

Broadcasting (Election Programmes and Election Advertising) Amendment Bill

Government Bill

Explanatory note

General policy statement

This Bill amends and updates Part 6 of the Broadcasting Act 1989, which regulates election programmes on television and radio.

The Bill enables political parties to communicate with voters through digital media more flexibly and cost-effectively, while maintaining existing safeguards and restrictions. This will be achieved by removing the requirements for opening and closing addresses to be broadcast at election time, along with the need for Television New Zealand and Radio New Zealand to provide free broadcasting time for these addresses. Parties will now be able to use their allocations of funding for Internet advertising, in addition to television and radio as currently permitted.

The funds allocated to a party will remain the limit on the party's use of television and radio for election programmes. Other rules for the broadcasting of election programmes remain in place.

Departmental disclosure statement

The Ministry of Justice is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2016&no=199>.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause and provides that the Bill comes into force on the day after the date on which it receives the Royal assent.

Part 1 Amendments to Broadcasting Act 1989

Clause 3 provides that this Part amends the Broadcasting Act 1989 (the **principal Act**).

Clause 4 replaces Part 6 of the principal Act (parliamentary election programmes). *New Part 6* is given the broader heading “Electoral broadcasting” to reflect the substantive change that public money appropriated by Parliament for funding the broadcasting of election programmes may now also be used by political parties to publish election advertisements on the Internet. This is in lieu of the current arrangement whereby political parties are allocated time, free of charge, by Television New Zealand (TVNZ) and Radio New Zealand (RNZ) for the broadcasting of opening and closing addresses. *New sections 69 to 80G* take account of this substantive change and substantially re-enact the existing provisions in Part 6 of the principal Act in accordance with the current drafting style and format to try to make the law easier to understand.

New section 69 is the interpretation provision for *new Part 6*. Many of the existing definitions are carried over and several new definitions are included, in particular definitions of the terms broadcaster, broadcasting costs, production costs, and publishing costs.

New section 70 prohibits television and radio broadcasters from broadcasting election programmes. However, this prohibition does not apply to party election programmes or candidate election programmes. A party election programme is an election programme that is promoted by a party or group of related parties, is broadcast during the period between writ day and polling day for a general election (the **election period**), and for which the broadcasting costs are paid from public money allocated to the party. A candidate election programme is an election programme that is promoted by a constituency candidate or by a party with the candidate’s authority, relates to that candidate and encourages voters to vote for that candidate, is broadcast during the period between writ day and polling day for either a general election or a by-election, and is broadcast for a fee that may be paid in whole or in part from public money allocated to a party. The point of difference between *new section 70* and existing *section 70* is that the exception in subsection (2)(a) of the latter is not continued. That exception relates to opening and closing addresses of a party that are broadcast free of charge by TVNZ or RNZ. As explained above, there is no longer to be provision for political parties to be allocated free broadcasting time for opening and closing addresses.

New section 71 re-enacts existing *section 79A* and prohibits the broadcasting of election programmes on specified days and at specified times.

New section 72 re-enacts existing section 79B and requires broadcasters to offer a party broadcasting time on the same terms as those offered to other parties. Similarly, a candidate must be offered broadcasting time on terms no more favourable than the terms offered to other candidates.

New section 73 re-enacts existing section 79 and provides that the broadcasting standard in section 4(1)(d) of the principal Act does not apply in respect of the broadcast of election programmes. That standard requires broadcasters to make reasonable efforts to ensure that significant points of view are presented when a programme discussing controversial issues of public importance is broadcast.

New section 74 provides for the appropriation of public money to fund election programmes and election advertising at the time of a general election. An appropriation must be made for the purpose of enabling parties to fund—

- all of the broadcasting costs incurred in relation to the broadcast of party election programmes; and
- all or part of the broadcasting costs incurred in relation to the broadcast of candidate election programmes; and
- all or part of the production costs, whenever incurred, in relation to—
 - party election programmes; and
 - candidate election programmes; and
- all or part of the publishing costs incurred in relation to the publication of election advertisements on the Internet during the election period; and
- all or part of production costs, whenever incurred, in relation to election advertisements published on the Internet—
 - during the election period; or
 - before and during the election period.

The Electoral Commission is responsible for deciding how the money appropriated under this section is to be allocated to parties.

New section 75 re-enacts existing section 70A(1) and (2) and requires the Electoral Commission, in every year in which Parliament is due to expire, to specify in the *Gazette* a date by which a political party must give notice that it considers itself qualified to receive an allocation of the money referred to in *new section 74* (an **allocation**). The notice must be given to the Electoral Commission.

New section 76 re-enacts existing sections 70A(3), 70B, and 70C. It provides that a party is qualified to receive an allocation if it provides to the Electoral Commission by the due date a written notice of qualification that includes certain specified matters.

New section 77 re-enacts existing section 76 and provides that, before allocating any public funds, the Electoral Commission must consult the political parties that have provided a notice of qualification.

New section 78 re-enacts existing section 75(1) and (2) and sets out the criteria that a political party must satisfy in order to qualify for an allocation and the matters that the Electoral Commission must have regard to when allocating money.

New section 79 re-enacts existing section 74A(2) to (5) and requires that the Electoral Commission's decision on how the public money is to be allocated to political parties must set out the allocations and may include conditions as to the manner in which a party is to spend its allocation. An allocation may be made to a group of related parties and a party that is to receive an allocation as part of a group of related parties may not receive an individual allocation. Existing section 75(3) is also re-enacted and clarified to provide that the Electoral Commission may make its decision either before the beginning of the relevant election period or during the relevant election period.

New section 80 re-enacts existing section 76A and sets out the circumstances in which the Electoral Commission may vary a decision under *new section 79*, and the matters that the Commission must have regard to when exercising this discretion.

New section 80A sets out how a political party or group of related parties may use an allocation. An allocation must be used for the purposes specified in *new section 74(1)* and in accordance with any conditions imposed by the Electoral Commission under *new section 79(1)(b)*. *New section 80A* also clarifies that none of the provisions in *new Part 6* restrict the amount of money that a party or group of related parties may spend on—

- broadcasting costs in relation to candidate election programmes; or
- publication costs in relation to election advertisements; or
- production costs for election programmes or election advertisements.

New section 80B re-enacts existing section 74B(2) to (5). It provides that a party that receives an allocation must send to the Electoral Commission within 50 working days after the end of the month in which the general election was held all accounts to be paid out of the party's allocation. Late accounts may not be paid from a party's allocation, and any unspent allocation must be repaid by the Electoral Commission to the Crown.

New section 80C provides that, if an election advertisement is published both before and during the election period, only the publishing costs attributable to the publication of the advertisement during the election period are payable from a party's allocation.

New section 80D re-enacts existing section 76B and provides that, in any case where an allocation is varied, the Electoral Commission may determine that all or part of the money paid on behalf of a party from the party's allocation be repaid to the Crown.

New sections 80E and 80F re-enact existing sections 76C and 76D and set out how *new Part 6* is modified if there is an early election.

New section 80G re-enacts the offence provision in existing section 80 relating to the broadcasting of election programmes.

Part 2

Consequential amendments to Electoral Act 1993

Clause 5 provides that this Part amends the Electoral Act 1993 (the **principal Act**).

Clause 6 amends section 5(b) of the principal Act to reflect the *new Part 6* heading in the Broadcasting Act 1989.

Clause 7 updates in the definition of election expenses in subpart 2 of Part 6A of the principal Act (election expenses of parties) cross-references to provisions of the Broadcasting Act 1989. For the purposes of the Electoral Act 1993, a party's election expenses exclude the costs of election programmes and election advertisements that are paid by the Electoral Commission from money allocated to the party under Part 6 of the Broadcasting Act 1989.

Hon Amy Adams

Broadcasting (Election Programmes and Election Advertising) Amendment Bill

Government Bill

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Part 2

Consequential amendments to Electoral Act 1993

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Broadcasting (Election Programmes and Election Advertising) Amendment Act **2016**.

2 Commencement

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This Act comes into force on the day after the date on which it receives the Royal assent.

Part 1

Amendments to Broadcasting Act 1989

3 Principal Act

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This **Part** amends the Broadcasting Act 1989 (the **principal Act**).

4 Part 6 replaced

Replace Part 6 with:

Part 6
Electoral broadcasting

69 Interpretation

(1) In this Part, unless the context otherwise requires,—

broadcaster means—

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- (a) a television broadcaster:
- (b) a radio broadcaster

broadcasting costs, in relation to an election programme,—

- (a) means the costs incurred in broadcasting the election programme; but
- (b) does not include any production costs incurred in respect of that programme

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candidate election programme means an election programme referred to in **section 70(3)**

constituency candidate has the meaning given to it by section 3(1) of the Electoral Act 1993, and includes a person who has declared his or her intention of becoming a constituency candidate

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election means—

- (a) a general election:
- (b) a by-election

election period, in relation to an election, means the period—

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- (a) beginning with writ day; and
- (b) ending with the close of the day preceding polling day

election programme means a programme that—

- (a) encourages or persuades, or appears to encourage or persuade, voters to vote for a party or the election of a constituency candidate; or
- (b) encourages or persuades, or appears to encourage or persuade, voters not to vote for a party or the election of a constituency candidate; or
- (c) advocates support for a constituency candidate or for a party; or
- (d) opposes a constituency candidate or a political party; or
- (e) notifies meetings held or to be held in connection with an election

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party means a political party

party election programme means an election programme that is not a candidate election programme

production costs, in relation to an election programme or election advertisement, means the costs incurred in the preparation, design, composition, and creation of the programme or advertisement (as the case may be)

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programme includes visual images, whether or not combined with sounds, that consist predominantly of alphanumeric text

publishing costs, in relation to an election advertisement,—

- (a) means the costs incurred in publishing an election advertisement; but
- (b) does not include any production costs incurred in respect of that advertisement

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

(2) In this Part the following terms have the meanings given to them by section 3(1) of the Electoral Act 1993: 10

- (a) **by-election:**
- (b) **election advertisement:**
- (c) **Electoral Commission:**
- (d) **general election:**
- (e) **polling day:** 15
- (f) **writ day.**

Compare: 1989 No 25 s 69

Provisions applying to broadcasters

70 Broadcasting election programmes

(1) Except as provided in **subsections (2) and (3)**, a broadcaster may not, at any time, broadcast an election programme. 20

(2) A broadcaster may, for the purpose of a general election, broadcast an election programme if—

- (a) the programme is promoted by a party or group of related parties; and
- (b) the programme is broadcast during the election period; and 25
- (c) the broadcasting costs are paid from money allocated to the party or group of related parties under **section 79**.

(3) A broadcaster may, for the purposes of a general election or by-election, broadcast an election programme if that programme—

- (a) is promoted by— 30
 - (i) a constituency candidate; or
 - (ii) a party with the authority of a constituency candidate; and
- (b) relates solely to the constituency candidate at the election; and
- (c) encourages or persuades, or appears to encourage or persuade, voters to vote for that candidate; and 35
- (d) is broadcast during the election period for the election; and

(e)	is broadcast for a fee that may, but need not, be paid from money allocated to a party or group of related parties.	
(4)	Nothing in this section restricts—	
(a)	the broadcasting, in relation to an election, of news or comments or current affairs programmes; or	5
(b)	the broadcasting of any non-partisan advertisement, as a community service, by a broadcaster.	
	Compare: 1989 No 25 s 70	
71	Hours during which broadcast of election programmes prohibited	
(1)	A television broadcaster may not broadcast election programmes—	10
(a)	during the hours between 6 am and noon on—	
(i)	Sunday; or	
(ii)	Anzac Day; or	
(b)	on—	
(i)	Christmas Day; or	15
(ii)	Good Friday; or	
(iii)	Easter Sunday.	
(2)	A radio broadcaster may not broadcast election programmes on—	
(a)	Christmas Day; or	
(b)	Good Friday; or	20
(c)	Easter Sunday.	
	Compare: 1989 No 25 s 79A	
72	Obligation to give identical terms to each party or constituency candidate	
(1)	A broadcaster may not offer or give to any party terms for broadcasting time that are more favourable than those offered or given to any other party that buys, or expresses an interest in buying, comparable time from that broadcaster.	25
(2)	A broadcaster may not offer or give to any constituency candidate terms for broadcasting time that are more favourable than those offered or given to any other constituency candidate who buys, or expresses an interest in buying, comparable time from that broadcaster.	30
	Compare: 1989 No 25 s 79B	
73	Programme standards in relation to election programmes	
	Section 4(1)(d) does not apply in relation to an election programme broadcast under this Part.	35
	Compare: 1989 No 25 s 79	

*Funding for election programmes and election advertisements in relation to
general election*

- 74 Public money to be appropriated for funding election programmes and election advertising in relation to general election**
- (1) In relation to each general election, the Minister of Justice must give notice to the Electoral Commission of the amount of money appropriated by Parliament for the purpose of enabling parties to fund—
- (a) all of the broadcasting costs incurred in relation to the broadcast of party election programmes; and
 - (b) all or part of the broadcasting costs incurred in relation to the broadcast of candidate election programmes; and
 - (c) all or part of the production costs, whenever incurred, in relation to—
 - (i) party election programmes; and
 - (ii) candidate election programmes; and
 - (d) all or part of the publishing costs incurred in relation to the publication of election advertisements on the Internet during the election period; and
 - (e) all or part of production costs, whenever incurred, in relation to election advertisements published on the Internet—
 - (i) during the election period; or
 - (ii) before and during the election period.
- (2) The Electoral Commission must decide how the amount in **subsection (1)** is to be allocated to parties.
- (3) For a general election that takes place after 2017 (a **subsequent general election**), an amount of money equal to the amount of public money allocated under **section 79** at the immediately preceding general election must, unless an Act of Parliament expressly provides otherwise, be deemed to have been appropriated by Parliament for the purposes of enabling parties to fund the costs specified in **subsection (1)** incurred in relation to the subsequent general election.
- (4) An amount of money deemed by **subsection (3)** to have been appropriated by Parliament for the purposes specified in that subsection is payable out of public money for those purposes without further appropriation than this section.
- Compare: 1989 No 25 ss 74, 74A(1)
- 75 Electoral Commission to set date for parties to notify qualification for allocation**
- (1) In every year in which Parliament is due to expire, the Electoral Commission must specify, by notice in the *Gazette*, a date by which a party must notify the Electoral Commission that it considers itself qualified to receive an allocation of the money referred to in **section 74**.

- (2) The date specified under **subsection (1)** may be a date before the beginning of the election period that will apply in relation to the general election to be held in that year.

Compare: 1989 No 25 s 70A(1), (2)

76 Parties to give notice of qualification 5

- (1) A party that considers it will be qualified under **section 78(1)(b)** to receive an allocation of the money referred to in **section 74** must provide to the Electoral Commission a notice of qualification.

- (2) A notice must— 10
- (a) be in writing; and
 - (b) be provided to the Electoral Commission no later than the date specified under **section 75(1)**.

- (3) A notice must include—
- (a) the full name of the party; and
 - (b) the contact details of the person providing the notice and the capacity in which he or she provides the notice; and 15
 - (c) the contact details of the secretary of the party, if the secretary is not providing the notice; and
 - (d) a statement that— 20
 - (i) the party is registered on the Register of Political Parties; or
 - (ii) the party has applied for registration on the Register of Political Parties; or
 - (iii) the party intends to apply for registration on the Register of Political Parties so as to be registered on that register at the date of dissolution or expiry of Parliament; and 25
 - (e) details of any relationships that may exist between the party and any other party in New Zealand that the Electoral Commission may need to take into account in allocating money to political parties; and
 - (f) whether the party intends to submit a list under section 127 of the Electoral Act 1993 for the general election to be held in that year. 30

Compare: 1989 No 25 ss 70A(3), 70B, 70C

77 Consultation with parties

- (1) Before making any allocation of the money referred to in **section 74**, the Electoral Commission must give to every party that has provided a notice under **section 76** the opportunity to— 35
- (a) meet with the Electoral Commission; and
 - (b) be heard by the Electoral Commission.

- (2) The failure of a party to make use of an opportunity afforded under **subsection (1)**, or to comply with any request of the Electoral Commission, does not—
- (a) prevent the Electoral Commission from making an allocation of money; or
 - (b) affect the validity of any allocation of money made, or not made, to a party.
- Compare: 1989 No 25 s 76
- 78 Criteria for allocating money to party**
- (1) A party may only receive an allocation of the money referred to in **section 74** if the party—
- (a) has provided to the Electoral Commission a notice in accordance with **section 76**; and
 - (b) was registered on the Register of Political Parties at the time of the dissolution or expiry of Parliament.
- (2) In allocating money to a party, the Electoral Commission must 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 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 party; and
 - (c) the number of members of Parliament who were members of that party immediately before the dissolution or expiration of Parliament; and
 - (d) any relationships that exist between a party and any other party; and
 - (e) any other indications of public support for that party, such as the results of public opinion polls and the number of persons who are members of that party; and
 - (f) the need to provide a fair opportunity for each party to which **subsection (1)** applies to convey its policies to the public by the broadcasting of election programmes on television.
- Compare: 1989 No 25 s 75(1), (2)
- 79 Allocation decision**
- (1) The Electoral Commission's decision on how the money referred to in **section 74** is to be allocated to parties—
- (a) must set out the allocations (which must be in any proportions that the Electoral Commission thinks fit); and
 - (b) may include conditions as to the manner in which a party is to spend its allocation.

- (2) An allocation may be made to a group of related parties.
- (3) An allocation may not be made to an individual party if that party is to receive an allocation as part of a group of related parties.
- (4) A condition included in a decision under **subsection (1)(b)** may require a party to advise the Electoral Commission of the value of election programme bookings made by the party. 5
- (5) If the Electoral Commission decides to allocate money to a party, the Electoral Commission must give a copy of its decision to—
- (a) the party secretary; and
- (b) the Secretary for Justice. 10
- (6) A decision under this section may be made—
- (a) before the beginning of the relevant election period; or
- (b) during the relevant election period.
- Compare: 1989 No 25 ss 74A(2)–(5), 75(3)
- 80 Electoral Commission may vary allocation 15**
- (1) The Electoral Commission may vary a decision made under **section 79** if a party to which an amount of money is allocated—
- (a) does not accept that allocation; or
- (b) ceases to be registered; or
- (c) fails to submit a list of candidates for election under section 127 of the Electoral Act 1993; or 20
- (d) fails to comply with any conditions imposed by the Electoral Commission under **section 79(1)(b)**.
- (2) The Electoral Commission may also vary a decision made under **section 79** if there has been a significant change in the relationship between a party that has received an allocation of money and any other party. 25
- (3) The Electoral Commission may vary a decision made under **section 79** without affording to any party the opportunity to—
- (a) meet with the Electoral Commission; or
- (b) comment on the proposed variation. 30
- (4) In varying a decision made under **section 79**, the Electoral Commission must have regard to—
- (a) the views of parties received in the course of consultations undertaken in accordance with **section 77**; and
- (b) the matters specified in **sections 78 and 79(3)**. 35
- (5) If an allocation of money made to a party has been spent (in whole or in part), the Electoral Commission must not vary that allocation unless—

<ul style="list-style-type: none"> (a) the registration of the party is cancelled under section 70 of the Electoral Act 1993; or (b) the party secretary has failed to submit a list of candidates for election under section 127 of the Electoral Act 1993. <p>Compare: 1989 No 25 s 76A</p>	5
80A How allocation may be used	
<ul style="list-style-type: none"> (1) A party or group of related parties that receives an allocation under section 79(1)(a)— <ul style="list-style-type: none"> (a) may only use that money for the purposes specified in section 74(1); and (b) must comply with any conditions imposed under section 79(1)(b). (2) Nothing in this Part restricts the amount of money that a party or group of related parties may spend on— <ul style="list-style-type: none"> (a) broadcasting costs in relation to candidate election programmes; or (b) publication costs in relation to election advertisements; or (c) production costs in relation to— <ul style="list-style-type: none"> (i) party election programmes; or (ii) candidate election programmes; or (iii) election advertisements. <p>Compare: 1989 No 25 ss 70(2A), 74B(1)</p>	10
80B Payment of allocation	
<ul style="list-style-type: none"> (1) A party to which an amount of money is allocated under section 79 must ensure that the Electoral Commission receives, no later than 50 working days after the end of the month in which the election was held,— <ul style="list-style-type: none"> (a) all accounts issued to the party in respect of the expenditure by that party of its allocation; and (b) any information in relation to those accounts that the Electoral Commission requires. (2) No account that the Electoral Commission receives from a party after the end of the period specified in subsection (1) may be paid by the Electoral Commission, either in part or in full, from the amount of money allocated to that party under section 79. (3) When the Electoral Commission is satisfied that any account or a part of any account should be paid, the Electoral Commission must, from the money it received under section 74(1), pay to the person who issued the account the amount approved by the Electoral Commission for payment. 	25
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(4)	An amount of money that has been allocated to a party under section 79 and that is not paid out under subsection (3) must be repaid by the Electoral Commission to the Crown. Compare: 1989 No 25 s 74B(2)–(5)	
80C	Apportionment of publishing costs incurred in relation to election advertisements published both before and during election period	5
(1)	This section applies if an election advertisement is published for a party on the Internet both before the commencement of the election period and during the election period.	
(2)	If this section applies, only the publishing costs attributable to the publication of the election advertisement during the election period are payable from money allocated under section 79 .	10
80D	Recovery of money from party	
(1)	Where effect has been given in whole or in part to an allocation made under section 79 and the Electoral Commission, acting under section 80 , varies that allocation, the Electoral Commission may determine that all or part of the money paid on behalf of a party as a result of that allocation be repaid to the Crown by the party.	15
(2)	Where the Electoral Commission makes a determination under subsection (1) ,—	20
(a)	the Electoral Commission must give a copy of that determination to both the party secretary and the Secretary for Justice; and	
(b)	the Secretary for Justice may recover from the party as a debt due to the Crown the amount specified in the determination as being repayable to the Crown by the party.	25
	Compare: 1989 No 25 s 76B	
80E	Procedure in relation to early elections	
(1)	This section applies if, at the time Parliament is dissolved or expires,—	
(a)	the Electoral Commission has not specified a date under section 75 in respect of the election period that will apply in relation to the next general election; or	30
(b)	the Electoral Commission has specified such a date, but that date has not yet passed.	
(2)	If this section applies, this Part applies subject to the modifications specified in section 80F .	35
	Compare: 1989 No 25 s 76C	
80F	Modification to application of this Part if section 80C applies If section 80E applies,—	

- (a) **section 75(1)** applies as if the words “In every year in which Parliament is due to expire” were replaced with “At the earliest available opportunity”; and
- (b) **section 76(3)** applies as if **paragraph (d)** were replaced with the words “a statement that the party was registered on the Register of Political Parties at the time of the dissolution or expiry of Parliament (as the case may be); and”; and
- (c) the Electoral Commission may set, for the consultation required under **section 77**, any time that is reasonable in the circumstances.

Compare: 1989 No 25 s 76D

Offences

80G Offences relating to broadcasting

A person commits an offence and is liable on conviction to a fine not exceeding \$100,000 if the person—

- (a) fails to comply with—
- (i) **section 70**; or
 - (ii) **section 71**; or
 - (iii) **section 72**; or
- (b) in an election period, arranges for the broadcasting of an election programme contrary to **section 70**.

Compare: 1989 No 25 s 80

Part 2

Consequential amendments to Electoral Act 1993

5 Principal Act

This **Part** amends the Electoral Act 1993 (the **principal Act**).

6 Section 5 amended (Functions)

In section 5(b), replace “parliamentary election programmes” with “electoral broadcasting”.

7 Section 206 amended (Interpretation)

In section 206(1), definition of **election expenses**, replace paragraph (c) with:

- (c) excludes the costs referred to in **section 74(1)** of the Broadcasting Act 1989 that are paid by the Electoral Commission out of money allocated to the party under **section 79** of that Act.

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Wellington, New Zealand:

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