(b) the first screening of each episode of an archived work; or
  - “(c) an archived work, in the case of an archived work available for screening on demand, from the time that the work is first available until the date when registration closes, as notified under subsection (2)(d).
- “(5) The information required must advise any person with an interest in the work who has not already registered—
  - “(a) of the scheme set up under this subpart; and
  - “(b) how to register for the scheme; and
  - “(c) of the date by which registration must be made (which must be the date notified under subsection (2)(d)).

*“Funds that must be established for purposes  
of scheme*

**“29G TVNZ Archived Works Fund**

- “(1) The TVNZ Archived Works Fund (the **Fund**) must be established for the purposes of the scheme administered under this subpart.
- “(2) TVNZ must ensure that at all times the Fund contains, in relation to an archived work to be screened in accordance with section 29C, a sum determined on the basis of the market value of that work.
- “(3) For the purpose of subsection (2), the chief executive must, after consultation with TVNZ, appoint as an assessor an in-

dependent person with the appropriate expertise to assess the market value of an archived work.

- “(4) The market value of an archived work that is to be screened in accordance with section 29C must be assessed at the time of its screening under that section.
- “(5) In making an assessment of the market value of an archived work, the assessor must have regard to the uses permitted for that work by this Part.

**“29H Contingency account**

- “(1) A contingency fund (the **contingency account**) must be established.
- “(2) TVNZ must ensure that, on an annual basis, a sum that is equal to no less than 10% of the total amount held in the Fund in that financial year is paid into the contingency account.
- “(3) The contingency account is to be held for the purposes of meeting—
  - “(a) any payments required as a result of determinations made by reviewers under section 29N; and
  - “(b) the costs, including the administrative costs, associated with any review conducted under subpart 4.

*“Participation in scheme*

**“29I Registration to participate in scheme**

- “(1) A person with an interest in an archived work in respect of which notices are given under section 29F may apply to register to participate in the scheme in relation to that work.
- “(2) The application must be made in the prescribed form and manner, and must include evidence—
  - “(a) of the person’s interest in accordance with the categories set out in clause 1 of Schedule 3; and
  - “(b) that the person was engaged under a contract with the Broadcasting Corporation of New Zealand or its predecessors before 27 May 1989 to provide services associated with the creation, production, or performance of the relevant archived work; and
  - “(c) that the person did provide the services to which the contract applied.

**“29J Confirmation of registration**

- “(1) TVNZ must ensure that, as soon as is reasonably practicable after the closing date for registration for an archived work, a determination is made and written notice given to persons who seek to register, advising the person, as appropriate, that the person’s registration—
- “(a) is accepted and that an assessment will be made in accordance with section 29K; or
  - “(b) is declined and the reasons for that decision.
- “(2) In the case of a person whose registration is declined, advice must also be given of the right of review of that decision under subpart 4, how to apply for review, and the date by which an application must be made (which must be the same as the date notified under section 29K(4)).

**“29K TVNZ to assess entitlement and make payment from Fund**

- “(1) Not later than 20 working days after the closing date for registration in relation to an archived work, TVNZ must assess the entitlement of each person whose registration is accepted under section 29J(1)(a).
- “(2) Assessments must be calculated—
- “(a) on the basis of the categories set out in clause 1 of Schedule 3; and
  - “(b) in accordance with the formula set out in clause 3 of Schedule 3 for determining each person’s share of the Fund in relation to the relevant archived work.
- “(3) TVNZ must notify each person in writing of that person’s assessment and make the payment in full accordingly.
- “(4) When notice is given under subsection (3), advice must also be given of the right of review under subpart 4, how to apply for review, and the date by which an application must be made (which must not be later than 20 working days after the date of the notice).

“Subpart 4—Review

“**29L Review process to be established**

- “(1) The chief executive must appoint a panel of reviewers the members of which are to determine applications for review under section 29M.
- “(2) Reviewers must be persons who are recognised as experts with the knowledge, experience, and qualifications that are relevant to the review function under this subpart.
- “(3) In carrying out a review, a reviewer must—
- “(a) regulate his or her own procedure; and
  - “(b) act judicially.
- “(4) A reviewer may not be held personally liable for any determination made in good faith under this subpart.
- “(5) Reviewers are entitled—
- “(a) to receive remuneration not within paragraph (b) for services as reviewers at a rate and of a kind determined by the chief executive in accordance with the fees framework; and
  - “(b) in accordance with the fees framework, to be reimbursed for actual and reasonable travelling and other expenses incurred in carrying out the office of a reviewer.
- “(6) For the purposes of this section, **fees framework** means the framework determined by the Government from time to time for the classification and remuneration of statutory and other bodies in which the Crown has an interest.

“*Review procedures*

“**29M Application for review**

- “(1) The following persons may apply for review under this subpart:
- “(a) a person whose registration was declined under section 29J(1)(b); or
  - “(b) a person who is dissatisfied with an assessment made under section 29K.
- “(2) Application must be made—
- “(a) in the prescribed form and manner; and
  - “(b) not later than the date notified under section 29K(4).

- “(3) Application for review may be made only on the grounds that TVNZ,—
- “(a) in the case of a person whose registration to participate in the scheme was declined, failed properly to assess the evidence of that person’s role in the archived work; or
  - “(b) in the case of a person who is dissatisfied with an assessment,—
    - “(i) attributed the wrong category of interest to that person under clause 1 of Schedule 3; or
    - “(ii) incorrectly applied the formula set out in clause 3 of Schedule 3 to determine that person’s share of the Fund in relation to the relevant work.
- “(4) An application for review must include all the evidence necessary to establish, as the case may be,—
- “(a) why the person’s registration to participate in the scheme ought to have been accepted; or
  - “(b) what the applicant alleges is the correct assessment.

**“29N Determination of application for review**

- “(1) In determining an application for review, a reviewer—
- “(a) must take into account all the relevant information that was before TVNZ for the purpose of making a decision under section 29J or an assessment under section 29K; and
  - “(b) may take into account any new evidence that it is satisfied assists with determining whether the person’s registration ought to have been accepted or what the appropriate assessment ought to have been, as the case may be.
- “(2) If a reviewer is satisfied that there is no or insufficient evidence on which to change the decision on registration or the assessment by TVNZ, as the case may be, the reviewer must confirm the decision or assessment.
- “(3) Subsection (4) applies if the reviewer is satisfied—
- “(a) that a person’s registration ought to have been accepted under section 29J(1)(a); or
  - “(b) that an assessment was not made in accordance with section 29K(2).

- “(4) After taking into account all the relevant circumstances, the reviewer must calculate the assessment in the manner provided for in section 29K(2), as the reviewer determines is reasonable in the circumstances, and remit the matter to TVNZ for payment from the contingency account.
- “(5) A reviewer must provide a copy of a determination, with reasons, to the applicant and to TVNZ.

**“29O Effect of review decision**

- “(1) TVNZ must ensure that the sum (if any) required by the determination of a reviewer is paid to the applicant from the contingency account.
- “(2) The determination of a reviewer is final.

*“Circumstance in which other relief may be sought*

**“29P Applications from persons unable to register to participate in scheme**

- “(1) A person may apply under this subpart for review if that person, for reasons beyond his or her control, was unable to register to participate in the scheme until after the close of the period for registration notified under section 29F.
- “(2) An application under this section—
- “(a) must be made not later than 2 years after the date of the first notice given under section 29F(1) in relation to the relevant archived work; and
  - “(b) must be made in the form and manner approved for the purpose; and
  - “(c) must include—
    - “(i) the information required by section 29I(2); and
    - “(ii) the evidence necessary to establish that the person was unable to register to participate in the scheme in accordance with notice given under section 29F(1).
- “(3) If the reviewer is satisfied that the applicant meets the requirements of subsections (1) and (2), the reviewer must assess the applicant’s entitlement—

- “(a) on the basis of that person’s category of interest under clause 1 of Schedule 3; and
  - “(b) in accordance with the formula set out in clause 3 of Schedule 3.
- “(4) After taking into account the particular circumstances of the case, the reviewer must determine the amount to be paid (if any) from the contingency fund in lieu of that person’s participation in the scheme.
- “(5) A determination by a reviewer under subsection (4) is final.

#### “Subpart 5—Miscellaneous

##### “29Q Regulations

The Governor-General may, by Order in Council, on the recommendation of the Minister and after consultation with TVNZ, make regulations to—

- “(a) provide for other platforms or channels or new methods by which archived works may be made available for public viewing;
- “(b) if circumstances so require, add new criteria for any assessment under section 29K, or amend or cancel criteria;
- “(c) add to or amend the categories provided for in clause 1 of Schedule 3;
- “(d) vary the proportion of the total sum of money available in relation to an archived work for a category of interest, as set out in clause 2 of Schedule 3;
- “(e) vary the method of calculating the share of the total sum of money payable to each person with an interest in an archived work, as set out in clause 3 of Schedule 3;
- “(f) prescribe forms to be used under subparts 3 and 4;
- “(g) provide for the procedures to be followed by a reviewer under subpart 4;
- “(h) provide for any other matters contemplated by this Part, or necessary for its administration or for giving it full effect.

**“29R Residual funds**

If, in any financial year, there is residual money in the Fund or in the contingency account, that money may be applied—

- “(a) to the contingency account for the following financial year; or
- “(b) for the maintenance of the TVNZ Archive.

**“29S Review of Part**

“(1) As soon as practicable after the expiry of the period of 2 years from the date of the first notice given under section 29F, the chief executive must ensure that a review is commenced and a report prepared that—

- “(a) reviews the operation of this Part since the date of its commencement; and
- “(b) considers whether any amendments to this Part are necessary or desirable (including an amendment to require further periodic reports).

“(2) Not later than 3 years from the date of the first notice referred to in subsection (1), the chief executive must provide a copy of the report to the Minister who must, as soon as is reasonably practicable, present a copy of the report to the House of Representatives.”

**11 New Schedule 3 added**

The Schedule 3 set out in the Schedule of this Act is added.

**Part 2****Repeals and related amendments****12 Spent sections of principal Act repealed**

The following spent sections are repealed:

- (a) section 7 (TVNZ ceases to be State enterprise); and
- (b) section 8 (transmission business separated from TVNZ); and
- (c) section 9 (separation of transmission business implemented by Order in Council); and
- (d) section 10 (transitional provision relating to TVNZ ceasing to be State enterprise and separation of transmission business).

*Amendment to Copyright Act 1994***13 Amendment to Copyright Act 1994**

Section 14 amends the Copyright Act 1994.

**14 New section 57A inserted**

The following section is inserted after section 57:

**“57A Making archived works available for public viewing**

“(1) The communication of an archived work in accordance with section 29C of the Television New Zealand Act 2003 does not infringe copyright (if any) in the archived work under this Act.

“(2) In this section, **archived work** has the same meaning as in section 29A of the Television New Zealand Act 2003.”

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**Schedule**  
**New Schedule 3 added**

s 11

**Schedule 3**  
**Payments from TVNZ Archived Works  
Fund**

ss 29A, 29I, 29K

**1 Categories applicable to persons with interest in archived work**

For the purpose of making an assessment under section 29K of a registered person's interest in an archived work, TVNZ must determine, on the evidence provided by that person, which of the following categories applies to that person in relation to the archived work:

- (a) creator, writer, producer, or director of the archived work; or
- (b) choreographer or composer; or
- (c) leading or solo performer, artist, or presenter; or
- (d) supporting performer, artist, or presenter; or
- (e) a person who has a right in a work incorporated into an archived work.

**2 Proportion of interests**

The proportion of the interest of a registered person in the total sum of money available in relation to an archived work is to be calculated in accordance with the categories in clause 1 as follows:

- (a) the persons in category (a) share equally in one-half of the total sum available; and
- (b) the persons in category (b) share equally in one-sixth of the total sum available; and
- (c) the persons in category (c) share equally in one-sixth of the total sum available; and
- (d) the persons in categories (d) and (e) share equally in one-sixth of the total sum available.

**3 Calculation of share for each person with interest in archived work**

- (1) TVNZ must calculate the share of the total sum of money payable to each registered person with an interest in an archived work in accordance with the following formula:

$$\frac{T \times \$ \times P}{R}$$

where—

T is the duration of the screening of an archived work (in units of 30 minutes)

\$ is the sum (\$NZ) for a 30-minute unit, as provided for under section 29G

P is the proportion of interest set out in clause 2

R is the number of registered persons in a particular category.

- (2) In this schedule, **registered person** means a person whose registration to participate in the scheme under subpart 3 of Part 4A is confirmed, as provided for by section 29J(1).

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**Legislative history**

9 December 2009	Introduction (Bill 89–1)
29 April 2010	First reading and referral to Commerce Committee
28 October 2010	Reported from Commerce Committee (Bill 89–2)
3 May 2011	Second reading
12 May, 17 May 2011	Committee of the whole House
22 June 2011	Reported from committee of the whole House
12 July 2011	Third reading
22 July 2011	Royal assent

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This Act is administered by the Ministry for Culture and Heritage.

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