



## ANALYSIS

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1993, No. 69

**An Act to amend the Broadcasting Act 1989**

[7 July 1993]

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 1993, and shall be

read together with and deemed part of the Broadcasting Act 1989 (hereinafter referred to as the principal Act).

(2) Except as provided in subsection (3) of this section, this Act shall come into force on the day after the date on which this Act receives the Royal assent.

(3) Sections 3 to 5, 7, 8, 23, and 24 of this Act shall come into force on the 1st day of July 1993.

**2. Interpretation**—Section 2 of the principal Act (as amended by section 3 of the Broadcasting Amendment Act (No. 2) 1990) is hereby amended by repealing the definition of the term “advertising programme” in subsection (1), and substituting the following definition:

“‘Advertising programme’—

“(a) Means a programme or part of a programme that—

“(i) Is primarily intended to promote—

“(A) The interest of any person; or

“(B) Any product or service for the commercial advantage of any person; and

“(ii) Is a programme or a part of a programme for which payment is made, whether in money or otherwise; and

“(b) Includes a credit in respect of a sponsorship or underwriting arrangement, being a credit that—

“(i) Is intended to promote any of the matters specified in paragraph (a) (i) of this definition; and

“(ii) Is a credit for which payment is made, whether in money or otherwise; but

“(c) Does not include programme material that is the subject of a credit to which paragraph (b) of this definition applies; and

“(d) Does not include any programme or credit of the kind described in paragraph (a) or paragraph (b) of this definition—

“(i) That promotes a scheduled programme on behalf of a broadcaster; or

“(ii) That promotes only a station identity on behalf of a broadcaster; or

“(iii) That constitutes an election programme.”.

**3. Formal complaints about programmes**—Section 6 of the principal Act is hereby amended by adding the following subsection:

“(3) Notwithstanding subsection (2) of this section, a broadcaster must consider a complaint if—

- “(a) The complainant has resubmitted the complaint in writing within 30 working days after the date on which the programme to which the complaint relates was broadcast by the broadcaster; and
- “(b) The complainant offers reasonable proof that the original complaint was lodged in accordance with subsection (2) of this section.”

**4. Right of complainant to refer formal complaint to Authority**—(1) The principal Act is hereby amended by repealing section 8 (as amended by section 9 of the Broadcasting Amendment Act (No. 2) 1990), and substituting the following section:

“8. (1) Subject to section 9 of this Act, where—

- “(a) The complainant, in respect of a complaint under section 6 (1) (a) of this Act, is dissatisfied with the decision or with the action taken by the broadcaster; or
- “(b) The broadcaster has not, within 60 working days after receiving the complaint, or, in the case of a complaint in relation to an election programme broadcast pursuant to Part VI of this Act, 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
- “(c) The complaint constitutes an allegation that a broadcaster has failed to comply with section 4 (1) (c) of this Act,—

the complainant may refer the complaint to the Authority.

“(2) Subsection (1) of this section shall apply in respect of a complaint about an advertising programme only where neither the broadcaster nor the advertiser recognise, in relation to that complaint, the jurisdiction of the Advertising Standards Complaints Board (a board appointed by the Advertising Standards Authority Incorporated).

“(3) Except as provided in subsection (2) of this section, nothing in this section entitles a complainant to refer a complaint about an advertising programme to the Authority.”

(2) Section 9 of the Broadcasting Amendment Act (No. 2) 1990 is hereby consequentially repealed.

**5. Functions of Authority**—Section 21 of the principal Act is hereby amended by adding the following subsection:

“(3) Nothing in subsection (1) of this section shall relate to advertising programmes or any credit in respect of a sponsorship or underwriting arrangement entered into in relation to a programme except where neither the broadcaster nor the advertiser recognise, in relation to a specific complaint, the jurisdiction of the Advertising Standards Complaints Board (a board appointed by the Advertising Standards Authority Incorporated).”

**6. Membership of Authority**—Section 26(3) of the principal Act is hereby amended by repealing paragraphs (b) and (c), and substituting the following paragraph:

“(b) Two persons (not being public servants directly connected with the administration of this Act or members of the House of Representatives), who shall be appointed by the Governor-General on the nomination of the House of Representatives, as members of the Authority, one of those members being nominated to represent the Government and one to represent Opposition parties.”

**7. Funding policies**—The principal Act is hereby amended by inserting, after section 39, the following section:

“39A. The Commission and Te Reo Whakapuaki Irirangi shall, in carrying out their respective functions under this Act, each have regard to the funding policies adopted by the other.”

**8. New Part inserted**—The principal Act is hereby amended by inserting, after section 53, the following Part:

“PART IVA

“TE REO WHAKAPUAKI IRIRANGI

“53A. **Establishment of Te Reo Whakapuaki Irirangi**—(1) There is hereby established an agency to be called Te Reo Whakapuaki Irirangi.

“(2) Te Reo Whakapuaki Irirangi shall be a body corporate with perpetual succession and a common seal, with power to purchase, take, hold, transfer, and lease property, to sue and be sued, and shall have all rights, powers, and privileges of a natural person.

“53B. **Function of Te Reo Whakapuaki Irirangi**—The function of Te Reo Whakapuaki Irirangi is to promote Maori language and Maori culture by making funds available, on such

terms and conditions as Te Reo Whakapuaki Irirangi thinks fit, for broadcasting and the production of programmes to be broadcast.

**“53C. Consultation**—Te Reo Whakapuaki Irirangi shall, in the exercise of its function under section 53B of this Act, consult from time to time with representatives of Maori interests, broadcasters, and others, being in each case persons or representatives who can, in the opinion of Te Reo Whakapuaki Irirangi, assist in the development of Te Reo Whakapuaki Irirangi’s funding policies.

**“53D. Powers of Te Reo Whakapuaki Irirangi**—Te Reo Whakapuaki Irirangi shall have all such powers as are reasonably necessary or expedient to enable it to carry out its function.

**“53E. Matters to be taken into account in relation to funding proposals**—Te Reo Whakapuaki Irirangi, in assessing any proposal for Te Reo Whakapuaki Irirangi to make funds available for broadcasting or for the production of a programme or programmes to be broadcast, shall have regard to—

- “(a) The extent to which the persons seeking the funding for the project to which the proposal relates have sought and secured funding or other resources for the project from sources other than Te Reo Whakapuaki Irirangi; and
- “(b) The potential size of the audience likely to benefit from the project to which the proposal relates; and
- “(c) The extent to which the intended audience involved has access to services that have as their primary aim the promotion of Maori language and Maori culture; and
- “(d) In the case of a proposal for the production of a programme or programmes, the extent to which the proposed programme or programmes would contribute to Te Reo Whakapuaki Irirangi meeting its objective under section 53B of this Act; and
- “(e) In the case of a proposal for the production of a programme or programmes, the likelihood that the proposed programme or programmes, if produced, would be broadcast.

**“53F. Requirements in relation to standards**—Te Reo Whakapuaki Irirangi shall require from recipients of funding from Te Reo Whakapuaki Irirangi in relation to the production

of a programme or programmes, in such form as Te Reo Whakapuaki Irirangi shall determine, undertakings that the programme or programmes will be consistent with the standards specified in section 4 (1) of this Act.

**“53G. Requirements in relation to equal employment opportunities—**Te Reo Whakapuaki Irirangi may decline to make funds available under section 53B of this Act, where it considers that the prospective recipient is not operating an appropriate equal employment opportunities plan in circumstances where it would be practicable for the prospective recipient to do so.

**“53H. Contracts in relation to use of funds—**In making funds available under section 53B of this Act, Te Reo Whakapuaki Irirangi shall, to the extent that, in the opinion of Te Reo Whakapuaki Irirangi, it is practicable to do so,—

- “(a) Invite competitive proposals for the use of funds made available by Te Reo Whakapuaki Irirangi; and
- “(b) Ensure by the terms of contracts that the recipients of the funds are obliged both to attain specified standards of performance and to account for the use of the funds; and
- “(c) Adopt measures to ensure that recipients of funds comply with the terms referred to in paragraph (b) of this section.

**“53I. Membership of Te Reo Whakapuaki Irirangi—**Te Reo Whakapuaki Irirangi shall consist of not more than 7 members, who shall be appointed by the Minister, after consultation with the Minister of Maori Affairs, of whom one shall be appointed as Chairperson and another shall be appointed as Deputy Chairperson.

**“53J. Term of office of members of Te Reo Whakapuaki Irirangi—**(1) Except as otherwise provided in subsection (3) of this section and in clause 1 (5) of the First Schedule to this Act, every member of Te Reo Whakapuaki Irirangi shall be appointed for a term of not less than 1 year and not more than 3 years.

“(2) Every member of Te Reo Whakapuaki Irirangi shall be eligible for reappointment from time to time.

“(3) Where the term for which a member of Te Reo Whakapuaki Irirangi has been appointed expires, that member of Te Reo Whakapuaki Irirangi, unless sooner vacating or removed from office under clause 1 of the First Schedule to this

Act, shall continue to hold office by virtue of the appointment for the term that has expired, until—

- “(a) That member is reappointed; or
- “(b) A successor to that member is appointed; or
- “(c) That member is informed in writing by the Minister that the member is not to be reappointed and that a successor to that member is not to be appointed.

“53K. **Funds of Te Reo Whakapuaki Irirangi**—The funds of Te Reo Whakapuaki Irirangi shall consist of—

- “(a) Any money appropriated by Parliament for the purposes of Te Reo Whakapuaki Irirangi and paid to Te Reo Whakapuaki Irirangi for the purposes of Te Reo Whakapuaki Irirangi:
- “(b) From the commencement of the 1st day of January 1995, that proportion of the public broadcasting fees (net of collection costs) paid pursuant to regulations made under this Act that Te Reo Whakapuaki Irirangi receives from the Commission:
- “(c) All other money lawfully received by Te Reo Whakapuaki Irirangi for the purposes of Te Reo Whakapuaki Irirangi:
- “(d) All accumulations of income derived from any such money.

“53L. **Payment of funds to Te Reo Whakapuaki Irirangi by Commission**—(1) Notwithstanding anything in Part IV of this Act, the Commission shall pay to Te Reo Whakapuaki Irirangi from time to time such proportion of the broadcasting fees (net of collection costs) as the Minister may direct by notice in writing given by the Minister to the Commission.

“(2) Where a notice is given to the Commission under subsection (1) of this section, the Minister shall, as soon as practicable after the giving of the notice,—

- “(a) Publish a copy of it in the *Gazette*; and
- “(b) Lay a copy of it before the House of Representatives.

“53M. **Administrative expenses**—(1) The Minister shall in each year give to Te Reo Whakapuaki Irirangi, not later than the 30th day of June, notice in writing of the amount that it may spend on account of its own administrative expenses in the immediately succeeding financial year.

“(2) The Minister may from time to time by notice in writing given to Te Reo Whakapuaki Irirangi increase or reduce any amount specified by the Minister in a notice given under subsection (1) of this section (including a notice amended under this subsection).

“(3) Where a notice is given to Te Reo Whakapuaki Iirangi under subsection (1) or subsection (2) of this section, the Minister shall, as soon as practicable after the giving of the notice,—

“(a) Publish a copy of it in the *Gazette*; and

“(b) Lay a copy of it before the House of Representatives.

“53N. **Refund of amount of administrative expenses**—Te Reo Whakapuaki Iirangi shall pay into the Crown Bank Account in each financial year the amount specified in respect of that financial year under section 53M of this Act.

“53O. **Exemption from income tax**—The income of Te Reo Whakapuaki Iirangi shall be exempt from income tax.

“53P. **Seal**—The common seal of Te Reo Whakapuaki Iirangi shall be judicially noticed in all Courts and for all purposes.

“53Q. **Crown entity**—(1) Te Reo Whakapuaki Iirangi shall be a Crown entity for the purposes of the Public Finance Act 1989.

“(2) The Minister of Communications shall, for the purposes of the Public Finance Act 1989, be the Minister responsible for the financial performance of Te Reo Whakapuaki Iirangi.

“53R. **Further provisions applying in respect of Te Reo Whakapuaki Iirangi**—(1) The provisions set out in the First Schedule to this Act shall apply in respect of Te Reo Whakapuaki Iirangi as if every reference to the Commission were a reference to Te Reo Whakapuaki Iirangi.

“(2) Notwithstanding subsection (1) of this section, clauses 11A and 14 of the First Schedule to this Act shall not apply to Te Reo Whakapuaki Iirangi.”

**9. Prohibition on paid election programmes**—The principal Act is hereby amended by repealing section 70 (as enacted by section 8 of the Broadcasting Amendment Act (No. 2) 1990), and substituting the following section:

“70. (1) Except as provided in subsection (2) of this section, no broadcaster shall permit the broadcasting, within or outside an election period, of an election programme.

“(2) Nothing in subsection (1) of this section applies in respect of—

“(a) An election programme broadcast for a political party or group of related political parties during broadcasting time allocated to that political party or group of

related political parties under section 73 (1) of this Act; or

“(b) An election programme broadcast for a political party or group of related political parties and paid for with money allocated to that political party or group of related political parties under section 74A of this Act; or

“(c) An election programme—

“(i) Broadcast for a fee or other consideration; and

“(ii) Relating solely to one named candidate as a candidate for a particular electoral district; and

“(iii) Used or appearing to be used to promote or procure the election of the candidate; and

“(iv) Broadcast by the candidate or with the candidate’s authority within the 3 months preceding polling day for the election; or

“(d) Any advertisement placed 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 1956; or

“(e) Any non-partisan advertisement broadcast, as a community service, by the broadcaster.

“(3) Nothing in subsection (1) of this section restricts the broadcasting, in relation to an election, of news or of comments or of current affairs programmes.”

**10. Contents of notice**—Section 70c of the principal Act (as enacted by section 8 of the Broadcasting Amendment Act (No. 2) 1990) is hereby amended by inserting, after paragraph (a), the following paragraph:

“(aa) Details of any relationships that may exist between that political party and any other political parties in New Zealand which the Authority may need to take into account in allocating time or money to political parties; and”.

**11. Invitation to broadcasters**—Section 71 of the principal Act (as enacted by section 8 of the Broadcasting Amendment Act (No. 2) 1990) is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) 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.”

**12. Replies to invitation**—Section 71A (2) of the principal Act (as enacted by section 8 of the Broadcasting Amendment Act (No. 2) 1990) is hereby amended by inserting, after paragraph (c), the following paragraph:

“(ca) In 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”.

**13. Allocation of time to political parties**—The principal Act is hereby amended by repealing section 73 (as enacted by section 8 of the Broadcasting Amendment Act (No. 2) 1990), and substituting the following section:

“73. (1) Subject to subsections (2) and (3) of this section and to sections 75, 75A, and 76 of this Act, the Authority shall, in respect of each election period, allocate to political parties, in such proportions as the Authority 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 Authority, in allocating time to political parties under subsection (1) of this section,—

“(a) Shall classify as major political parties for the purposes of this Part of this Act, the political parties that, in the opinion of the Authority, are entitled to a maximum allocation of broadcasting time and a maximum allocation of money; and

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

“(i) In full; or

“(ii) With modifications specified by the Authority; and

“(c) Shall modify proposals made under section 71A (2) (d) of this Act if, in the opinion of the Authority, the proposals are not consistent with the provisions of section 75 of this Act.

“(3) The Authority 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.”

**14. Amount of public money to be allocated to political parties**—Section 74 (2) of the principal Act (as enacted by section 8 of the Broadcasting Amendment Act (No. 2) 1990) is hereby amended by inserting, after the expression “section 74A”, the expression “or section 77A”.

**15. Allocation of money to political parties**—(1) Section 74A (2) of the principal Act (as enacted by section 8 of the Broadcasting Amendment Act (No. 2) 1990) is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) Conditions included in a decision pursuant to subsection (1)(b) of this section may include conditions requiring the political party or group of related political parties to advise the Authority of the value of election programme bookings made by the political party or group of related political parties.”

(2) Section 74A of the principal Act (as so enacted) is hereby further amended by adding the following subsection:

“(4) The Authority 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.”

**16. Criteria in relation to allocation of money and time to political parties**—(1) Section 75 (1) (c) of the principal Act (as enacted by section 8 of the Broadcasting Amendment Act (No. 2) 1990) is hereby amended by inserting, after the word “party”, the words “or group of related political parties”.

(2) Section 75 (1) (d) (ii) of the principal Act (as so enacted) is hereby amended by inserting, after the word “party”, the words “or group of related political parties”.

(3) Section 75 (2) of the principal Act (as so enacted) is hereby amended by inserting, after paragraph (c), the following paragraph:

“(ca) Any relationships that exist between a political party and any other political party; and”.

**17. Power of Authority to vary allocations**—(1) Section 76A (1) of the principal Act (as enacted by section 8 of the Broadcasting Amendment Act (No. 2) 1990) is hereby amended by inserting, after paragraph (a), the following paragraph:

“(aa) 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”.

(2) Section 76A of the principal Act (as so enacted) is hereby further amended—

(a) By inserting, after the word “party” in subsection (1) (b), the words “or group of related political parties”; and

(b) By inserting, after the word “party” in subsection (4) (b), the words “or group of related political parties”.

**18. Opening addresses and closing addresses**—The principal Act is hereby amended by repealing section 77A (as enacted by section 8 of the Broadcasting Amendment Act (No. 2) 1990), and substituting the following section:

“77A. (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 free-to-air 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) Radio New Zealand Limited on the service known as National Radio.

“(4) A sum on account of the production costs shall be paid by the Secretary of Commerce out of public money appropriated by Parliament for the purpose to the free-to-air television broadcaster or radio broadcaster by which an opening address or a closing address is produced.

“(5) The amounts to be paid under subsection (4) of this section shall be determined in each case by the Authority.”

**19. Returns in relation to broadcasting time—**

Section 79c of the principal Act (as enacted by section 8 of the Broadcasting Amendment Act (No. 2) 1990) is hereby amended by omitting the expression “5”, and substituting the expression “10”.

**20. Advertising hours—**Section 81 of the principal Act is hereby amended by adding the following subsections:

“(5) Nothing in this section applies to any programme broadcast on television, where the signal for that programme—

“(a) Originates outside New Zealand; and

“(b) Is produced and transmitted simultaneously to both New Zealand audiences and audiences outside New Zealand; and

“(c) Is targeted primarily at audiences outside New Zealand.

“(6) Nothing in this section prevents the broadcasting of advertising programmes on any broadcasting service that is primarily directed at persons temporarily resident in holiday accommodation.”

**21. Provisions applying in respect of Broadcasting Commission—**The First Schedule to the principal Act is hereby amended—

(a) By omitting from clause 12 the words “and the Commission shall each”, and substituting the word “shall”; and

(b) By omitting from clause 14 (as substituted by section 42 of the Public Finance Amendment Act 1992) the words “and the Commission shall each”, and substituting the word “shall”; and

(c) By repealing clause 15.

**22. Transitional provisions**—Every action taken by the Authority before the commencement of this section which would have been valid if Part VI of the principal Act (as amended by this Act) had been in force when that action was taken is declared to be and always to have been valid.

**23. Amendment to Ombudsmen Act 1975**—Part II of the First Schedule to the Ombudsmen Act 1975 is hereby amended by inserting, in its appropriate alphabetical order, the following item:

“Te Reo Whakapuaki Irirangi.”

**24. Amendments to Public Finance Act 1989**—(1) The Public Finance Act 1989 is hereby amended by inserting in the Fourth Schedule (as added by section 41 of the Public Finance Amendment Act 1992), in its appropriate alphabetical order, the following item:

“Te Reo Whakapuaki Irirangi.”

(2) The Public Finance Act 1989 is hereby further amended by inserting in the Fifth Schedule (as added by section 41 of the Public Finance Amendment Act 1992), in its appropriate alphabetical order, the following item:

“Te Reo Whakapuaki Irirangi.”

(3) The Public Finance Act 1989 is hereby further amended by inserting in the Sixth Schedule (as added by section 41 of the Public Finance Amendment Act 1992), in their appropriate alphabetical order, the following items:

“Broadcasting Commission.

“Te Reo Whakapuaki Irirangi.”

**25. Transitional provision in relation to membership of Authority**—Every person who holds office as a member of the Authority under section 26 (3) (b) or section 26 (3) (c) of the principal Act immediately before the commencement of this section, shall be deemed to have been appointed as a member of the Authority under section 26 (3) (b) of the principal Act (as substituted by section 6 of this Act).