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1982, No. 6

An Act to amend the Broadcasting Act 1976

[*6 August 1982*

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Broadcasting Amendment Act 1982, and shall be read together with and deemed part of the Broadcasting Act 1976 (hereinafter referred to as the principal Act).

(2) Except as provided in sections 4 (2), 6 (3), 7 (3), and 8 (2) of this Act, this Act shall come into force on the 1st day of November 1982.

2. Interpretation—Section 2 of the principal Act is hereby amended by inserting, in their appropriate alphabetical order, the following definitions:

" 'Broadcasting body' means the holder of a warrant or authorisation in respect of a broadcasting station:

" 'Participant' means—

"(a) In the case of a sound radio programme, a person whose voice was heard in the programme:

"(b) In the case of a television programme, a person who appeared, or whose voice was heard, in the programme:

" 'The person affected'—

"(a) In relation to any such unjust or unfair treatment as is mentioned in section 95o (1) (b) (i) of this Act, means a participant in the programme in question who was the subject of that treatment or a person who, whether such a participant or not, had a direct interest in the subject-matter of that treatment:

"(b) In relation to any such unwarranted infringement of privacy as is mentioned in section 95o (1) (b) (ii) of this Act, means a person whose privacy was infringed:

" 'Unjust or unfair treatment' includes treatment which is unjust or unfair because of the way in which material included in a programme has been selected or arranged:

" 'Working day' means any day of the week other than—

"(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, and Waitangi Day; and

"(b) A day in the period commencing with the 25th day of December in any year and ending with the 15th day of January in the following year:".

3. Delegation of functions and powers of Corporation—Section 18 of the principal Act is hereby amended by adding the following subsections:

"(7) This section shall apply in relation to the duties and responsibilities of the Corporation—

"(a) Under sections 95A and 95B of this Act; and

"(b) Under this Act in relation to complaints made against the Corporation under section 95O (1) (b) of this Act,—

as if they were functions and powers of the Corporation under this Act.

"(8) Subject to subsection (3) of this section, a delegation under this section may confer on the committee or person or persons to whom the delegation is made the power to make a decision (including a decision in respect of a complaint) on behalf of the Corporation."

4. Corporation to have regard to Government policy—(1) The principal Act is hereby amended by repealing section 20, and substituting the following section:

"20. (1) In the exercise of its functions, duties, powers, rights, and authorities under this Act (including those which the Corporation may exercise, carry out, or perform only with the approval of the Minister or the Minister of Finance), the Corporation shall have regard to the general policy of the Government in relation to broadcasting or to the functions, duties, powers, rights, and authorities of the Corporation as that policy is communicated to the Corporation from time to time by notice in writing by the Minister, and shall comply with any directions given by the Minister to the Corporation by notice in writing pursuant to any such policy.

"(2) Nothing in subsection (1) of this section authorises the Minister to give a direction under that subsection in respect of—

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

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

"(c) The power conferred on the Corporation by subsection (4) of this section or section 30A (4) of this Act; or

"(d) The functions, duties, powers, rights, and authorities conferred on the Corporation by the following provisions of this Act, namely:

"(i) Section 17 (1) (b) (which relates to the giving of advice to the Minister):

"(ii) Section 18 (which relates to the delegation of functions and powers by the Corporation):

"(iii) Section 22 (a) (which relates to the operation of each Service as a public service):

"(iv) Section 24 (which relates to the responsibility of the Corporation for programme standards):

"(v) Section 27 (which relates to the New Zealand Symphony Orchestra):

"(vi) Section 29 (which relates to the *New Zealand Listener*):

"(vii) Section 30 (which relates to the powers of the Corporation in relation to publishing):

"(viii) Section 34 (which relates to contracts for the provision of services and programmes):

"(ix) Part VII (which relates to personnel):

"(x) Section 49 (1) (which relates to the giving of advice to the Government as to the rates of fees payable for broadcast receiving-station licences):

"(xi) Section 67A (which relates to decisions on complaints):

"(xii) Part XIA (which relates to complaints).

"(3) Where a direction given under subsection (1) of this section relates to a function, duty, power, right, or authority which may be exercised, performed, or carried out only with the approval of the Minister of Broadcasting or of the Minister of Finance, that direction, in respect of the matter to which it relates, shall constitute the approval of the Minister of Broadcasting and, if it is expressed to be given with the concurrence of the Minister of Finance, the approval of the Minister of Finance.

"(4) The Corporation may, in its discretion, publicly announce or refrain from publicly announcing that a notice has been given to it under subsection (1) of this section.

"(5) Where a notice is given to the Corporation under subsection (1) of this section, the Minister shall, as soon as

practicable after the giving of the notice, publish in the *Gazette* and lay before Parliament a copy of the notice."

(2) This section shall come into force on the day on which this Act receives the Governor-General's assent.

5. Publication of rules in relation to programme standards—The principal Act is hereby amended by inserting in Part III, after section 26, the following section:

"26A. Copies of all rules which are promulgated under section 26 of this Act and which are for the time being in force shall be procurable by purchase at a reasonable price at the Head Office of the Corporation."

6. Particulars of programmes—(1) The principal Act is hereby amended by inserting in Part V, after section 30, the following section:

"30A. (1) Notwithstanding anything in the Copyright Act 1962, no person shall publish or cause to be published any written information or other written material relating to particulars of programmes, including times of broadcast, intended to be broadcast by the Corporation, except with the consent of the Corporation and on such terms and conditions as the Corporation may impose.

"(2) For the avoidance of doubt and for the purpose of ensuring that particulars of programmes are widely advertised and publicised to members of the public within New Zealand (including members of the public who do not purchase the *New Zealand Listener*), it is hereby declared that, notwithstanding subsection (1) of this section, the Minister may from time to time, by notice in writing,—

"(a) Give directions to the Corporation requiring it to make particulars of programmes, including times of broadcast, intended to be broadcast by the Corporation available to classes of persons specified in the directions:

"(b) Give directions to the Corporation in respect of its power to give consent and impose terms and conditions under subsection (1) of this section.

"(3) Directions given under subsection (2) of this section may:

"(a) Specify particulars, or classes of particulars, to which the directions apply:

"(b) Exempt particulars or classes of particulars from the scope of the directions:

"(c) Specify classes of persons to whom any particulars or classes of particulars shall be made available or to whom the Corporation shall give its consent under subsection (1) of this section:

"(d) Specify terms and conditions that may or may not be imposed by the Corporation in making particulars or any class of particulars available or in giving its consent under subsection (1) of this section:

"(e) Specify or limit the charges that the Corporation may charge for its consent or for the making available of particulars or classes of particulars:

"(f) Specify circumstances in which the Corporation shall, without making a charge, give its consent under subsection (1) of this section or supply particulars or classes of particulars:

"(g) Specify criteria to which the Corporation is to have regard—

"(i) In deciding whether to give its consent; or

"(ii) In fixing a charge for the giving of its consent or the making available of particulars or classes of particulars; or

"(iii) In deciding whether to make a charge for the giving of its consent or the making available of particulars or classes of particulars:

"(h) The times at which and the manner in which particulars or classes of particulars are to be made available.

"(4) The Corporation may, in its discretion, publicly announce or refrain from publicly announcing that a notice has been given to it under subsection (2) of this section.

"(5) Where a notice is given to the Corporation under subsection (2) of this section, the Minister shall, as soon as practicable after the giving of the notice, publish in the *Gazette* and lay before Parliament a copy of the notice."

Cf. Broadcasting and Television Act 1942, s. 60 (Commonwealth of Australia)

(2) Section 29 of the principal Act is hereby consequentially amended by repealing subsection (2).

(3) This section shall come into force on the day on which this Act receives the Governor-General's assent.

7. Broadcasting Tribunal—(1) Section 61 (5) of the principal Act is hereby amended by omitting the words

"sections 3, 4, 4A, and 5 to 10 of that Act", and substituting the words "the provisions of that Act, except sections 2, 11, and 12,".

(2) Section 61 of the principal Act is hereby amended by adding the following subsection:

"(12) Where any person co-opted under this section fails to exercise, in relation to any application, complaint, or other proceeding, any right conferred on that person by subsection (11) of this section, that failure shall not affect the validity of any meeting, hearing, or other proceedings of the Tribunal in respect of that application, complaint, or other proceeding."

(3) This section shall come into force on the day on which this Act receives the Governor-General's assent.

8. Extraordinary vacancies—(1) Section 63 of the principal Act is hereby amended by adding the following subsection:

"(6) Where the term of office of a person who is a member of the Tribunal expires or where a person who is a member of the Tribunal resigns his office, the Minister may request any such person to continue to act as if he were a member of the Tribunal for the purpose of deciding any inquiry, application, or matter in which that person took part and which was commenced before the expiration of his term of office or before his resignation took effect, as the case may be, and, if any such person agrees to any such request and so acts, he shall be deemed, for that purpose and for such period as the Minister determines from time to time, to continue to be a member of the Tribunal."

(2) This section shall come into force on the day on which this Act receives the Governor-General's assent.

9. New sections substituted—The principal Act is hereby amended by repealing section 67, and substituting the following sections:

"67. **Functions and powers of Tribunal**—(1) The general functions of the Tribunal shall be—

"(a) To consider and adjudicate upon applications for warrants to establish and operate broadcasting stations and other applications relating to warrants:

"(b) To receive and determine complaints from persons who are dissatisfied with the outcome of complaints made under section 95B (1) or section 95C (1) or section 95O (1) (b) of this Act:

"Provided that the Tribunal may, if it considers that in all the circumstances of any complaint it should not be determined by the Tribunal, decline to determine it:

"(c) To advise the Minister in respect of such matters relating to broadcasting as may be referred to it by the Minister:

"(d) To exercise and perform such other functions, powers, and duties in relation to broadcasting as are conferred or imposed on it by or under this Act or any other enactment.

"(2) The Tribunal may, if it thinks fit, consider and determine any complaint without a formal hearing, but, in that case,—

"(a) Shall give the complainant and the holder of the warrant or authorisation a reasonable opportunity to make submissions to it in writing in relation to the complaint; and

"(b) Shall have regard to all relevant submissions made to it in writing in relation to the complaint.

"(3) The Tribunal may commission programme, audience research, market, or technical surveys for the purpose of obtaining information necessary for the performance of its functions and not available to the Tribunal from other sources.

"(4) The Tribunal shall not hear or determine any complaint unless and until the complainant signs and lodges with the Registrar of the Tribunal a declaration that legal action will not be taken in respect of the subject-matter of the complaint or the investigation of the complaint by the broadcasting body or the Tribunal.

"(5) In considering and determining any complaint or any application for the grant, renewal, transfer, amendment, revocation, or suspension of any warrant or short-term authorisation, or the imposition of any monetary penalty, it shall be the duty of the Tribunal to act judicially.

"(6) Subject to this section, the procedure of the Tribunal shall be as prescribed by regulations under this Act, or, where there are no such regulations or so far as the regulations do not extend, shall be determined by the Tribunal.

"(7) The Tribunal may from time to time give to the Broadcasting Complaints Committee such directions relating to the Committee's functions, powers, and duties as it thinks necessary.

"(8) The Tribunal shall have such powers, rights, and authorities as may reasonably be necessary or expedient to carry out its functions.

"(9) The Tribunal shall not exercise any function or power under this Act in respect of any short-wave station.

"(10) Nothing in subsection (4) of this section or in any declaration signed and lodged pursuant to that subsection shall limit the right of any person to make an application for review under section 4 (1) of the Judicature Amendment Act 1972 in respect of any decision of the broadcasting body or the Tribunal.

"67A. **Decisions on complaints**—(1) If, in the case of a complaint referred to the Tribunal under section 95E or section 95Z or section 95ZA of this Act, the Tribunal decides that the complaint is justified, in whole or in part, the Tribunal—

"(a) May recommend appropriate action to the broadcasting body by which the programme was broadcast; and

"(b) May give to the broadcasting body by which the programme was broadcast directions requiring that body to publish, in any manner specified in the directions, and within such period as may be so specified, a statement which relates to the complaint and which is approved for the purpose by the Tribunal; and

"(c) Shall inform the complainant in writing of any action recommended under paragraph (a) of this subsection and of any directions given under paragraph (b) of this subsection.

"(2) If, in the case of a complaint referred to the Tribunal under section 95E or section 95Z or section 95ZA of this Act, the Tribunal decides that the complaint is not justified, in whole or in part, the Tribunal shall give notice in writing of the decision—

"(a) To the broadcasting body by which the programme was broadcast; and

"(b) To the complainant.

"(3) If a complaint is found to be justified, in whole or in part, the broadcasting body by which the programme was broadcast—

"(a) Shall comply with any directions given under subsection (1) (b) of this section; and

"(b) Shall give notice in writing to the Tribunal and the complainant of—

"(i) The action taken pursuant to any recommendation made under subsection (1) (a) of this section; and

"(ii) The manner in which any directions given under subsection (1) (b) of this section have been complied with.

"(4) Every statement published pursuant to directions given under subsection (1) (b) of this section (including such a statement so published by broadcasting) shall be deemed for the purposes of clause 8 of Part II of the First Schedule to the Defamation Act 1954 to be a notice published on the authority of a Court of justice.

"67B. **Notice of decisions**—(1) Notice of every decision of the Tribunal on any complaint shall be published by the Registrar of the Tribunal in the *Gazette*, and copies of the decision (including its reasons therefor) shall be made available by the Registrar on payment of the prescribed fee.

"(2) Every notice published under subsection (1) of this section shall be deemed for the purposes of clause 2 of Part I of the First Schedule to the Defamation Act 1954 to be a fair and accurate report of the proceedings of a Court of justice in New Zealand.

"67C. **Power to award costs**—(1) Subject to subsection (2) of this section, the Tribunal may in any proceedings order any party to pay to any other party such costs and expenses (including expenses of witnesses) as are reasonable, and may apportion any such costs between the parties or any of them in such manner as it thinks fit.

"(2) Where any proceedings relate to a complaint referred to the Tribunal under section 95E or section 95Z or section 95ZA of this Act, no award of costs shall be made under subsection (1) of this section against the complainant unless—

"(a) In the opinion of the Tribunal, the complaint is frivolous or vexatious or one that ought not to have been made; or

"(b) The Tribunal considers it proper to do so by reason of the failure of the complainant to prosecute any proceeding related to the complaint at the time fixed for its hearing or to give adequate notice of the abandonment of any proceeding related to the complaint.

"(3) Where, through failure to prosecute any proceeding at the time fixed for its hearing or to give adequate notice of the abandonment of any proceeding, the Tribunal considers it proper to do so, the Tribunal may order the party in default to pay to the Crown such sum for costs as it considers reasonable.

Cf. 1977, No. 121, s. 147

"67D. **Enforcing orders for costs**—(1) For the purpose of enforcing any order of the Tribunal for payment of costs, a duplicate of such order may be filed by the person to whom the costs are payable in the office of the Court named in the order and shall thereupon be enforceable in all respects as a final judgment of that Court in its civil jurisdiction.

"(2) In every case where an order for costs is made, the order shall name the Court in which the order may, if necessary, be enforced.

"(3) The Court so named shall, where the amount recoverable under the order,—

"(a) Exceeds $12,000, be the High Court; and

"(b) Does not exceed $12,000, be a District Court."

Cf. 1977, No. 121, s. 148; 1980, No. 167, s. 36

10. Particulars of programmes to be made available—The principal Act is hereby amended by inserting, after section 94, the following section:

"94A. The holder of a warrant or authorisation in respect of a private broadcasting station shall, before the publication of any particulars of any programme to be broadcast from the station, make a copy of those particulars available at the office of the station on equal terms to the publishers (including the Corporation) of any newspaper, magazine, or journal published in New Zealand."

Cf. Broadcasting and Television Act 1942, s. 105 (Commonwealth of Australia)

11. New Part XIA inserted—The principal Act is hereby amended by inserting, after Part XI, the following Part:

"PART XIA

"COMPLAINTS

"95A. **Principles**—This Part of this Act is based on the following principles:

"(a) Broadcasting attracts complaints:

"(b) The holder of a warrant or authorisation issued in respect of a broadcasting station has a responsibility to deal with complaints and must establish a proper procedure to deal with them:

"(c) An independent complaints procedure must be available to complainants:

"(d) Complaints based merely on a complainant's preferences are not, in general, capable of being resolved by a complaints procedure:

"(e) An independent complaints procedure is not a substitute for proper consideration of complaints by the holder of the warrant or authorisation issued in respect of the broadcasting station:

"(f) Complaints should be made promptly to the holder of the warrant or authorisation issued in respect of the broadcasting station:

"(g) Formal complaints must be made in writing:

"(h) Most of the complaints that are capable of being resolved by an independent complaints procedure should not require to be resolved by that procedure but should be capable of being resolved by proper consideration and proper response on the part of the holder of the warrant or authorisation issued in respect of the broadcasting station:

"(i) The first consideration of a complaint under an independent complaints procedure should be prompt and without undue formality:

"(j) Further consideration of a complaint under an independent complaints procedure calls for greater formality:

"(k) Subject to the jurisdiction of the High Court in respect of any appeal, it is the responsibility of the Tribunal to decide the action to be taken in respect of a breach of a warrant or authorisation in respect of a broadcasting station.

"95B. **Formal complaints about Corporation's programmes**—(1) It shall be the duty of the Broadcasting Corporation—

"(a) To receive and consider formal complaints about any programme broadcast by the Corporation where the complaint constitutes, in respect of that programme, an allegation that the Corporation has failed to comply—

"(i) With the obligation (imposed by section 24 (1) of this Act) to maintain in its programmes and

their presentation, standards which will be generally acceptable in the community:

"(ii) With the obligation (imposed by section 24 (1) (c) of this Act) to have regard to the observance of standards of good taste and decency:

"(iii) With the obligation (imposed by section 24 (1) (d) of this Act) to have regard to the accurate and impartial gathering and presentation of news, according to recognised standards of objective journalism:

"(iv) With the obligation (imposed by section 24 (1) (e) of this Act) to have regard to the principle that when controversial issues of public importance are discussed, reasonable efforts are made to present significant points of view either in the same programme or in other programmes within the period of current interest:

"(v) With the obligation (imposed by section 24 (1) (f) of this Act) to have regard to the maintenance of law and order:

"(vi) With the obligation imposed by section 24 (2) of this Act in respect of the broadcasting of cinematograph films:

"(vii) With rules made under section 26 of this Act; and

"(b) To establish procedures for investigating any complaint under paragraph (a) of this subsection and any complaint under section 95O (1) (b) of this Act.

"(2) Every complaint under subsection (1) (a) of this section shall be lodged in writing with the Secretary.

"(3) Nothing in subsection (1) (a) of this section applies in respect of—

"(a) An alleged failure to comply with the obligation imposed by paragraph (a) or paragraph (b) or paragraph (g) of section 24 (1) of this Act; or

"(b) A complaint to which section 95O (1) (b) of this Act applies.

"95C. **Formal complaints about private broadcasting stations' programmes**—(1) It shall be the duty of the holder of a warrant or authorisation in respect of a private broadcasting station—

"(a) To receive and consider formal complaints about any programme broadcast by the private broadcasting

station where the complaint constitutes, in respect of that programme, an allegation that the private broadcasting station has failed to comply—

"(i) With the obligation (imposed by section 95 (1) of this Act) to maintain in its programmes and their presentation, standards which will be generally acceptable in the community:

"(ii) With the obligation (imposed by section 95 (1) (b) of this Act) to have regard to the observance of standards of good taste and decency:

"(iii) With the obligation (imposed by section 95 (1) (c) of this Act) to have regard to the accurate and impartial gathering and presentation of news, according to recognised standards of objective journalism:

"(iv) With the obligation (imposed by section 95 (1) (d) of this Act) to have regard to the principle that when controversial issues of public importance are discussed, reasonable efforts are made to present significant points of view either in the same programme or in other programmes within the period of current interest:

"(v) With the obligation (imposed by section 95 (1) (e) of this Act) to have regard to the maintenance of law and order:

"(vi) With rules made under section 26 of this Act; and

"(b) To establish procedures for investigating any complaint under paragraph (a) of this subsection and any complaint under section 95O (1) (b) of this Act.

"(2) Every complaint under subsection (1) (a) of this section shall be lodged in writing with the holder of the warrant or authorisation in respect of the private broadcasting station.

"(3) Nothing in subsection (1) (a) of this section applies in respect of—

"(a) An alleged failure to comply with the obligation imposed by paragraph (a) or paragraph (f) of section 95 (1) of this Act; or

"(b) A complaint to which section 95O (1) (b) of this Act applies.

"95D. **Decisions in respect of formal complaints**—(1) If a complaint under section 95B (1) (a) or section 95C (1) (a) of this Act is found to be justified, in whole or in part, the holder

of the warrant or authorisation in respect of the broadcasting station shall take appropriate action and shall inform the complainant in writing of the action taken.

"(2) If a complaint under section 95B (1) (a) or section 95C (1) (a) of this Act is found not to be justified, in whole or in part, the complainant shall be notified of the decision.

"95E. **Right of complainant to refer formal complaint to Tribunal**—If the complainant in respect of a complaint under section 95B (1) (a) or section 95C (1) (a) of this Act is dissatisfied with the decision or with the action taken by the holder of the warrant or authorisation in respect of the broadcasting station, or if that holder has not within 15 working days after receiving the complaint notified the complainant in writing of the date on which the complaint will be considered (being within a reasonable time after the lodging of the complaint), the complainant may refer the complaint to the Tribunal to be dealt with under section 67 of this Act.

"95F. **Broadcasting Complaints Committee**—There is hereby established a committee to be known as the Broadcasting Complaints Committee (in this Part referred to as the Committee).

Cf. Broadcasting Act 1980, s. 17 (1) (U.K.)

"95G. **Membership of Committee**—(1) The Committee shall consist of one person, who shall be appointed by the Governor-General on the recommendation of the Minister and, except as otherwise provided in this Act, shall hold office for a term of 3 years.

"(2) Any person appointed as the Broadcasting Complaints Committee may hold that office concurrently with any other office held by him and may from time to time be reappointed.

"(3) Unless he sooner vacates office or is removed from office under section 95J of this Act, the person for the time being holding the appointment shall continue to hold office until his successor comes into office, notwithstanding that the term for which he was appointed may have expired.

Cf. Broadcasting Act 1980, s. 17 (U.K.)

"95H. **Deputy of Broadcasting Complaints Committee**—(1) The Governor-General, on the recommendation of the Minister, may appoint a suitable person to be the deputy of the Broadcasting Complaints Committee.

"(2) Except as otherwise provided in this Act, every deputy appointed under this section shall hold office for such term as the Governor-General shall specify in his appointment, being a term not exceeding 3 years.

"(3) Any person appointed as the deputy of the Broadcasting Complaints Committee may hold that office concurrently with any other office held by him and may from time to time be reappointed.

"(4) Unless he sooner vacates office or is removed from office under section 95J of this Act, the person for the time being holding the appointment shall continue to hold office until his successor comes into office, notwithstanding that the term for which he was appointed may have expired.

"(5) Where—

"(a) The person holding office as the Broadcasting Complaints Committee—

"(i) Is absent or is incapable of carrying out the duties of his office; or

"(ii) Considers it not proper or desirable that he should deal with any specified matter; or

"(b) There is a vacancy in the office of Broadcasting Complaints Committee,—

the deputy appointed under this section shall have and may exercise all the functions, duties, and powers of the Broadcasting Complaints Committee.

"(6) No act done by the deputy, and no act done by the Committee while the deputy is acting for the Committee, shall in any proceedings be questioned on the ground that the occasion for his acting for the Committee had not arisen or had ceased.

"95I. **Co-opted members**—(1) For the purposes of any particular allegation or particular complaint made to the Committee, the Committee may co-opt 1 or 2 persons whose qualifications or experience are likely, in the opinion of the Committee, to be of assistance to the Committee in dealing with that allegation or complaint.

"(2) Every person co-opted under this section shall be entitled to attend any meeting or hearing of the Committee in respect of that allegation or complaint and to take part in the proceedings, but shall not be entitled to vote thereon.

"(3) Where any person co-opted under this section fails to exercise, in relation to any allegation or complaint, any right conferred on that person by subsection (2) of this section, that

failure shall not affect the validity of any meeting, hearing, or other proceedings of the Committee in respect of that allegation or complaint.

"95J. **Vacation of office by Committee and deputy**—(1) Any person who holds office as the Broadcasting Complaints Committee or as his deputy may at any time resign his office by delivering a notice in writing to that effect to the Minister.

"(2) Any person who holds office as the Broadcasting Complaints Committee or as his deputy shall be deemed to have vacated his office if he dies or is, under the Insolvency Act 1967, adjudged bankrupt.

"(3) Any person who holds office as the Broadcasting Complaints Committee or as his deputy may at any time be removed from office by the Governor-General for disability, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General.

"95K. **Procedure**—Subject to this Act, to any regulations made under this Act, and to any directions given by the Tribunal under section 67 (7) of this Act, the Broadcasting Complaints Committee may regulate its procedure in such manner as it thinks fit.

"95L. **Committee not personally liable**—No person who holds office under section 95G or section 95H or section 95I of this Act shall be personally liable for any act or default done or made by him in good faith in the course of the operations of the Committee.

"95M. **Information**—In the discharge of its functions under this Act, the Committee may hear and obtain information from such persons as it thinks fit, and may make such inquiries as it thinks fit.

Cf. 1975, No. 9, s. 18 (3)

"95N. **Services for Committee**—(1) The Department of Justice shall furnish such secretarial, recording, and clerical services as may be necessary to enable the Committee to discharge its functions, and the Secretary for Justice shall designate an officer of the Department of Justice to be Secretary to the Committee.

"(2) The cost of any services provided by the Department of Justice pursuant to this section shall be paid from the Consolidated Account out of money appropriated by Parliament for the purpose.

"95O. **Functions and duties of Committee**—(1) The functions and duties of the Committee shall be—

"(a) To investigate, and to report to the Tribunal in relation to, allegations made to the Committee by any person of breaches by broadcasting stations of the conditions of warrants or authorisations, being conditions imposed under section 71 or section 75 or section 76 or by section 95U of this Act:

"(b) To receive and consider formal complaints of—

"(i) Unjust and unfair treatment in programmes broadcast by the Corporation or by a private broadcasting station; or

"(ii) Unwarranted infringement of privacy in, or in connection with the obtaining of material included in, programmes broadcast by the Corporation or by a private broadcasting station:

"(c) To comply with any directions given to the Committee by the Tribunal.

"(2) The Committee shall not entertain complaints not falling within subsection (1) (b) of this section.

"(3) The Committee shall not exercise any function, duty, or power under this Act in respect of any short-wave station.

Cf. Broadcasting Act 1980, s. 18 (U.K.)

"95P. **Complaints**—(1) Every formal complaint made for the purposes of section 95O (1) (b) of this Act shall be lodged in writing with the Secretary to the Committee.

"(2) A formal complaint for the purposes of section 95O (1) (b) of this Act may be made by an individual or by a body of persons, whether incorporated or not, but, subject to subsection (3) of this section, shall not be entertained by the Committee unless made by the person affected or by a person authorised by him to make the complaint for him.

"(3) Where the person affected is an individual who has died or is for any other reason both unable to make a complaint himself and unable to authorise another person to do so for him, a complaint may be made by the personal representative of the person affected, or by a member of his family, or by some other person or body closely connected with him, whether as his employer, or as a body of which he is or was at his death a member, or in other way.

Cf. Broadcasting Act 1980, s. 19 (1)–(3) (U.K.)

"95Q. **Refusal of complaints**—(1) The Committee shall not investigate, or shall not investigate further, or shall not proceed with the consideration of, a complaint under section 95O (1) (b) of this Act if it appears to the Committee—

"(a) That the complaint relates to the broadcasting of the relevant programme on an occasion more than 5 years after the death of the person affected; or

"(b) That the unjust or unfair treatment or unwarranted infringement of privacy complained of is the subject of proceedings in a court of law in New Zealand; or

"(c) That the unjust or unfair treatment or unwarranted infringement of privacy complained of is a matter in respect of which the person affected has a remedy by way of proceedings in a court of law in New Zealand, and that in the particular circumstances it is not appropriate for the Committee to consider a complaint about it; or

"(d) That the complaint is frivolous; or

"(e) That it is, having regard to all the circumstances of the case, unnecessary for the Committee to investigate, or to investigate further, or to proceed with the consideration of, the complaint.

"(2) The Committee may decide not to investigate, or not to investigate further, or not to proceed with the consideration of, a complaint if it appears to the Committee not to have been made within a reasonable time after the last occasion on which the relevant programme was broadcast by the Corporation or the private broadcasting station.

"(3) Where, in the case of a complaint, the relevant programme was broadcast within 5 years after the death of the person affected, subsection (2) of this section shall apply as if at the end there were added 'within 5 years after the death of the person affected'.

"(4) The Committee may decide not to investigate, or not to investigate further, or not to proceed with the consideration of,—

"(a) A complaint of unjust or unfair treatment if the person named as the person affected was not himself the subject of the treatment complained of and it appears to the Committee that he did not have a sufficiently direct interest in the subject-matter thereof to justify the making of a complaint with him as the person affected; or

"(b) A complaint made under section 95P (3) of this Act by a person other than the person affected or a person authorised by him, if it appears to the Committee that the complainant's connection with the person affected is not sufficiently close to justify the making of the complaint by him.

"(5) In any case where the Committee decides not to investigate, or not to investigate further, or not to proceed with the consideration of, a complaint, it shall inform both the person who made the complaint and the broadcasting body in respect of whose programme the complaint was made of that decision, and shall state its reasons therefor.

Cf. Broadcasting Act 1980, s. 19 (4)–(7) (U.K.)

"95R. **Procedure in relation to complaints**—(1) Where the Secretary to the Committee receives a complaint under section 95O (1) (b) of this Act, he shall forthwith send a copy of the complaint to the broadcasting body by which the programme was broadcast.

"(2) Subject to section 95Q of this Act, every complaint under section 95O (1) (b) of this Act shall be considered and determined by the Committee with due expedition.

"(3) Where the Committee proposes to consider a complaint under section 95O (1) (b) of this Act, it shall be the duty of the broadcasting body by which the relevant programme was broadcast, if so required by the Committee, to arrange for one or more of the members or officers of that body to attend and assist the Committee in its consideration of the complaint.

Cf. Broadcasting Act 1980, s. 20 (3), (5) (U.K.)

"95S. **Access to programmes**—(1) Where a broadcasting body receives from the Secretary to the Committee a copy of a complaint under section 95O (1) (b) of this Act, it shall be the duty of that body, if so required by the Committee,—

"(a) To make suitable arrangements for enabling the complainant and the Committee to view or hear—

"(i) The relevant programme, or any specified part of it, if and so far as that body has in its possession a visual or sound record of it; and

"(ii) Any programme that is related to the relevant programme, or any specified part of a programme that is so related, if and so far as that body has in its possession a visual or sound record of it:

"(b) To provide the Committee and the complainant with a transcript of—

"(i) So much of the relevant programme or of any specified part of it, as consisted of speech, if and so far as that body is able to do so; and

"(ii) So much of any programme that is related to the relevant programme, or of any specified part of a programme that is so related, as consisted of speech, if and so far as that body is able to do so:

"(c) To provide the Committee and the complainant with copies of any documents in the possession of that body being the originals or copies of any correspondence between that body and the person affected or the complainant in connection with the complaint:

"(d) To furnish to the Committee and the complainant a written statement in answer to the complaint.

"(2) Where, under subsection (1) (b) of this section, a broadcasting body supplies a transcript to the Committee and the complainant, the broadcasting body may, and shall if the Committee so requires and a recording is available to the broadcasting body, supply a recording with that transcript.

"(3) Where, in connection with a complaint under section 95o (1) (b) of this Act received by it, the Committee has made to any person (other than the broadcasting body by which the relevant programme was broadcast) who appears to it to have been responsible for the making or provision of the relevant programme a request to which this subsection applies, it shall be the duty of that broadcasting body to take such steps as it reasonably can to ensure that the request is complied with.

"(4) Subsection (3) of this section applies to the following requests by the Committee to any such person as is there mentioned, that is to say a request—

"(a) To make suitable arrangements for enabling the complainant and the Committee to view or hear—

"(i) The relevant programme, or any specified part of it, if and so far as the person requested has in that person's possession a visual or sound record of it; and

"(ii) Any programme that is related to the relevant programme, or any specified part of a programme that is so related, if and so far as the person requested has in that person's possession a visual or sound record of it:

"(b) To provide the Committee and the complainant with a transcript of—

"(i) So much of the relevant programme or of any specified part of it, as consisted of speech, if and so far as the person requested is able to do so; and

"(ii) So much of any programme that is related to the relevant programme, or of any specified part of a programme that is so related, as consisted of speech, if and so far as the person requested is able to do so:

"(c) To provide the Committee and the complainant with copies of any documents in the possession of the person requested being the originals or copies of any correspondence between that person and the person affected or the complainant in connection with the complaint:

"(d) To furnish to the Committee and the complainant a written statement in answer to the complaint:

"(e) To attend or, where the person requested is not an individual, to arrange for a representative to attend and assist the Committee in their consideration of the complaint.

"(5) Where, under subsection (4) (b) of this section, the person requested supplies a transcript to the Committee and the complainant, the person requested may, and shall if the Committee so requires and a recording is available to that person, supply a recording with that transcript.

Cf. Broadcasting Act 1980, s. 20 (4), (6), (7) (U.K.)

"95T. **Duty in respect of contracts**—It shall be the duty of the holder of a warrant or authorisation in respect of a broadcasting station to endeavour to ensure that every contract that is entered into after the commencement of this section between that holder and a programme contractor contains such provisions as the holder thinks necessary or expedient to ensure compliance by the programme contractor with any request to which section 95S (3) of this Act applies which may be made to the programme contractor by the Committee.

Cf. Broadcasting Act 1980, s. 20 (8) (U.K.)

"95U. **Non-compliance deemed breach of warrant or authorisation**—If the holder of a warrant or authorisation in respect of a broadcasting station wilfully fails to comply with

any duty imposed on it by section 95R (3) or section 95S or section 95T of this Act, it shall be deemed to have committed a breach of the conditions subject to which the warrant or authorisation was issued.

"95V. **Consideration and determination of complaints**—(1) The Committee may, if it thinks fit, consider and determine any complaint under section 95O (1) (b) of this Act without a formal hearing, but, in that case,—

"(a) Shall give the complainant and the holder of the warrant or authorisation a reasonable opportunity to make submissions to it in writing in relation to the complaint; and

"(b) Shall have regard to all relevant submissions made to it in writing in relation to the complaint.

"(2) The hearing of a complaint under section 95O (1) (b) of this Act shall be held in private.

"(3) The Committee shall not hear or determine any complaint under section 95O (1) (b) of this Act unless and until the complainant signs and lodges with the Secretary to the Committee a declaration that legal action will not be taken in respect of the subject-matter of the complaint or the investigation of the complaint by the Committee or the Tribunal.

"(4) Nothing in subsection (3) of this section or in any declaration signed and lodged for the purposes of this section shall limit the right of any person to make an application for review under section 4 (1) of the Judicature Amendment Act 1972 in respect of any decision of the Committee or the Tribunal.

Cf. Broadcasting Act 1980, s. 20 (1)–(2) (U.K.)

"95W. **Persons entitled to be heard**—(1) Where a formal hearing is held in respect of a complaint under section 95O (1) (b) of this Act,—

"(a) Each of the following persons shall be given an opportunity to attend and be heard, namely,—

"(i) The complainant; and

"(ii) The broadcasting body by which the relevant programme was broadcast; and

"(b) Any other person not within paragraph (a) of this subsection shall be entitled to be heard if that person satisfies the Committee that that person has an interest in the complaint apart from any interest in common with the public; and

"(c) Any person not within paragraph (a) or paragraph (b) of this subsection who satisfies the Committee that any information heard or obtained by the Committee may adversely affect that person's interests shall be given an opportunity to be heard in respect of the matter to which the information relates.

"(2) Every person entitled, or given an opportunity, to be heard under this section may appear in person or by his barrister or solicitor or agent.

Cf. Broadcasting Act 1980, s. 20 (2) (U.K.); 1908, No. 28, s. 4A; 1980, No. 2, s. 4

"95X. **Decisions on complaints**—(1) If, in the case of a formal complaint made for the purposes of section 95O (1) (b) of this Act, the Committee decides that the complaint is justified, in whole or in part, the Committee—

"(a) May recommend appropriate action to the broadcasting body by which the programme was broadcast; and

"(b) May give to the broadcasting body by which the programme was broadcast directions requiring that body to publish, in any manner specified in the directions, and within such period as may be so specified, a statement which relates to the complaint and which is approved for the purpose by the Committee; and

"(c) Shall inform the complainant in writing of any action recommended under paragraph (a) of this subsection and of any directions given under paragraph (b) of this subsection.

"(2) If, in the case of a formal complaint made for the purposes of section 95O (1) (b) of this Act, the Committee decides that the complaint is not justified, in whole or in part, the Committee shall give notice in writing of the decision—

"(a) To the broadcasting body by which the programme was broadcast; and

"(b) To the complainant.

"(3) Subject to section 95Z (4) of this Act, if a complaint is found to be justified, in whole or in part, the broadcasting body by which the programme was broadcast—

"(a) Shall comply with any directions given under subsection (1) (b) of this section; and

"(b) Shall give notice in writing to the Committee and the complainant of—

"(i) The action taken pursuant to any recommendation made under subsection (1) (a) of this section; and

"(ii) The manner in which any directions given under subsection (1) (b) of this section have been complied with.

"(4) Every statement published pursuant to directions given under subsection (1) (b) of this section (including such a statement so published by broadcasting) shall be deemed for the purposes of clause 8 of Part II of the First Schedule to the Defamation Act 1954 to be a notice published on the authority of a Court of justice.

Cf. Broadcasting Act 1980, s. 21 (1)–(2) (U.K.)

"95Y. **Committee to report to Tribunal**—(1) Notwithstanding anything in section 95X of this Act, where, in investigating an allegation under section 95O (1) (a) of this Act or in considering a formal complaint under section 95O (1) (b) of this Act, the Committee forms the opinion that a significant breach of the conditions of a warrant or authorisation has occurred, it shall—

"(a) Report the breach and the action taken to remedy it to the Tribunal; and

"(b) Supply, to the holder of the warrant or authorisation, a copy of the report made under paragraph (a) of this subsection.

"(2) The Committee shall supply to the Tribunal at such notice and in such terms as the Tribunal may require a report on the Committee's proceedings in respect of any broadcasting station in regard to which the Tribunal intends to conduct a hearing, or at such other time as the Tribunal may require.

"95Z. **Power to refer complaint to Tribunal**—(1) If a complainant who has made a formal complaint for the purposes of section 95O (1) (b) of this Act is dissatisfied—

"(a) With the decision made under section 95Q or section 95X of this Act by the Committee; or

"(b) With the action taken by the broadcasting body by which the programme was broadcast, being action taken pursuant to—

"(i) A recommendation made under section 95X (1) (a) of this Act by the Committee; or

"(ii) A direction given under section 95X (1) (b) of this Act by the Committee,—

the complainant may refer the complaint to the Tribunal to be dealt with under section 67 of this Act.

"(2) No complaint shall be referred to the Tribunal under subsection (1) of this section, unless—

"(a) In the case of a reference under subsection (1) (a) of this section, it is so referred within 15 working days after the date on which the complainant is given notice of the Committee's decision; or

"(b) In the case of a reference under subsection (1) (b) of this section, it is so referred within 15 working days after the date on which the complainant is given notice, under section 95x (3) (b) of this Act, of the action taken by the broadcasting body by which the programme was broadcast.

"(3) If the broadcasting body by which the programme was broadcast is dissatisfied with the decision of the Committee, that body may, within 15 working days after receiving notice of the decision, refer the complaint to the Tribunal to be dealt with under section 67 of this Act.

"(4) Where any complaint is referred to the Tribunal any decision or directions of the Committee in relation to that complaint shall be deemed to have no effect.

"(5) The Tribunal may, in its discretion, extend any time prescribed or allowed under subsection (1) or subsection (2) of this section for the reference of a complaint to the Tribunal.

"(6) Nothing in this section limits the provisions of section 83 of this Act.

"95ZA. **Power of Minister to refer complaint to Tribunal**—(1) Where the Minister considers—

"(a) That—

"(i) Any programme broadcast by a broadcasting station has infringed any of the provisions of section 24 (1) (other than paragraph (a) or paragraph (b) or paragraph (g)) or of section 24 (2) or of section 95 (1) (other than paragraph (a) or paragraph (f)) or of any rules made under section 26 of this Act, or that any intended broadcast that has been recorded or filmed will be in breach of any of those provisions; or

"(ii) Any programme broadcast by a broadcasting station has infringed the provisions of section 24 (1) (g) or of section 95 (1) (f) of this Act or could give rise to a complaint under section 95o (1) (b) of this Act, or that any intended broadcast that has

been recorded or filmed will be in breach of any of those provisions or could give rise to a complaint under section 95O (1) (b) of this Act; and

"(b) That in the special circumstances of the case it is in the public interest that the question be determined by the Tribunal,—

he may refer the matter to the Tribunal, which shall deal with it under section 67 of this Act as if it were a complaint referred to the Tribunal under section 95E or section 95Z of this Act, as the case may require.

"(2) As soon as practicable after referring any matter to the Tribunal under subsection (1) of this section, the Minister shall publish in the *Gazette* and lay before Parliament a notice that he has done so, giving a general outline of the substance of the matter.

"(3) Where under subsection (1) of this section the Minister refers a programme to the Tribunal, he shall notify the holder of the warrant or authorisation issued in respect of the relevant broadcasting station, and that holder shall not re-broadcast, or, in the case of an intended programme, broadcast, the programme except in accordance with the decision of the Tribunal.

"95ZB. **Duty to publicise method of making complaints**—It shall be the duty of each broadcasting body regularly to publicise—

"(a) The Committee and its function under section 95O (1) (b) of this Act of receiving and considering complaints; and

"(b) The broadcasting body's duties and responsibilities in respect of complaints; and

"(c) The functions of the Tribunal in respect of complaints.

Cf. Broadcasting Act 1980, s. 22 (U.K.)

"95ZC. **Service of notices**—(1) Any notice or other document required or authorised by section 67A of this Act or by this Part of this Act to be given to any person shall be in writing and shall be sufficiently given—

"(a) If it is delivered to that person; or

"(b) If, in the case of a body corporate, it is posted in a letter addressed to that body corporate at its registered office; or

"(c) If, in the case of an individual, it is posted in a letter addressed to that individual at his usual or last known place of abode or business in New Zealand; or

"(d) If it is posted in a letter addressed to that person at a postal address given by or on behalf of that person for the purposes of the matter to which the notice or document relates.

"(2) A notice or document so posted shall, unless the contrary is proved, be deemed—

"(a) If the letter is posted to an address in New Zealand, to have been given on the fourth day after the day on which the letter was posted:

"(b) If the letter is posted to an address outside New Zealand, to have been given at the time at which the letter would have been delivered in the ordinary course of post."

12. Abolition of Committee of Private Broadcasters—(1) The Committee of Private Broadcasters established by section 85 of the principal Act is hereby abolished.

(2) No member of the Committee of Private Broadcasters shall be entitled to any compensation for loss of office resulting from the abolition of that committee.

13. Amendments and repeals consequential upon sections 11 and 12 of this Act—(1) The principal Act is hereby consequentially amended in the manner indicated in the Schedule to this Act.

(2) Section 25 and sections 85 to 93 of the principal Act are hereby consequentially repealed.

14. Transitional provisions—(1) Any complaint (being a complaint lodged under section 25 (2) of the principal Act before the 1st day of November 1982) which has not been dealt with before that date under section 25 (3) or section 25 (4) of the principal Act, shall be dealt with by the Corporation under section 25 (3) or section 25 (4) of the principal Act and the provisions of the principal Act shall apply accordingly as if this Act had not been passed.

(2) In the case of a complaint (being a complaint lodged under section 91 (2) of the principal Act before the 1st day of November 1982) which has not been dealt with before that date under section 91 (3) or section 91 (4) of the principal Act, the complainant may, not later than the 21st day of November 1982, refer the complaint to the Tribunal to be dealt with under section 67 of this Act and the provisions of the principal Act shall apply accordingly as if this Act had not been passed.

(3) Where, in the case of any complaint, the notice required under section 91 (3) or section 91 (4) of the principal Act has been given after the 30th day of September 1982, the complainant may, if he is dissatisfied with the recommendation or with the action taken by the private broadcasting station concerned, refer the complaint to the Tribunal, not later than the 21st day of November 1982, to be dealt with under section 67 of the principal Act and the provisions of the principal Act shall apply accordingly as if this Act had not been passed.

(4) Any complaint (being a complaint referred to the Tribunal before the 1st day of November 1982 to be dealt with under section 67 of the principal Act) which has not been dealt with by the Tribunal before that date, shall, unless the Tribunal, acting under the proviso to section 67 (1) (b) of the principal Act, declines to determine that complaint, be determined as if this Act had not been passed.

(5) Except as provided in this section, no formal complaint lodged before the 1st day of November 1982 under section 25 (2) or section 91 (2) of the principal Act shall, after that date, be dealt with under the principal Act (either as it stood before that date or as amended by this Act).

(6) Subject to subsections (1) to (5) of this section, a formal complaint made for the purposes of section 95B (1) (a) or section 95C (1) (a) or section 95O (1) (b) of the principal Act may be made, whether or not the substance of the complaint arose before or after the 1st day of November 1982.

(7) Nothing in subsection (6) of this section limits the proviso to section 67 (1) (b) of the principal Act or the provisions of section 95Q of the principal Act.

SCHEDULE

Section 13 (1)

AMENDMENTS TO PRINCIPAL ACT

Section of Principal Act Amended	Amendment
Section 2	By inserting, after the definition of the term "broadcasting", the following definition: "'Broadcasting Complaints Committee' means the Broadcasting Complaints Committee established by section 95F of this Act:".
Section 3	By omitting from subsection (1), and also from subsection (2), the words "Committee of Private Broadcasters", and substituting in each case the words "Broadcasting Complaints Committee".
Section 65	By omitting from subsection (3) the words "Committee under section 89", and substituting the words "Broadcasting Complaints Committee under section 95F".
Section 66	By repealing this section, and substituting the following section: "66. **Levy**—(1) For the purpose of providing funds to enable the Tribunal to exercise its functions and powers (including the cost of any services provided by the Department of Justice for the Tribunal under section 65 of this Act) and to enable the Broadcasting Complaints Committee to exercise its functions and powers (including the cost of any services provided by the Department of Justice for the Broadcasting Complaints Committee under section 95N of this Act) the Governor-General in Council may from time to time impose, by and in accordance with regulations under this Act, a levy on broadcasting stations operating in New Zealand at a rate not exceeding that authorised in the regulations. "(2) Any levy under this section may apply to all broadcasting stations or to any particular class of broadcasting stations and the amount of the levy may vary in respect of different classes of broadcasting stations. "(3) The proceeds of any levy imposed by regulations made pursuant to this section shall be paid into the Public Account."

SCHEDULE—*continued*

AMENDMENTS TO PRINCIPAL ACT—*continued*

Section of Principal Act Amended	Amendment
Section 68	By inserting in the proviso to subsection (1), after the words "in respect of", the words "any particular allegation or".
Section 83	By omitting from subsection (1) the word "programme". By omitting from subsection (1) the words "Committee of Private Broadcasters in respect of private broadcasting stations", and substituting the words "Broadcasting Complaints Committee".
Section 96	By omitting from subsection (1), and also from subsection (2), the words "Committee of Private Broadcasters", and substituting in each case the words "Broadcasting Complaints Committee".
Section 98	By repealing paragraph (d), and substituting the following paragraph: "(d) Regulating meetings and procedures of the Tribunal and the Broadcasting Complaints Committee, including the procedure at hearings conducted, under this Act, by the Tribunal or the Broadcasting Complaints Committee, and the quorum and voting rights at meetings of the Tribunal:". By repealing paragraph (f), and substituting the following paragraph: "(f) Prescribing requirements as to the authentication of documents by the Tribunal or by the Broadcasting Complaints Committee, the furnishing by the Tribunal or the Broadcasting Complaints Committee of evidence as to its proceedings, and the issue by the Tribunal, of certificates relating to warrants, authorisations, or consents:".

This Act is administered in the Broadcasting Corporation of New Zealand.