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ANALYSIS

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1996, No. 53

An Act to amend the Broadcasting Act 1989

[1 July 1996]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Broadcasting Amendment Act 1996, and shall be read together with and deemed part of the Broadcasting Act 1989 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the day on which this Act receives the Royal assent.

2. Interpretation—Section 2 (1) of the principal Act (as amended by section 3 of the Broadcasting Amendment Act (No. 2) 1990 and section 2 of the Broadcasting Amendment Act 1993) is hereby amended by inserting, in their appropriate alphabetical order, the following definitions:

“‘Approved financial reporting standard’ has the meaning given to that term by section 2 (1) of the Financial Reporting Act 1993:

“‘Series’—

“(a) Means two or more related sequential programmes; but

“(b) Does not include any news or current affairs programme:

“‘Total operating revenue’ means total operating revenue as defined in Approved Financial Reporting Standard No. 9.”.

3. Formal complaints about programmes—Section 6 (1) of the principal Act is hereby amended by inserting, after paragraph (b), the following paragraph:

“(ba) To broadcast on each channel or broadcasting station operated by the broadcaster notices (each of which shall be of at least 15 seconds duration) publicising the procedure for making such complaints,—

“(i) With the equivalent in each year of one notice per day for each day of broadcasting on the channel or broadcasting station; and

“(ii) With the notices being broadcast at different programming times but in such a manner that the notices are broadcast in the course of a year at all programming times, including prime time and children’s programming times; and”.

4. Right of complainant to refer formal complaint to Authority—(1) Section 8 (1) of the principal Act (as substituted by section 4 (1) of the Broadcasting Amendment Act 1993) is hereby amended by repealing paragraph (b), and substituting the following paragraphs:

“(b) Except as provided in subsection (1A) of this section, the complaint is a complaint about a programme (other than an election programme broadcast pursuant to Part VI of this Act) and the broadcaster has not, within 20 working days after receiving the complaint, notified the complainant of—

“(i) The decision of the broadcaster; or

“(ii) The action taken by the broadcaster in relation to the complaint; or

“(ba) The complaint is a complaint about an election programme broadcast pursuant to Part VI of this Act and the broadcaster has not, within 48 hours after receiving the complaint, notified the complainant of—

“(i) The decision of the broadcaster; or

“(ii) The action taken by the broadcaster in relation to the complaint; or”.

(2) Section 8 of the principal Act (as so substituted) is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) Where, within 20 working days after receiving the complaint, the broadcaster gives to the complainant a written notice—

“(a) Stating that the broadcaster will be unable to make, within the prescribed period of 20 working days, a decision with regard to the complaint; and

“(b) Giving the reasons why the broadcaster will be unable to make the decision within the prescribed time,—
subsection (1)(b) of this section shall have effect in relation to that complaint as if, for the expression ‘20 working days’, there were substituted the expression ‘40 working days’.”

5. Time limits—Section 9 (2) of the principal Act is hereby amended by omitting the expression “80”, and substituting the expression “60”.

6. Additional powers to make orders in respect of series—The principal Act is hereby amended by inserting, after section 13, the following section:

“13A. (1) Notwithstanding section 13 of this Act, if, in the case of a complaint referred to the Authority under section 8 of this Act, the Authority considers that, in relation to a particular programme within a series, a broadcaster has failed to comply with section 4 of this Act because that programme contains material that—

“(a) Describes, depicts, or otherwise deals with—

“(i) Acts of torture, the infliction of serious physical harm, or acts of significant cruelty; or

“(ii) Sexual violence or sexual coercion or violence or coercion in association with sexual conduct; or

“(iii) Other sexual or physical contact of a degrading, dehumanising, or demeaning nature; or

“(iv) Sexual conduct with or by children or both;

or

“(v) Physical conduct in which sexual satisfaction is derived from inflicting or suffering cruelty or pain;

or

“(b) Exploits the nudity of young children; or

“(c) Promotes or encourages criminal acts or acts of terrorism,—

in a manner that is likely to be injurious to the public good, the Authority may make an order directing the broadcaster to make available to the Authority—

“(d) A copy of any visual recordings; or

“(e) A copy of any transcript; or

“(f) Any other material,—

related to further programmes within the series.

“(2) In determining whether or not the broadcasting of any programme within a series is likely to be injurious to the public good, the Authority shall, in addition to the matters specified in subsection (1) of this section, have regard to—

“(a) The dominant effect of the programme as a whole; and

“(b) The impact of the programme given the medium in which the programme is presented; and

“(c) The character of the programme, including any merit, value, or importance the programme has in relation to artistic, social, cultural, educational, scientific, or other matters; and

“(d) The persons, class of persons, or age of persons by whom the programme was intended, or is likely, to be viewed; and

“(e) The purpose of the programme; and

“(f) Any other relevant matter relating to the broadcasting of the programme.

“(3) If, after viewing the material referred to in paragraphs (d) to (f) of subsection (1) of this section, the Authority is satisfied that the broadcasting of any programme within the series is likely to be injurious to the public good, the Authority may make one or both of the following orders:

“(a) An order directing that the broadcaster withdraw that programme:

“(b) An order specifying the conditions that must be complied with by any broadcaster who broadcasts the series that is the subject of the complaint or any programme in that series.

“(4) If, after viewing the material referred to in paragraphs (d) to (f) of subsection (1) of this section, the Authority is satisfied that the broadcasting of each and every further programme within the series is likely to be injurious to the public good, the Authority may make—

“(a) An order directing that the broadcaster withdraw the series that is the subject of the complaint; or

“(b) An order directing that the broadcaster withdraw one or more specified programmes; or

“(c) An order (which may be made in conjunction with an order made under paragraph (b) of this subsection) specifying the conditions that must be complied with by any broadcaster who broadcasts the series that is the subject of the complaint or any programme in that series.

“(5) Where the Authority makes, under subsection (3) (a) or subsection (4) (b) of this section, an order in relation to any programme, no broadcaster shall broadcast that programme.

“(6) Where the Authority makes, under subsection (3) (b) or subsection (4) (c) of this section, an order in relation to any series or programmes in a series, no broadcaster shall broadcast, otherwise than in accordance with the conditions specified in the order, that series or any programme in that series.

“(7) Where the Authority makes, under subsection (4) (a) of this section, an order in relation to any series, no broadcaster shall broadcast that series or any programme in that series.”

7. Offences—The principal Act is hereby amended by repealing section 14, and substituting the following section:

“14. Every broadcaster commits an offence and is liable on summary conviction to a fine not exceeding \$100,000—

“(a) Who fails to comply with an order made in respect of that broadcaster under section 13 (1) of this Act; or

“(b) Who contravenes an order made under section 13A (2) of this Act.”

8. Power to award costs—Section 16 of the principal Act is hereby amended by adding the following subsection:

“(4) Without limiting subsections (1) to (3) of this section, where the Authority finds a complaint against a broadcaster to be justified, in whole or in part, the Authority may order the broadcaster to pay to the Crown by way of costs, within one month after the date on which notice in writing of the decision is given to the broadcaster under section 13 (2) of this Act, such sum not exceeding \$5,000, as the Authority thinks fit.”

9. Appeal against decision of Authority—Section 18 (1) (b) of the principal Act is hereby amended by inserting, after the expression “section 13”, the expression “or section 13A”.

10. Membership of Authority—(1) Section 26 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsections:

“(1) The Authority shall consist of 4 members, who shall be appointed by the Governor-General on the recommendation of the Minister, and of whom one shall be appointed as Chairperson.

“(1A) One of the members appointed under subsection (1) of this section shall be appointed after consultation by the Minister with such representatives of the broadcasting industry as the Minister thinks fit.

“(1B) One of the members appointed under subsection (1) of this section shall be appointed after consultation by the Minister with such representatives of public interest groups in relation to broadcasting as the Minister thinks fit.”

(2) Section 26 of the principal Act is hereby further amended by repealing subsection (3) (as amended by section 6 of the Broadcasting Amendment Act 1993).

(3) Section 6 of the Broadcasting Amendment Act 1993 is hereby consequentially repealed.

(4) Notwithstanding subsections (1) to (3) of this section, every member of the Authority in office at the commencement of this section shall, unless the member sooner vacates the member’s office under clause 1 of the First Schedule to the

principal Act, continue in office as if those subsections had not been enacted.

(5) As vacancies occur in the membership of the Authority (not being vacancies in the office of Chairperson), the Minister shall, in making recommendations under section 26 (1) of the principal Act, decide, having regard to the composition of the membership of the Authority, whether any such vacancy is to be filled having regard to section 26 (1A) or section 26 (1B) of the principal Act.

11. Term of office of members of Authority—The principal Act is hereby amended by repealing section 27, and substituting the following section:

“27. (1) Except as otherwise provided in clause 1 (5) of the First Schedule to this Act, every member of the Authority shall be appointed for a term of 3 years.

“(2) Every member of the Authority shall be eligible for reappointment from time to time.

“(3) Every member of the Authority shall, unless the member sooner vacates the member’s office under clause 1 of the First Schedule to this Act, continue in office until the member’s successor comes into office, notwithstanding that the term for which the member was appointed may have expired.”

12. Delegation of functions or powers by Authority—Section 29 (1) of the principal Act is hereby amended by omitting the words “(other than its functions and powers under Part VI of this Act)”.

13. New sections inserted—The principal Act is hereby amended by inserting, after section 30, the following sections:

“30A. **Return on total operating revenue**—(1) Every broadcaster shall, not later than the 31st day of July in each year, give to the Authority a return, for the broadcaster’s immediately preceding financial year, of the total operating revenue derived by that broadcaster in that financial year from broadcasting within New Zealand.

“(2) The return—

“(a) Shall be in such form and contain such particulars as the Authority may require; and

“(b) Shall be accompanied by a certificate signed by an auditor and stating whether or not, in that auditor’s opinion, the return represents a true and fair statement of the total operating revenue derived by the broadcaster in the financial year of the

broadcaster to which the return relates from broadcasting within New Zealand.

“(3) Notwithstanding subsection (2) of this section, a broadcaster may in any year satisfy the requirements of subsection (1) of this section by giving to the Authority, not later than the 31st day of July in that year, a copy of the broadcaster’s financial statement for the financial year of the broadcaster to which the return relates, being a financial statement that contains a statement of the broadcaster’s total operating revenue for that financial year.

“(4) Where a broadcaster gives to the Authority in accordance with subsection (3) of this section the broadcaster’s financial statement for any financial year, the broadcaster’s total operating revenue for that financial year, as stated in that financial statement, will, for the purposes of subsection (1) of this section, be deemed to be the total operating revenue derived by that broadcaster in that financial year from broadcasting within New Zealand.

“30B. **Payment of annual levy**—(1) Where a return given to the Authority under section 30A of this Act by a broadcaster shows that, in the financial year of the broadcaster to which the return relates, the broadcaster had a total operating revenue of more than \$500,000, that return shall be accompanied by an annual levy calculated in accordance with section 30c of this Act.

“(2) The annual levy shall be payable in respect of each financial year of the broadcaster during which programmes are broadcast within New Zealand by the broadcaster.

“(3) Where a broadcaster commences broadcasting within New Zealand during the financial year of the broadcaster to which the return under section 30A of this Act relates, no annual levy shall be payable by the broadcaster in respect of that financial year.

“(4) The annual levy payable under subsection (1) of this section shall be payable by the broadcaster not later than the 31st day of July of the year in which the return is required to be given to the Authority.

“30c. **Annual levy**—The amount of the annual levy payable under section 30B of this Act by a broadcaster shall be an amount ascertained in accordance with the following formula:

$$a \times b$$

where—

“a is the broadcaster’s total operating revenue for the financial year of the broadcaster to which the return under section 30A of this Act relates; and

“b is .00051.

“30d. **Rebates**—(1) The Authority may grant to a broadcaster a rebate in respect of the whole or any part of the annual levy paid by that broadcaster under section 30B of this Act.

“(2) In deciding whether or not to grant a rebate, the Authority shall have regard to—

“(a) Whether or not the broadcaster ceased broadcasting during the financial year of the broadcaster in respect of which the levy was paid; and

“(b) The levy paid by the broadcaster.

“30E. **Recovery of levies**—Any annual levy that is not paid in accordance with this Act may be recovered from the broadcaster liable at the suit, and in the name, of the Authority in any Court of competent jurisdiction.

“30F. **Goods and services tax**—The amount of the levy calculated under section 30B of this Act is exclusive of any goods and services tax payable under the Goods and Services Tax Act 1985.

“30G. **Offence**—Every broadcaster commits an offence and is liable on summary conviction to a fine not exceeding \$100,000 who contravenes section 30A of this Act.”

14. Funds of Authority—Section 31 of the principal Act is hereby amended by inserting, after paragraph (a), the following paragraph:

“(aa) All annual levies paid by broadcasters under section 30B of this Act.”.

15. Administrative expenses—Section 49 of the principal Act is hereby amended by adding the following subsection:

“(5) For the purposes of this section ‘administrative expenses’ means all expenditure made by the Commission (other than expenditure made by the Commission in making funds available for the purposes specified in paragraphs (e) to (g) of section 36 of this Act).”

16. Administrative expenses—Section 53M of the principal Act (as inserted by section 8 of the Broadcasting Amendment Act 1993) is hereby amended by adding the following subsection:

“(4) For the purposes of this section ‘administrative expenses’ means all expenditure made by Te Reo Whakapuaki Irirangi (other than expenditure made by Te Reo Whakapuaki Irirangi in making funds available under section 53B of this Act for broadcasting and the production of programmes to be broadcast).”

17. Interpretation—The principal Act is hereby amended by repealing section 69 (as substituted by section 8 of the Broadcasting Amendment Act (No. 2) 1990), and substituting the following section:

“69. (1) In this Part of this Act, unless the context otherwise requires,—

“‘Candidate’ has the meaning given to that term by section 3 of the Electoral Act 1993:

“‘Constituency candidate’ has the meaning given to that term by section 3 of the Electoral Act 1993:

“‘Election’ means a general election or by-election within the meaning of the Electoral Act 1993:

“‘Election period’, in relation to an election, means the period—

“(a) Beginning with writ day; and

“(b) Ending with the close of the day preceding polling day:

“‘Election programme’ means, subject to subsection (2) of this section, a programme that—

“(a) Encourages or persuades or appears to encourage or persuade voters to vote for a political party or the election of any person at an election; or

“(b) Encourages or persuades or appears to encourage or persuade voters not to vote for a political party or the election of any person at an election; or

“(c) Advocates support for a candidate or for a political party; or

“(d) Opposes a candidate or a political party; or

“(e) Notifies meetings held or to be held in connection with an election:

“‘Electoral Commission’ means the Electoral Commission established under section 4 of the Electoral Act 1993:

“‘Free-to-air television broadcasting’ means broadcasting of television programmes by means of radio waves propagated in space without artificial guide, where

persons wishing to view programmes are not required to pay to do so:

“ ‘General election’ means a general election within the meaning of the Electoral Act 1993:

“ ‘Production costs’, in relation to an opening address or a closing address, includes the costs of linking between venues and broadcasting studios:

“ ‘Register’ and ‘Register of Political Parties’ means the Register of Political Parties established under section 62 (2) of the Electoral Act 1993.

“(2) Notwithstanding section 2 of this Act, for the purposes of the definition of the term ‘election programme’, the term ‘programme’ includes visual images, whether or not combined with sounds, that consist predominantly of alphanumeric text.”

18. Prohibition on paid election programmes—

(1) Section 70 (1) of the principal Act (as substituted by section 9 of the Broadcasting Amendment Act 1993) is hereby amended by omitting the expression “subsection (2)”, and substituting the expression “subsections (2) and (2A)”.

(2) Section 70 (2) of the principal Act (as substituted by section 9 of the Broadcasting Amendment Act 1993) is hereby amended by repealing paragraph (d), and substituting the following paragraph:

“(d) Any advertisement placed by the Electoral Commission or by the Chief Registrar of Electors, the Chief Electoral Officer, a Registrar of Electors, a Returning Officer, or other official for the purposes of the Electoral Act 1993; or”.

(3) Section 70 of the principal Act (as so substituted) is hereby further amended by inserting, after subsection (2), the following subsections:

“(2A) Nothing in subsection (1) of this section restricts the amount of money that a political party or group of related political parties may spend on the production costs of an election programme.

“(2B) Nothing in this Act derogates from section 214B of the Electoral Act 1993.”

19. New sections substituted—The principal Act is hereby amended by repealing sections 70A to 72 (as enacted by section 8 of the Broadcasting Amendment Act (No. 2) 1990), section 73 (as enacted by section 13 of the Broadcasting Amendment Act 1993), sections 74 to 77 (as enacted by section 8 of the Broadcasting Amendment Act (No. 2) 1990), section 77A (as

enacted by section 18 of the Broadcasting Amendment Act 1993), and sections 79 to 80 (as enacted by section 8 of the Broadcasting Amendment Act (No. 2) 1990), and substituting the following sections:

“70A. Obligation of political parties to give notice to Electoral Commission—(1) In every year in which a Parliament is due to expire, the Electoral Commission shall specify, by notice in the *Gazette*, a date by which any political party that considers that it will qualify for an allocation of time under section 73 of this Act or of money under section 74A of this Act, in respect of the election period that will apply in relation to the general election to be held in that year, must notify the Electoral Commission in writing that it considers itself to be so qualified.

“(2) The date specified under subsection (1) of this section may be a date before the beginning of the election period.

“(3) Each political party that considers that it will qualify for an allocation of time under section 73 of this Act or of money under section 74A of this Act in respect of an election period shall notify the Electoral Commission in writing that it considers itself to be so qualified.

“70B. Time by which notice must be given—Every notice given under section 70A (3) of this Act shall be given,—

“(a) Where a date has been specified under section 70A (1) of this Act, not later than that date; and

“(b) In any other case, as soon as practicable after writ day and before noon on nomination day.

“70C. Contents of notice—Every notice given under section 70A (3) of this Act shall state, among other things,—

“(a) The full name of the political party; and

“(b) The name and address of the person providing the notice and the capacity in which he or she provides the notice; and

“(c) Where the person providing the notice is not the Secretary of the political party, the name and address of the Secretary of the political party; and

“(d) The name and address of the person who is to be responsible for providing to the Electoral Commission on behalf of the political party the written statement required by section 79BA of this Act; and

“(e) Details of any relationships that may exist between that political party and any other political parties in New Zealand which the Electoral Commission may need

to take into account in allocating time or money to political parties; and

“(f) Either—

“(i) That the party is registered on the Register of Political Parties; or

“(ii) That the party is intending to apply for registration on the Register of Political Parties in order to be registered at least 3 months before the date in that year on which the Parliament is due to expire; or

“(g) Where the political party considers that it is eligible for an allocation of time and money under section 75 (1) (a) (ii) of this Act,—

“(i) The full name of each person who has declared his or her intention of becoming a constituency candidate for that political party at the general election to be held in that year; and

“(ii) The electoral district for which each person to whom subparagraph (i) of this paragraph applies intends to be a constituency candidate.

“70D. **Persons deemed to be candidates**—Where a political party states, pursuant to section 70c (g) of this Act, that a person has declared his or her intention of becoming a constituency candidate at an election, that person shall, until noon on nomination day for that election, be deemed, for the purposes of subsections (1) (a) (ii) and (1) (b) (ii) of section 75 of this Act, to be a candidate at that election, whether that person is nominated or not.

“71. **Invitation to broadcasters**—(1) The Electoral Commission may from time to time invite broadcasters to permit political parties to broadcast election programmes free of charge or at discounted rates in an election period.

“(2) For the purpose of issuing invitations to broadcasters the Electoral Commission may require, from time to time, that the Authority supply the Electoral Commission with a list of all broadcasters that have made a return under section 30A of this Act for the last financial year.

“(3) Notwithstanding subsection (1) of this section, the opening addresses and closing addresses of political parties shall be broadcast—

“(a) By Television New Zealand Limited on one free-to-air channel with national coverage; and

“(b) By Radio New Zealand Limited on the service known as National Radio.

“(4) Notwithstanding subsection (1) of this section, but subject to subsection (5) of this section, the Electoral Commission shall, during the term of each Parliament, issue an invitation under subsection (1) of this section not earlier than 9 months and not later than 8 months before the date on which that Parliament is due to expire.

“(5) Nothing in subsection (4) of this section applies in relation to the Parliament that is due to expire in the year 1996.

“71A. **Replies to invitation**—(1) Every broadcaster who receives an invitation under section 71 of this Act shall reply to that invitation by giving a written reply to the Electoral Commission within 20 working days after the day on which the invitation is received by the broadcaster.

“(2) The reply—

“(a) Shall state—

“(i) The amount of time that the broadcaster is prepared to make available in the election period free of charge; and

“(ii) The amount of time that the broadcaster is prepared to make available in the election period at discounted rates; and

“(iii) The discounted rates (if any); and

“(iv) Any conditions proposed in relation to the scheduling and duration of election programmes within the time that the broadcaster is prepared to make available; and

“(b) May indicate the broadcasting stations or networks on which the broadcaster is prepared to make the time available; and

“(c) May indicate separately the amount of time that the broadcaster is prepared to make available free of charge or at discounted rates for—

“(i) Opening addresses; and

“(ii) Closing addresses; and

“(d) In the the case of Television New Zealand Limited and Radio New Zealand Limited, the amount of time that will be provided for—

“(i) Opening addresses in accordance with section 77A (3) of this Act; and

“(ii) Closing addresses in accordance with section 77A (3) of this Act; and

“(e) May, in relation to time that the broadcaster is prepared to make available, include proposals for the allocation of that time to political parties.

“(3) Notwithstanding anything in subsections (1) and (2) of this section, a broadcaster—

“(a) Shall, in stating discounted rates under subsection (2) (a) of this section, have regard to the provisions of section 79B of this Act; and

“(b) Shall, in making proposals under subsection (2) (e) of this section, have regard to the provisions of section 75 of this Act.

“72. Duty of Electoral Commission to refer replies to political parties—(1) The Electoral Commission shall, in accordance with this section, give to—

“(a) Each political party that has given a notice to the Electoral Commission under section 70A (3) of this Act; and

“(b) The Minister of Justice,—
a copy of each reply given to the Electoral Commission under section 71A of this Act.

“(2) The Electoral Commission—

“(a) Shall accumulate the replies received under section 71A of this Act; and

“(b) Shall, within 5 working days after the day on which all broadcasters have replied or within 5 working days after the last day of the period of 20 working days specified in section 71A (1) of this Act, whichever is the sooner, comply with subsection (1) of this section in respect of each reply given to the Electoral Commission under section 71A of this Act.

“(3) Where a reply is received after the expiration of the period of 20 working days specified in section 71A (1) of this Act, the Electoral Commission shall, as soon as practicable after that reply is received, comply with subsection (1) of this section in relation to that reply.

“(4) The Electoral Commission shall, in complying with this section, ensure, so far as practicable, that, when copies of a reply are sent to political parties and the Minister of Justice, each of the intended recipients receives a copy of the reply on the same day.

“73. Allocation of time to political parties—(1) Subject to subsections (2) and (3) of this section and to sections 75, 75A, and 76 of this Act, the Electoral Commission shall, in respect of

each election period, allocate to political parties, in such proportions as the Electoral Commission thinks fit—

“(a) The time that broadcasters have offered in response to an invitation under section 71 of this Act, to make available to political parties for the broadcasting of election programmes free of charge or at discounted rates; and

“(b) The time that Television New Zealand Limited and Radio New Zealand Limited have made available for opening addresses and closing addresses in accordance with section 77A (3) of this Act.

“(2) The Electoral Commission, in allocating time to political parties under subsection (1) of this section,—

“(a) Shall consider whether the proposals made under section 71A (2) (e) of this Act for the allocation of broadcasting time can be adopted either—

“(i) In full; or

“(ii) With modifications specified by the Electoral Commission; and

“(b) Shall modify proposals made under section 71A (2) (e) of this Act if, in the opinion of the Electoral Commission, the proposals are not consistent with the provisions of section 75 of this Act.

“(3) The Electoral Commission shall not under this section allocate any time to an individual political party if that political party has received an allocation of time under this section as part of a group of related political parties.

“74. **Amount of public money to be allocated to political parties**—(1) The Minister of Justice shall notify the Electoral Commission, in respect of each election period, of the amount of money appropriated by Parliament for the purpose of enabling political parties to meet all or part of the costs of broadcasting election programmes.

“(2) Where a general election takes place after the year 1990, an amount of money equal to the amount of public money allocated under section 74A or section 77A of this Act in respect of the broadcasting of election programmes at the immediately preceding general election shall, unless an Act of Parliament expressly provides otherwise, be deemed to have been appropriated by Parliament for the purpose of enabling political parties to meet all or part of the costs of broadcasting election programmes at the first-mentioned general election.

“(3) Where an amount of money is deemed by subsection (2) of this section to have been appropriated by Parliament for the

purpose specified in that subsection, that amount shall be payable out of public money for that purpose without further appropriation than this subsection.

“74A. Allocation of money to political parties—(1) The Electoral Commission shall, in respect of each election period, decide the allocation to political parties of the amount of any money appropriated by Parliament, or deemed to have been appropriated by Parliament, for the purpose of enabling political parties to meet all or part of the costs of broadcasting election programmes during that election period.

“(2) The decision made under subsection (1) of this section—

“(a) Shall set out the allocations (which shall be in such proportions as the Electoral Commission thinks fit); and

“(b) May include conditions concerning the manner in which any political party is to expend its allocation.

“(3) Conditions included in a decision pursuant to subsection (2)(b) of this section may include conditions requiring the political party or group of related political parties to advise the Electoral Commission of the value of election programme bookings made by the political party or group of related political parties.

“(4) Where the Electoral Commission decides under subsection (1) of this section to allocate a sum of money to a political party, the Electoral Commission shall supply a copy of its decision to—

“(a) That political party; and

“(b) The Secretary for Justice.

“(5) The Electoral Commission shall not under this section allocate any money to an individual political party if that political party has received an allocation of money under this section as part of a group of related political parties.

“74B. Application and payment of allocation—(1) Every political party to which an amount of money is allocated under section 74A of this Act—

“(a) Shall expend that money only for the purpose of meeting—

“(i) The production costs of any election programme broadcast by the political party during the election period; or

“(ii) The cost of the broadcasting time of any election programme broadcast by the political party during the election period; and

“(b) Shall, in expending that money for the purpose specified in paragraph (a) of this subsection, observe any conditions imposed by the Electoral Commission under section 74A of this Act.

“(2) Every political party shall submit to the Electoral Commission, together with such information as the Electoral Commission may require from time to time, accounts issued to the political party in respect of the expenditure by that political party of its allocation.

“(3) Any account submitted to the Electoral Commission under subsection (2) of this section may be in respect of—

“(a) The production costs of any election programme broadcast by the political party during the election period; or

“(b) The cost of the broadcasting time of any election programme broadcast by the political party during the election period; or

“(c) Both.

“(4) When the Electoral Commission is satisfied in relation to any account that the account or any part of the account should be paid, the Electoral Commission shall, out of money appropriated by Parliament, or deemed to have been appropriated by Parliament, for the purpose of enabling political parties to meet all or part of the costs of broadcasting election programmes during the election period, pay to the person who issued the account the amount approved by the Electoral Commission for payment.

“75. Criteria in relation to allocation of time and money to political parties—(1) The Electoral Commission shall not allocate any time to a political party under section 73 of this Act or make under section 74A of this Act an allocation of money to a political party unless,—

“(a) In the case of a general election,—

“(i) That party was registered on the Register of Political Parties at least 3 months before the dissolution of Parliament for that general election; or

“(ii) Persons belonging to that party or group of related political parties were, by section 70D of this Act, deemed, at least 3 months before the dissolution of Parliament for that general election, to be constituency candidates at that general election for at least 5 seats in the House of Representatives; and

“(b) In the case of a by-election, a person belonging to that political party is a candidate at that by-election and either—

“(i) That party was registered on the Register of Political Parties at least 3 months before the issue of the writ for the by-election; or

“(ii) Persons belonging to that party or group of related political parties were constituency candidates at the immediately preceding general election for at least 5 seats in the House of Representatives.

“(2) The Electoral Commission shall, in allocating time to a political party under section 73 of this Act or in making under section 74A of this Act an allocation of money to a political party, have regard to—

“(a) The number of persons who voted at the immediately preceding general election for that party and for candidates belonging to that political party; and

“(b) The number of persons who voted at any by-election held since the immediately preceding general election for any candidate belonging to that political party; and

“(c) The number of members of Parliament who,—

“(i) In the case of a general election, were members of that political party immediately before the expiration or dissolution of Parliament; and

“(ii) In the case of a by-election, were members of that political party immediately before the date on which the vacancy occurred; and

“(d) Any relationships that exist between a political party and any other political party; and

“(e) Any other indications of public support for that political party such as the results of public opinion polls and the number of persons who are members of that political party; and

“(f) The need to provide a fair opportunity for each political party to which subsection (1)(a)(i) of this section applies to convey its policies to the public by the broadcasting of election programmes on television.

“(3) Notwithstanding anything in subsection (1) or subsection (2) of this section, an allocation made under section 73 of this Act of time in an election period or a decision made under section 74A of this Act in respect of an election period may be made before the beginning of the election period.

“75A. Consultation with broadcasters—(1) The Electoral Commission shall not allocate time under section 73 of this Act or make an allocation of money under section 74A of this Act or make a determination under section 77A of this Act unless—

“(a) The Electoral Commission has consulted with such broadcasters as are likely to be affected by the allocation or determination and those broadcasters have had the opportunity to give their comments on the proposed allocation or determination to the Electoral Commission; and

“(b) The Electoral Commission has considered any such comments.

“(2) Where the Electoral Commission adopts in full, pursuant to section 73 of this Act, a proposal made by a broadcaster under section 71A (2) (e) of this Act, the Electoral Commission shall not be required by subsection (1) of this section to consult with that broadcaster.

“(3) The modification of any allocation or determination by the Electoral Commission after complying with subsection (1) of this section shall not require the Electoral Commission to grant to any broadcaster any further opportunity to give the comments of the broadcaster on the modified allocation or determination to the Electoral Commission.

“(4) The failure of any broadcaster to avail itself of the opportunity to consult with, or to give comments to, the Electoral Commission under subsection (1) of this section, or to comply with any other request of the Electoral Commission—

“(a) Shall not prevent the making of—

“(i) Any allocation of time under section 73 of this Act; or

“(ii) Any allocation of money under section 74A of this Act; or

“(iii) Any determination under section 77A of this Act; and

“(b) Shall not affect the validity of—

“(i) Any allocation of time under section 73 of this Act; or

“(ii) Any allocation of money under section 74A of this Act; or

“(iii) Any determination under section 77A of this Act.

“76. Consultation with political parties—(1) The Electoral Commission shall,—

“(a) Before allocating time to a political party under section 73 of this Act; and

“(b) Before allocating any money under section 74A of this Act; and

“(c) Before making any determination under section 77A of this Act,—

grant to every political party that has notified the Electoral Commission under section 70A (3) of this Act that it considers that it will qualify for an allocation under section 73 or section 74A of this Act the opportunity to meet with and be heard by the Electoral Commission.

“(2) The modification of any allocation or determination by the Electoral Commission after complying with subsection (1) of this section shall not require the Electoral Commission to grant to any political party any further opportunity to meet with and be heard by the Electoral Commission.

“(3) The failure of any political party to give a notice under section 70A (3) of this Act or to avail itself of the opportunity to meet with and be heard by the Electoral Commission under subsection (1) of this section, or to comply with any other request of the Electoral Commission,—

“(a) Shall not prevent the making of—

“(i) Any allocation of time under section 73 of this Act; or

“(ii) Any allocation of money under section 74A of this Act; or

“(iii) Any determination under section 77A of this Act; and

“(b) Shall not affect the validity of—

“(i) Any allocation of time under section 73 of this Act; or

“(ii) Any allocation of money under section 74A of this Act; or

“(iii) Any determination under section 77A of this Act.

“76A. Power of Electoral Commission to vary allocations—(1) If, after any allocation is made under section 73 or section 74A of this Act,—

“(a) A broadcaster in respect of which an allocation of time has been made ceases to be a broadcaster; or

“(b) A political party does not accept any allocation of time under section 73 of this Act or any allocation of money under section 74A of this Act; or

“(c) The party ceases to be registered; or

“(d) The party fails to submit a list of candidates for election to the seats reserved for those members of Parliament elected from lists pursuant to section 127 of the Electoral Act 1993; or

“(e) The relationship of the party with any other political party has changed to a significant extent; or

“(f) The number of persons who are constituency candidates belonging to a political party or group of related political parties changes,—

the Electoral Commission may, subject to subsection (4) of this section, vary the allocation under section 73 or section 74A of this Act, as the case may require.

“(2) The varying of any allocation pursuant to this section shall not require the Electoral Commission to grant to any political party the opportunity to meet with and be heard by the Electoral Commission.

“(3) The Electoral Commission shall, in varying any allocation pursuant to this section, have regard to—

“(a) The views of political parties received by the Electoral Commission in the course of consultations undertaken in accordance with section 76 of this Act; and

“(b) Such of the matters referred to in sections 73, 74A, and 75 of this Act, as the case may require.

“(4) Where effect has been given in whole or in part to an allocation made under section 73 or section 74A of this Act to a political party, the Electoral Commission shall not vary the allocation pursuant to this section unless—

“(a) The registration of that political party is cancelled under section 70 of the Electoral Act 1993; or

“(b) It is satisfied that a false representation in relation to the number of persons belonging to the political party who were to be constituency candidates for seats at the election was made by or on behalf of the political party; or

“(c) It is satisfied that the number of seats for which persons belonging to the political party or group of related political parties are nominated as constituency candidates at the election is less than 5.

“76B. Recovery of money from political party—

(1) Where effect has been given in whole or in part to an allocation made under section 74A of this Act and the Electoral Commission, acting under section 76A of this Act varies that allocation, the Electoral Commission may determine that the

whole or part of the money paid by or on behalf of the political party or to the political party as a result of that allocation be repaid to the Crown by the political party.

“(2) Where the Electoral Commission makes a determination under subsection (1) of this section,—

“(a) The Electoral Commission shall give a copy of that determination to both the political party and the Secretary for Justice; and

“(b) The Secretary for Justice may recover from the political party as a debt due to the Crown the amount specified in the determination as being repayable to the Crown by the political party.

“76c. **Procedure in relation to early elections**—(1) This section applies in any case where writs for a general election are issued during the term of a Parliament and, at the time of the issue of the writs, either—

“(a) No invitation in respect of a general election has, during the term of that Parliament, been issued under section 71 (1) of this Act; or

“(b) If an invitation in respect of a general election has, during the term of that Parliament, been issued under section 71 (1) of this Act, the time at which the Electoral Commission must discharge, in relation to the replies received to that invitation, the obligations imposed on the Electoral Commission by section 72 (1) of this Act has not arrived.

“(2) Where this section applies, this Part of this Act shall apply subject to the modifications specified in this section.

“(3) Where this section applies, the Electoral Commission shall issue an invitation under section 71 (1) of this Act at the earliest available opportunity to—

“(a) All broadcasting industry associations; and

“(b) All known broadcasters not represented by a broadcasting industry association.

“(4) Every broadcaster who receives an invitation issued in accordance with subsection (3) of this section, shall reply to the Electoral Commission by such means as it considers appropriate within 72 hours after the time at which the invitation was issued by the Electoral Commission.

“(5) The Electoral Commission shall specify at the earliest available opportunity, by notice in the *Gazette*, a date by which any political party that considers it will qualify for an allocation of time under section 73 of this Act or of money under section 74A of this Act, in respect of the election period that will

apply in relation to the general election, must notify the Electoral Commission that it considers itself to be so qualified.

“(6) Each political party that considers it will qualify for an allocation of time under section 73 of this Act or of money under section 74A of this Act shall notify the Electoral Commission, by such means as it considers expedient, that it considers itself to be so qualified.

“(7) For the purposes of subsection (6) of this section, and notwithstanding section 75 of this Act, a party shall be eligible for an allocation of time under section 73 of this Act or of money under section 74A of this Act if—

“(a) That party was registered on the Register of Political Parties at the time the writs for that general election were issued; or

“(b) Persons belonging to that party or group of related political parties are constituency candidates at that general election for at least 5 seats in the House of Representatives.

“(8) The Electoral Commission may impose, for the consultation required under section 75A (1) (a) of this Act, such time periods as are reasonable in the circumstances.

“(9) The Electoral Commission may require that any political party that wishes to avail itself of the opportunity to meet with and be heard by the Electoral Commission under section 76 (1) of this Act must avail itself of that opportunity within such reasonable period of time as shall be specified by the Electoral Commission.

“77. **Broadcasting of election programmes**—(1) Subject to this section and to section 77A of this Act, every broadcaster who has, in response to an invitation under section 71 of this Act, offered to permit political parties to broadcast election programmes free of charge or at discounted rates, shall broadcast election programmes on behalf of every political party allocated time for the broadcasting of election programmes free of charge or at discounted rates, as the case may require, on stations operated by the broadcaster.

“(2) Subject to section 77A of this Act, every broadcaster to which subsection (1) of this section applies shall act in accordance with the allocation of time under section 73 of this Act applying to the broadcaster.

“(3) In the event of any dispute between—

“(a) Any broadcaster and any political party; or

“(b) Any broadcaster and any other broadcaster; or

“(c) Any political party and any other political party—

concerning the time at which any election programme is to be broadcast free of charge, the Electoral Commission shall decide the matter in dispute.

“(4) Every decision of the Electoral Commission under subsection (3) of this section shall be final.

“77A. **Opening addresses and closing addresses—**
(1) Where time is allocated to a political party under section 73 (1) of this Act for the broadcasting of television programmes free of charge or at discounted rates, part of that time may be allocated to that political party for—

“(a) The broadcasting of an election programme consisting of an opening address on behalf of that political party; and

“(b) The broadcasting in the last week of the election period of an election programme consisting of a closing address on behalf of that political party.

“(2) Every opening address and every closing address broadcast pursuant to subsection (1) of this section—

“(a) Shall be broadcast on all broadcasting stations during time made available (in response to an invitation under section 71 of this Act) for the broadcasting of opening addresses and closing addresses; and

“(b) Shall be broadcast between the hours of 7.00 p.m. and 9.00 p.m.; and

“(c) Shall not be broken by advertising programmes.

“(3) Notwithstanding subsection (1) of this section, but subject to section 73 (1) (b) of this Act, the opening addresses and closing addresses of political parties shall be broadcast—

“(a) By Television New Zealand Limited on one free-to-air channel with national coverage; and

“(b) By Radio New Zealand Limited on the service known as National Radio.

“(4) The Electoral Commission shall determine the amounts to be paid on account of the production costs of every opening address and every closing address broadcast pursuant to subsection (1) of this section.

“(5) The Electoral Commission shall pay each amount determined under subsection (4) of this section to the person who issued the account for the production costs of the opening address or closing address.

“(6) Each amount paid under subsection (5) of this section shall be paid out of public money appropriated by Parliament (or deemed by section 74 (2) of this Act to have been

appropriated by Parliament) for the purpose specified in section 74 (1) of this Act.

“79. Programme standards in relation to election programmes—Nothing in section 4 (1) (d) of this Act applies in relation to an election programme broadcast pursuant to this Part of this Act.

“79A. Hours during which election programmes prohibited—(1) No broadcaster shall broadcast election programmes on television—

“(a) During the hours between 6 a.m. and noon on—

“(i) Sunday; or

“(ii) Anzac Day; or

“(b) On—

“(i) Christmas Day; or

“(ii) Good Friday; or

“(iii) Easter Sunday.

“(2) No broadcaster shall broadcast election programmes on sound radio on—

“(a) Christmas Day; or

“(b) Good Friday; or

“(c) Easter Sunday.

“79B. Obligation to give identical terms to each political party or candidate—(1) No broadcaster shall offer or give to any political party, whether by way of a reply under section 71A of this Act or otherwise, terms for broadcasting time that are more favourable than those offered or given to any other political party that buys or expresses an interest in buying comparable time from that broadcaster.

“(2) No broadcaster shall offer or give to any candidate terms for broadcasting time that are more favourable than those offered or given to any other candidate who buys or expresses an interest in buying comparable time from that broadcaster.

“79c. Returns in relation to broadcasting time—Every broadcaster shall, within 10 working days after polling day for any election, give to the Electoral Commission a complete and accurate written statement, signed by or on behalf of the broadcaster, setting out in relation to election programmes broadcast by that broadcaster during the election period for that election,—

“(a) The candidate or political party for whom or for which each election programme was broadcast:

“(b) The length of each election programme and the time at which it was broadcast:

“(c) The amount paid for the broadcasting of each election programme and the rate or rates by which that amount was fixed.

“80. **Offences**—Every person commits an offence and is liable on summary conviction to a fine not exceeding \$100,000 who—

“(a) Fails to comply with section 70 or section 77 (1) or section 77 (2) or section 79A or section 79B or section 79c of this Act; or

“(b) In an election period,—

“(i) Broadcasts an election programme for or on behalf of a political party; or

“(ii) Arranges for the broadcasting of an election programme for or on behalf of a political party—other than pursuant to, and in conformity with, this Part of this Act.”

20. Regulations—Section 82 of the principal Act is hereby amended by inserting, after paragraph (a), the following paragraph:

“(aa) Authorising the Commission, in such situations as the Commission considers appropriate,—

“(i) To grant concessions from the payment of public broadcasting fees; or

“(ii) To waive payment of public broadcasting fees.”.

21. Contracts of Commission—The Public Bodies Contracts Act 1959 is hereby amended by inserting in Part II of the First Schedule, in its appropriate alphabetical order, the following item:

“The Broadcasting Commission

1989, No. 25—The Broadcasting Act 1989.”

22. Amendment to Public Finance Act 1989—The Public Finance Act 1989 is hereby amended by inserting in the Sixth Schedule (as added by section 41 of the Public Finance Amendment Act 1992), in its appropriate alphabetical order, the following item:

“Broadcasting Standards Authority.”

23. Repeals—Sections 10 to 19 of the Broadcasting Amendment Act 1993 are hereby consequentially repealed.

24. Transitional provisions—(1) Any notice given by the Authority after the 1st day of March 1996 and before the date of the commencement of this Act, being a notice published in the *Gazette* under section 70A of the principal Act, shall, on the date of commencement of this Act, cease to be of any legal effect.

(2) In respect of the period beginning with the commencement of this Act and ending with the close of the 30th day of November 1996, sections 71A (1) and 72 (2) (b), and 72 (3) of the principal Act (as enacted by section 19 of this Act) shall be read as if, for the expression “20 working days” wherever it appears, there were substituted in each case the expression “10 working days”.

(3) In respect of the period beginning with the commencement of this Act and ending with the close of the 30th day of November 1996, section 75 (1) of the principal Act (as enacted by section 19 of this Act) shall be read as if, for paragraph (a), there were substituted the following paragraph:

“(a) In the case of a general election,—

“(i) That party was registered on the Register of Political Parties on the 5th working day after the date of commencement of the Broadcasting Amendment Act 1996; or

“(ii) Persons belonging to that party or group of related political parties were, on the 5th working day after the date of commencement of the Broadcasting Amendment Act 1996, deemed, by section 70D of this Act, to be constituency candidates at that general election for at least 5 seats in the House of Representatives; and”.

This Act is administered in the Ministry of Commerce.