

# **Fair Digital News Bargaining Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

The Bill's purpose is to enable fair bargaining between New Zealand news media entities and operators of digital platforms to support commercial arrangements for news content.

The Bill establishes equitable treatment for all news media entities (including smaller, rural, regional, Māori, ethnic, community, and public news media entities) by creating a good-faith bargaining environment.

The Bill supports a free and independent news media industry by providing a way for news media entities to be viable in a digital marketplace.

### **Background**

There has been a shift in the way that people consume news and media content. News media is now accessed via online digital platforms. The shift has undermined the viability of traditional media business models.

Online digital platforms aggregate and display news content to attract attention to their sites, and make money through advertising and other services, but do not effectively share that monetisation with the people who create the news content. Attempts by news media entities to bargain for the value of their news content are often unsuccessful.

It is not desirable for the Government to continue funding the news media industry directly, because it increases risks of eroding public trust in the media. However, some intervention is necessary to create an even playing field for the industry and support the ongoing production of New Zealand news content.

High-quality news content supports democracy, counters misinformation, and enhances social cohesion and ultimately the well-being of New Zealanders by providing trustworthy information.

Supporting the efforts of New Zealand news media entities to secure revenue for the use of their content online will provide a critical revenue stream and mean that the sector will not be reliant on government funding in the future.

Government funding is not required if news media entities are empowered to bargain for the value of their news content. Accordingly, commercial bargaining will better maintain trusted, independent news media, as well as ensuring the financial sustainability of the industry in a digital environment.

### **Objectives of Bill**

This Bill ensures fair revenue sharing between operators of digital platforms and news media entities by—

- creating a fair bargaining environment through a bargaining code that will be established by the independent regulator and operate as secondary legislation; and
- requiring bargaining parties to comply with the bargaining code and to bargain in good faith, as well as requiring parties registered under the legislation to participate in the bargaining process; and
- promoting voluntary commercial agreements between operators of digital platforms and news media entities, with minimal government intervention; and
- where agreement cannot be reached, creating a stepped bargaining process to facilitate fair and equitable outcomes; and
- providing for collective bargaining by news media entities; and
- establishing civil penalties for non-compliance with the legislation.

This Bill aims to—

- support news media entities to maximise the benefits they receive from the content they create that is aggregated and displayed on digital platforms; and
- ensure that implementation of its provisions will impose a minimal financial cost and compliance burden on the affected parties and government; and
- create equitable treatment and support for New Zealand's diverse news media industry, including smaller, rural, regional, and ethnic news media entities, and, specifically, Māori news media entities; and
- support a free and independent news media industry by enabling media companies to be viable in a digital marketplace.

### **Broadcasting Standards Authority will be independent regulator**

This Bill appoints the Broadcasting Standards Authority (the **Authority**) as the independent regulator to oversee the bargaining environment established by the Bill and monitor parties' compliance with the duties and responsibility established by the Bill. To give the Authority time to prepare to fulfil the proposed new statutory responsibilities, the Bill provides for commencement of its bargaining process provisions on a date or dates appointed by Order in Council, with a backstop date of 1 July 2025.

### Departmental disclosure statement

The Ministry for Culture and Heritage 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=2023&no=278>

### Regulatory impact statement

The Ministry for Culture and Heritage produced a regulatory impact statement on 17 August 2022 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <https://mch.govt.nz/sites/default/files/projects/cab-rel-online-news-151222.pdf>
- <https://treasury.govt.nz/publications/informationreleases/ris>

### Clause by clause analysis

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause. Most of the Bill comes into force on 1 July 2024.

However, the provisions that allow registered news media entities to initiate compulsory news content bargaining under the Bill come into force on a date or dates appointed by Order in Council. This provides time for the Broadcasting Standards Authority (the **Authority**) to issue a bargaining code and make other arrangements to set up the bargaining process. News media entities and operators can continue to engage in voluntary news content bargaining during that period.

If the bargaining process provisions are not commenced by Order in Council, they come into force on 1 July 2025.

## Part 1

### Preliminary provisions

#### Subpart 1—Purpose

*Clause 3* sets out the purpose of the Bill. The purpose is to support sustainable production of New Zealand news content by ensuring that operators of digital platforms make a fair contribution to the cost of producing news content that is made available by their digital platforms.

The Bill achieves that purpose by—

- incentivising operators to enter into news content agreements and other arrangements that contribute to sustainable production of New Zealand news content; and
- facilitating fair bargaining between news media entities and operators about the terms on which news content produced by the entities may be made available by the operators digital platforms; and
- where necessary, imposing news content agreements that require operators to fairly compensate news media entities for that news content through binding arbitration.

### Subpart 2—Interpretation

*Clause 4* defines terms used in the Bill. Some key terms, including news content, news media entity, and operator, are defined in *clauses 5 to 10*.

*Clause 9* allows the Authority to designate 1 or more of the operators of a digital platform as the operator or operators responsible for the digital platform for the purposes of the Bill if satisfied this would promote the purpose of the Bill. The Authority can also designate an interconnected body corporate of an operator as responsible for the digital platform on the same basis.

*Clause 10* defines the circumstances in which a digital platform will be considered to have made news content available for the purposes of the Bill. They include, for example, when any part of the content is reproduced on the digital platform or when the digital platform facilitates access to the content by linking to it.

### Subpart 3—Other preliminary matters

*Clause 11* sets out how the Bill applies to an operator of a digital platform that is incorporated outside New Zealand.

*Clause 12* indicates that the transitional, savings and related provisions (if any) are set out in *Schedule 1*.

*Clause 13* provides that the Bill binds the Crown.

## Part 2

### Registered News media entities and operators

*Part 2*—

- provides for news media entities to be registered to participate in the bargaining process;
- provides for operators of digital platforms to be registered as subject to the bargaining process;
- imposes duties on news media entities and operators (whether registered or not) to—

- comply with the bargaining code issued by the Authority under *clause 112*;
- bargain in good faith when engaging in news content bargaining.

### Subpart 1—Registered news media entities

*Clause 14* provides for news media entities to apply to the Authority for registration to participate in the bargaining process.

*Clause 15* sets out the criteria an applicant must satisfy to be registered to participate in the bargaining process. The Authority must register an applicant as a registered news media entity if the Authority is satisfied that—

- the applicant is a news media entity; and
- the news content the applicant produces is predominantly directed at a New Zealand audience.

The criteria a person must satisfy to be a news media entity are set out in *clause 6*. To be a news media entity, a person must be in the business of producing news content and be subject to oversight by a recognised regulatory body or a standards code in respect of the content.

*Clause 16* prohibits the Authority from registering a news media entity in specified circumstances.

*Clause 17* requires the Authority to keep and maintain a register of registered news media entities.

*Clause 18* provides for the Authority to cancel a news media entity's registration in specified circumstances.

*Clause 19* specifies how cancellation of a news media entity's registration affects a bargaining process the news media entity is a party to.

### Subpart 2—Registered operators

*Clause 20* provides for registration of operators as subject to the bargaining process. An operator may be registered on application by 1 or more news media entities or on the Authority's own initiative if the Authority considers that would promote the purpose of the Act.

*Clause 21* provides for news media entities to apply to the Authority for registration of an operator.

*Clauses 22 and 23* set out the test the Authority must apply to determine whether an operator should be registered as required to participate in the bargaining process with—

- 1 or more registered news media entities; or
- every registered news media entity.

The Authority may only register an operator in respect of a news media entity if, in the Authority's opinion,—

- the operator’s digital platform makes the news media entity’s news content available; and
- there is a bargaining power imbalance between the operator and the news media entity that favours the operator and is more than minor or insignificant.

However, the Authority may register the operator in respect of all registered news media entities (current and future) if, in the Authority’s opinion,—

- the registration conditions are met in respect of all the registered news media entities whose news content is made available by the operator’s digital platform; and
- it is reasonable to infer that the registration conditions would be met in respect of all other news media entities if they were registered and their content was made available.

*Clause 24* specifies procedural requirements for decisions about registering an operator.

*Clause 25* requires the Authority to keep and maintain a register of registered operators.

### Subpart 3—Duties of people engaging in news content bargaining

*Subpart 3* imposes duties on operators and news media entities engaging in news content bargaining. News content bargaining includes the bargaining process under the Bill and bargaining engaged in voluntarily without initiating the bargaining process.

*Clause 26* requires news media entities and operators to comply with the bargaining code.

The bargaining code is issued by the Authority under *clause 112*. The purpose of the bargaining code is to facilitate fair and efficient news content bargaining. A person who contravenes the bargaining code is liable to a civil liability remedy.

*Clause 27* requires news media entities and operators engaging in news content bargaining to do so in good faith. A person who contravenes the requirement is liable to a civil liability remedy.

## Part 3 Bargaining process

*Part 3* provides for the mandatory bargaining process and exemptions from the bargaining process. The bargaining process has 3 stages, as follows:

- negotiation:
- mediation:
- final offer arbitration.

## Subpart 1—General

*Clauses 28 to 30* set out the matters that may be dealt with through the bargaining process and confirm, for the avoidance of doubt, that the bargaining process does not override existing news content agreements or other contractual arrangements.

The bargaining process is limited to matters that relate to a registered operator's digital platform making available news content produced by a registered news media entity and cannot be used to renegotiate the terms on which news content is made available under an existing agreement. However, the parties can agree to expand the scope of the negotiation and mediation stages of the bargaining process to cover any matter relating to news content produced by the news media entity party.

The final offer arbitration stage of the bargaining process is further limited to the matters that may be included in a final offer (*see clause 45*).

The parties to a bargaining process cannot expand the scope of the final offer arbitration stage by agreement.

*Clause 31* requires the parties to a bargaining process to participate in the bargaining process. A person who contravenes this requirement is liable to a civil liability remedy.

*Clause 32* provides for initiation of the bargaining process by a registered news media entity or a group of news media entities bargaining collectively.

## Subpart 2—Negotiation

*Clauses 33 and 34* require the parties to a bargaining process to engage in negotiations, set out when the negotiation period starts and ends, and specify the circumstances in which the bargaining process will end at the negotiation stage.

## Subpart 3—Mediation

If the parties are unable to reach agreement within the negotiation period, the bargaining process moves from negotiation to mediation.

*Clauses 35 and 39* require the parties to a bargaining process to engage in mediation, set out when the mediation period starts and ends, and specify the circumstances in which the bargaining process will end at the mediation stage.

*Clauses 36 and 37* provide for appointment of a mediator and require the parties to enter into a procedure agreement with the mediator.

*Clause 38* specifies how costs and expenses incurred in relation to mediation are apportioned between the parties.

## Subpart 4—Final offer arbitration

### *Commencement*

If the parties are unable to reach agreement within the mediation period, the bargaining process moves from mediation to binding final offer arbitration.

*Clause 40* sets out when final offer arbitration commences.

#### *General rules of conduct*

*Clause 41* sets out general requirements relating to how final offer arbitration must be conducted and specifies how the Arbitration Act 1996 applies to final offer arbitration under the Bill.

#### *Arbitration panel*

*Clauses 42 to 44* require final offer arbitration to be conducted by a panel of 3 approved arbitrators and provide for arbitrators to be appointed to and removed from the panel.

#### *Submission of final offers by parties*

*Clause 45* requires the parties to submit final offers and specifies what a final offer must contain.

A final offer must offer an agreement that,—

- unless otherwise agreed by the parties, is for a term of up to 5 years; and
- requires the operator to pay a monetary amount to each news media entity as consideration for the operator's digital platform making the news content produced by the entity available in 1 or more specified ways during the term of the agreement; and
- includes any mandatory terms prescribed in regulations; and
- does not include terms other than those that are necessary for these purposes or that are otherwise permitted to be included in a final offer by regulations.

*Clauses 46 to 48* specify what happens when a party fails to submit a final offer and provide for exchange, amendment, and withdrawal of final offers.

#### *Selection of final offer by arbitration panel*

*Clause 49* provides that the arbitration panel determines a final offer arbitration by selecting the final offer of one of the parties.

The arbitration panel must select a final offer that, in its opinion, fairly compensates the news media entity party for its news content being made available by the operator's digital platform on the terms provided for in the offer.

However, the panel must not select an offer that, in its opinion,—

- is likely to have a serious adverse effect on people in New Zealand's access to New Zealand news content or production of news content for a New Zealand audience; or
- is otherwise inconsistent with the purpose of the Bill.

If both offers fairly compensate the news media entity party, the panel must select the offer that, in its opinion, better supports sustainable production of New Zealand news content.



*Clause 50* sets out the matters an arbitration panel must have regard to when deciding whether to select a final offer.

*Clause 51* specifies what happens if an arbitration panel is unable to select a final offer.

#### *Form, content, and status of panel's decision*

*Clauses 52 and 53* specify matters relating to the form and content of the arbitration panel's decision and the status of the final offer selected by the arbitration panel.

#### *Costs and expenses*

*Clause 54* specifies how costs and expenses incurred in relation to final offer arbitration are apportioned between the parties.

#### *Authority may provide administrative and technical assistance*

*Clause 55* provides that the Authority may provide an arbitration panel with administrative support and impartial assistance in relation to technical matters.

### Subpart 5—Exemptions from bargaining process

*Clause 56* provides that the Authority may exempt an operator of a digital platform from the bargaining process under the Bill. *Clause 61* provides that registered news media entities cannot initiate bargaining with an operator who is exempt from the bargaining process and that any bargaining process involving the operator terminates when an exemption is granted. However, the Authority can provide for exceptions to those general rules in the terms and conditions of a specific exemption.

The Authority may exempt an operator from the bargaining process if, in the Authority's opinion,—

- the operator already makes a fair contribution to sustainable production of New Zealand news content; and
- the exemption is necessary or desirable to promote the purpose of the Bill; and
- the exemption is not broader than reasonably necessary to achieve its purpose.

*Clauses 57 to 60* specify the procedure relating to applications for exemptions and provide that the term of an exemption may not exceed 5 years.

*Clause 62* requires an operator that holds an exemption to comply with the terms and conditions of its exemption. A person who contravenes this requirement is liable to a civil liability remedy.

*Clause 63* specifies the circumstances in which the Authority may vary or revoke an exemption.

*Clause 64* requires the Authority to maintain a public register of the exemptions it has granted.

## Subpart 6—Miscellaneous

### *Parties must give Authority copy of agreement*

*Clause 65* provides that if the parties to a bargaining process enter into a news content agreement they must give the Authority a copy of the agreement.

### *Approval of mediators and arbitrators*

*Clause 66* allows the Authority to approve people to perform the role of a mediator or an arbitrator under the Bill and requires the Authority to maintain a list of the approved people on its Internet site.

## Part 4

### Information gathering

#### Subpart 1—General information-gathering powers

*Clause 67* provides that the Authority, if it considers it necessary or desirable for the purposes of performing or exercising any of its functions, powers, or duties under the Bill, to require a person to—

- supply information or documents:
- reproduce, or assist in reproducing, in a usable form, information stored in any document:
- appear before the Authority, or a member, employee, or delegate of the Authority, to give evidence and produce documents.

*Clauses 68 to 70* provide for—

- the powers of the Authority to receive evidence (whether or not it is admissible in a court of law):
- how evidence may be received (for example, on oath or by written statement):
- witnesses' expenses.

#### Subpart 2—Sharing information and documents

### *Power to share information and documents with other law enforcement or regulatory agencies and overseas regulators*

*Clause 71* allows the Authority to provide information and documents to a law enforcement or regulatory agency or an overseas regulator if it considers the information or documents may assist the agency or regulator to perform its functions. It also allows the Authority to use information and documents given to it by a law enforcement or regulatory agency or an overseas regulator.

### *Power to act on requests of overseas regulators*

*Clauses 72 and 73* allow an overseas regulator to request that the Authority inquire into matters that relate to the overseas regulator's functions. The Authority may exercise its information-gathering powers to help it comply with the request. The Authority will only comply with a request if it is satisfied that—

- compliance will not have a substantial negative effect on the performance of its other functions; and
- appropriate protections are or will be in place to maintain the confidentiality of anything provided (in particular, personal information); and
- it is otherwise appropriate in the circumstances.

### *Conditions*

*Clause 74* allows the Authority to impose conditions on information or documents it provides to a law enforcement or regulatory agency or an overseas regulator (for example, to maintain the confidentiality of anything provided).

## Subpart 3—Miscellaneous provisions relating to information-gathering powers

### *Authority may authorise person to obtain information or documents*

*Clauses 75 and 76* allow the Authority to authorise a suitably qualified or trained person to exercise information-gathering powers for the purposes of the Bill or in order to comply with the request of an overseas regulator under *clause 72*.

*Clause 77* restricts disclosure of information or documents obtained by an authorised person under *clause 67* and specifies the circumstances in which that material may be disclosed by an authorised person (for example, where disclosure is directed by the Authority).

*Clause 78* protects an authorised person from liability when exercising their powers under *clauses 67 and 77* unless the person acts in bad faith.

### *Privileges*

*Clause 79* provides that a person has the same privileges in relation to providing information and documents and answering questions as witnesses have in proceedings before a court.

### *Effect of proceedings on exercise of power*

*Clause 80* provides that the information-gathering powers may continue to be exercised despite the fact that proceedings have been commenced in a court in respect of the exercise of those powers.

*Clause 81* provides for the effect of a final decision that the exercise of those powers is unlawful.

### *Confidentiality*

*Clause 82* restricts publication and disclosure of information and documents supplied, disclosed to, or obtained by the Authority or an authorised person. It also specifies the circumstances in which that material may be disclosed.

*Clause 83* allows the Authority to impose conditions on information or documents disclosed or published under *clause 82* in specified circumstances.

## **Part 5 Enforcement**

### Subpart 1—Power to accept undertakings

*Clauses 84 to 86* allow the Authority to accept undertakings in connection with a matter relating to the enforcement of the Bill. Those undertakings are enforceable in the High Court. For example, the High Court can order a person who breaches an undertaking to—

- pay to the Crown an amount up to the amount of any financial benefit obtained that is reasonably attributable to the breach;
- pay compensation to any person who has suffered loss or damage as a result of the breach.

### Subpart 2—Power to issue corrective notices

*Clauses 87 to 89* allow the Authority to issue corrective notices. A notice may be given to a person who has contravened, is likely to contravene, has attempted to contravene, or has been involved in a contravention of various provisions of the Bill (civil liability provisions as defined in *clause 94*).

The Authority may require the person to take reasonable steps to—

- avoid, remedy, or mitigate any adverse effects of a contravention or possible contravention; or
- ensure that a contravention is not continued or repeated or does not occur.

If the person fails to comply with the corrective notice, a court may order them to pay a pecuniary penalty under *clause 95*.

### Subpart 3—Power to require warning to be disclosed

*Clauses 90 to 93* apply if the Authority has issued a warning about any matter to a news media entity or operator of a digital platform.

They allow the Authority to issue a disclosure notice requiring the entity or operator to—

- prominently disclose the warning on its Internet site; or
- ensure that specified communications contain the warning.

If the person fails to comply with the disclosure notice, a court may order them to pay a pecuniary penalty under *clause 95*.

The Authority must publish the disclosure notice (with its reasons) and may notify other persons of the warning.

### Subpart 4—Civil liability

*Subpart 4 of Part 5* provides for the following civil liability remedies:

- pecuniary penalty orders:
- injunctions.

Those remedies are available for contraventions of civil liability provisions. Those provisions impose substantive duties under the Bill, including duties—

- to comply with the bargaining code:
- to bargain in good faith:
- to participate in the bargaining process:
- to comply with the terms and conditions of an exemption from the bargaining process:
- to comply with corrective notices and disclosure notices.

### *Pecuniary penalty orders*

*Clauses 95 to 99* provide for the High Court to impose a pecuniary penalty against a person who has contravened a civil liability provision, attempted a contravention, or been involved in a contravention. There are 3 tiers of penalties.

Tier 1 has maximum penalties of \$500,000 for an individual or \$10 million for a body corporate (or a higher amount based on 3 times the commercial gain from a contravention or 10% of turnover). Tier 1 covers—

- contraventions of the duty to participate in the bargaining process:
- contraventions of the terms and conditions of an exemption from the bargaining process.

Tier 2 has maximum penalties of \$200,000 for an individual or \$3 million for a body corporate (or a higher amount based on the commercial gain from a contravention or 3% of turnover). Tier 2 covers—

- contraventions of the bargaining code:
- contraventions of the duty to bargain in good faith:
- contraventions of certain terms and conditions imposed on an exemption from specified provisions of the Commerce Act 1986 under *subpart 2 of Part 6*.

Tier 3 has maximum penalties of \$30,000 for an individual or \$300,000 for a body corporate. Tier 3 covers—

- contraventions of the requirement to give the Authority a copy of a news content agreement entered into through the bargaining process:

- contraventions of corrective notices and disclosure notices.

In determining an appropriate pecuniary penalty, the court must have regard to all relevant matters, for example, the nature and extent of the relevant conduct and the loss or damage caused by that conduct.

### *Injunctions*

*Clauses 100 to 103* provide for the court to grant injunctions that—

- restrain a person from contravening a civil liability provision; or
- require a person to do something in order to ensure that they comply with a civil liability provision.

### *Rules of procedure*

*Clause 104* provides for the rules of civil procedure and evidence to apply (including proof to the balance of probabilities standard).

*Clause 105* requires a proceeding under *subpart 4* to be commenced within 3 years after the relevant conduct was discovered or ought reasonably to have been discovered.

### *Relationship between proceedings and orders*

*Clauses 106 to 108* provide that a person may not be liable to—

- more than 1 pecuniary penalty order for the same conduct; or
- both a pecuniary penalty and a criminal penalty for the same conduct.

### Subpart 5—Miscellaneous provisions relating to enforcement

*Clause 109* provides for the jurisdiction of the High Court.

*Clause 110* defines when a person is involved in a contravention. This includes where a person has aided, abetted, counselled, procured, or induced a contravention or has been in any way, directly or indirectly, knowingly concerned in, or party to, a contravention.

### Subpart 6—Offences

*Clause 111* provides for various offences relating to compliance with the Authority's information-gathering powers and misleading or deceiving the Authority. The penalty for an offence under that clause is a fine not exceeding \$500,000 for an individual and \$10 million for any other person.

## **Part 6 Miscellaneous**

*Part 6*—

- requires the Authority to issue a bargaining code:

- provides for exemptions from section 27 and aspects of sections 30 and 30C(1) of the Commerce Act 1986 to enable registered news media entities to engage in collective bargaining:
- provides for other matters, including—
  - the Authority’s functions:
  - approval of standards codes by the Authority:
  - the Authority’s reporting obligations:
  - powers to make regulations and specify how things must be done.

### Subpart 1—Bargaining code

*Clause 112* requires the Authority to issue a bargaining code and specifies what the Authority must do before it issues the code.

*Clause 113* sets out the purpose of the bargaining code. The purpose is to facilitate fair and efficient news content bargaining.

*Clause 114* provides that the bargaining code may contain any provisions that are necessary or desirable to promote the purpose of the code. They include—

- provisions specifying how the bargaining process must be conducted:
- provisions imposing obligations on registered news media entities and registered operators engaged in news content bargaining outside of the bargaining process:
- provisions prescribing more detailed requirements relating to the good-faith obligations of parties to news content bargaining.

It also provides that the bargaining code must include any provisions the Authority considers necessary to ensure that news media entities and operators—

- have access to the information they need to engage in fair and efficient news content bargaining:
- engage in news content bargaining in a way that respects the cultural and ethnic background of the people participating in the process.

### Subpart 2—Exemption from specified provision of Commerce Act 1986 for collective bargaining

*Subpart 2 of Part 6* exempts registered news media entities from section 27 of the Commerce Act 1986 and from sections 30 and 30C(1) of that Act to the extent that they apply to price fixing. (Sections 27 and 30 of the Commerce Act 1986 prohibit contracts, arrangements, and understandings that substantially lessen competition in a market or contain a cartel provision as defined in section 30A of that Act. Section 30C(1) of that Act provides that cartel provisions are unenforceable subject to certain exceptions).

The exemption applies in specified circumstances.

The purpose of the exemption is to enable news media entities to engage in collective bargaining with a registered operator.

*Clause 115* defines collective bargaining and collective bargaining agreement for the purposes of *subpart 2* as follows:

- collective bargaining must—
  - be between 2 or more registered news media entities and a registered operator; and
  - be in respect of matters relating to the operator’s digital platform making available news content produced by those news media entities:
- a collective bargaining agreement is an agreement between 2 more registered news media entities to engage in collective bargaining.

*Clause 116* provides that the specified provisions of the Commerce Act 1986 do not apply to things done by a registered news media entity for the purposes of entering into a collective bargaining agreement or engaging in collective bargaining if specified criteria are met.

The criteria are that—

- the collective bargaining agreement—
  - does not contain a prohibited provision; and
  - is recorded in writing; and
  - is notified to the Authority before it is entered into in accordance with *clause 121*; and
- the registered news media entities participating in collective bargaining comply with—
  - the terms of their collective bargaining agreement; and
  - any terms and conditions imposed by the Authority; and
  - any direction not to enter into, or engage in collective bargaining under, a collective bargaining agreement.

*Clause 117* specifies provisions of collective bargaining agreements that are prohibited provisions. It also provides for additional types of prohibited provisions to be specified in regulations.

*Clauses 118 and 119* allow the Authority to impose terms and conditions on registered news media entities in respect of their engagement in collective bargaining.

*Clause 120* allows the Authority to direct a registered news media entity not to enter into, or engage in bargaining under, a specified collective bargaining agreement.

*Clause 121* provides for the Authority to be provided with a copy of a collective bargaining agreement before it is entered into and prohibits the parties from entering into the agreement for 20 working days after the agreement is provided to the Authority (unless authorised to do so by the Authority).



*Clause 122* requires the Authority to maintain a register of collective bargaining agreements.

### Subpart 3—Regulations

*Clauses 123 to 125* provide for regulations to be made for the purposes of the Bill. They include—

- regulations prescribing additional law enforcement and regulatory agencies for the purposes of the definition of law enforcement or regulatory agency (*see clause 4*):
- regulations prescribing additional regulatory bodies for the purposes of the definition of recognised regulatory body (*see clause 4*):
- regulations prescribing additional types of Internet service as digital platforms for the purposes of the definition of digital platform (*see clause 7*):
- regulations prescribing mandatory terms that must be included in a final offer and optional terms that may be included in a final offer (*see clause 45*):
- regulations prescribing how notice may be given or served for the purposes of the Bill (*see clause 134*):
- regulations relating to registers maintained by the Authority under the Bill.

### Subpart 4—Miscellaneous

*Subpart 4 of Part 6* provides for miscellaneous matters, including—

- the Authority's functions:
- the Authority's reporting obligations:
- the Authority's power to approve standards codes:
- the Authority's power to specify how a thing must be done:
- service of notices:
- a requirement that the Minister review the Bill within 5 years of the date on which it comes into force.



*Hon Willie Jackson*

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**Registered news media entities and operators**

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Fair Digital News Bargaining Act **2023**.

**2 Commencement**

- (1) This Act comes into force on **1 July 2024**. 5
- (2) However,—
- (a) **subparts 1 to 4 of Part 3** and **section 65** come into force on a date or dates set by Order in Council; and
- (b) if those provisions have not come into force by **1 July 2025**, they come into force then. 10
- (3) An Order in Council made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

## Part 1 Preliminary provisions

### Subpart 1—Purpose

#### 3 Purpose

- (1) The purpose of this Act is to support sustainable production of New Zealand news content by ensuring that operators of digital platforms make a fair contribution to the cost of producing news content that is made available by their digital platform. 5
- (2) The Act achieves that purpose by—
- (a) incentivising operators to enter into news content agreements and other arrangements that contribute to sustainable production of New Zealand news content; and 10
  - (b) facilitating fair bargaining between news media entities and operators about the terms on which news content produced by the entities may be made available by the operators' digital platforms; and 15
  - (c) where necessary, imposing news content agreements that require operators to fairly compensate news media entities for that news content through binding arbitration.

### Subpart 2—Interpretation

#### *General* 20

#### 4 Interpretation

In this Act, unless the context otherwise requires,—

**approved arbitrator** means a person approved by the Authority to act as an arbitrator under **section 66**

**approved mediator** means a person approved by the Authority to act as a mediator under **section 66** 25

**Authority** means the Broadcasting Standards Authority established by section 20 of the Broadcasting Act 1989

**bargaining code** means the bargaining code set out in secondary legislation made under **section 112** 30

**bargaining process** means the bargaining process under **Part 3** (including the arbitration stage of that process)

**business** means any undertaking that is carried on, whether for gain or reward or not

**Commission** means the Commerce Commission established by section 8 of the Commerce Act 1986 35

- digital platform** has the meaning given in **section 7**
- document** has the meaning given in section 4(1) of the Evidence Act 2006
- interconnected** and **interconnected bodies corporate** have the meanings set out in section 2(7) of the Commerce Act 1986
- involved in a contravention** has the meaning given in **section 110** 5
- law enforcement or regulatory agency** means any of the following:
- (a) any department of State that, with the authority of the Prime Minister, is responsible for the administration of this Act or legislation made under this Act:
  - (b) the Approved Agency appointed under section 7 of the Harmful Digital Communications Act 2015: 10
  - (c) the Commerce Commission:
  - (d) the Department of Internal Affairs:
  - (e) the Financial Markets Authority established by section 6 of the Financial Markets Authority Act 2011: 15
  - (f) the New Zealand Police:
  - (g) the Office of Film and Literature Classification established by section 76 of the Films, Videos, and Publications Classification Act 1993:
  - (h) any other body prescribed as a law enforcement or regulatory agency by regulations for the purposes of this definition 20
- Māori news media entity** means a news media entity that produces news content—
- (a) primarily for a Māori audience; or
  - (b) that primarily relates to Māori issues and events
- news content** has the meaning given in **section 5** 25
- news content agreement** means—
- (a) an agreement between 1 or more news media entities and an operator entered into as a result of negotiation or mediation engaged in as part of the bargaining process; or
  - (b) an arbitration panel’s decision that is treated as a news content agreement under **section 53**; or 30
  - (c) any other agreement between 1 or more news media entities and an operator—
    - (i) that is not entered into as a result of the bargaining process; and
    - (ii) the primary purpose of which is to set the terms on which news content produced by the news media entities may be made available by the operator’s digital platform 35

**news content bargaining**—

- (a) means bargaining between 1 or more news media entities and an operator aimed at agreeing a news content agreement in respect of news content produced by the news media entities; and
- (b) includes negotiation, mediation, and arbitration engaged in as part of the bargaining process under this Act and bargaining engaged in voluntarily without initiating the bargaining process

**news media entity** has the meaning given in **section 6**

**operator** has the meaning given in **section 8**

**overseas operator** has the meaning given in **section 11** 10

**overseas regulator** means a body in another country that performs functions that correspond with, or are similar to, any of those conferred on the Authority under this Act or legislation made under this Act

**party** means, in respect of the bargaining process, any of the following engaged in the process: 15

- (a) a registered news media entity;
- (b) a group of 2 or more registered news media entities collectively bargaining;
- (c) a registered operator

**recognised regulatory body** means any of the following: 20

- (a) the Broadcasting Standards Authority;
- (b) the New Zealand Media Council;
- (c) any other body prescribed as a regulatory body by regulations for the purposes of this definition

**registered news media entity** means a news media entity registered under **section 15** 25

**registered operator** has the meaning given in **section 20(1)**

**regulations** means regulations made under this Act

**responsible operator** has the meaning given in **section 9**

**standards code** means— 30

- (a) a code of broadcasting practice approved under section 21(1)(g) of the Broadcasting Act 1989; or
- (b) a code approved by the Authority under **section 131**.

*Key terms***5 News content** 35

- (1) In this Act, **news content** means any of the following types of content regardless of the form in which it is published:

- (a) news;
- (b) observations on news;
- (c) current affairs.
- (2) For the purposes of **subsection (1)**, news content may relate to matters primarily relevant to— 5
- (a) the general public at a national, regional, or local level; or
- (b) Māori; or
- (c) Pacific and other ethnic communities; or
- (d) communities that share other characteristics (including age, disability, sex, sexual orientation, gender identity, ethical belief, or religious belief); or 10
- (e) people with an interest in specific subject matters (including the arts, sports, science, health, business, or the environment).
- 6 News media entities**
- (1) In this Act, **news media entity** means a person who— 15
- (a) is in the business of producing news content; and
- (b) satisfies the professional standards condition in **subsection (2)**.
- (2) A person **satisfies the professional standards condition** if, in respect of the news content the person produces, the person is subject to—
- (a) oversight by a recognised regulatory body; or 20
- (b) a standards code.
- (3) For the purposes of **subsection (1)**, a person is **in the business of producing news content** if they carry on a business that produces news content—
- (a) on a regular basis; and
- (b) as a significant element of the business (whether or not the business is the person’s only business or the person’s principal business). 25
- 7 Meaning of digital platform**
- (1) In this Act, **digital platform** means—
- (a) a content host, search engine, social media platform, or other similar Internet service that makes news content produced by news media entities available to people in New Zealand; or 30
- (b) any other Internet service prescribed as a digital platform by regulations made for the purposes of this definition.
- (2) In this section,—
- content host** means an Internet service that, at the request of the recipient of the service, stores information electronically and makes information available 35

**search engine** means an Internet service that allows users to search multiple Internet sites or databases and returns results containing information related to the subject matter of the search (including aggregated information and links to content)

**social media platform** means an Internet service that enables users to connect and communicate with each other, share content, and find other users and content. 5

## 8 Meaning of operator

- (1) In this Act, **operator**, in respect of a digital platform,—
- (a) means a body corporate that, directly or indirectly by any means, manages or controls the digital platform’s operations in New Zealand (whether by itself or together with other bodies corporate); and 10
- (b) includes bodies corporate incorporated outside New Zealand that satisfy the criterion in **paragraph (a)**.
- (2) However, if the Authority has designated 1 or more bodies corporate as a responsible operator under **section 9**, the responsible operators are the only operators of the digital platform for the purposes of this Act while the designation is in place. 15

## 9 Power to designate responsible operator

- (1) The Authority may, if satisfied that to do so will promote the purpose of the Act specified in **section 3**, designate 1 or more of the following bodies corporate as an operator responsible for the digital platform for the purposes of this Act (a **responsible operator**): 20
- (a) a body corporate that is an operator of the digital platform under **section 8(1)**: 25
- (b) an interconnected body corporate of an operator of the digital platform under **section 8(1)**.
- (2) Without limiting **subsection (1)**, designating a body corporate as a responsible operator will promote the purpose of this Act if the designation is necessary or desirable to— 30
- (a) provide certainty about who is and is not an operator for the purposes of this Act; or
- (b) ensure that this Act can be effectively enforced in respect of a digital platform.
- (3) The Authority must maintain a list of the Authority’s designations under this section (if any) on its Internet site. 35

## 10 Making news content available

- (1) In this Act, a digital platform makes news content **available** if—

- (a) the news content, or any part of it, is reproduced or otherwise placed on the platform; or
  - (b) the platform facilitates access to the content, or any portion of it, by any means including an index, aggregation, or ranking of news content.
- (2) **Subsection (1)** does not limit the ways a digital platform may make news content available for the purposes of this Act. 5

### Subpart 3—Other preliminary matters

#### 11 Application of Act to operators incorporated outside New Zealand

This Act (including legislation made under this Act) applies to an operator of a digital platform incorporated outside New Zealand (an **overseas operator**) as follows: 10

- (a) an overseas operator may be registered to participate in the bargaining process under **subpart 2 of Part 2** and may be exempt from that process under **subpart 5 of Part 3**:
- (b) an overseas operator— 15
  - (i) is subject to duties imposed on, and other requirements relating to, operators to the extent that those duties and requirements relate to the operator’s digital platform making news content produced by news media entities available to people in New Zealand; and
  - (ii) may be subject to enforcement action under **subparts 1 to 5 of Part 5** in respect of the operator’s involvement in a contravention of those obligations (including when the conduct giving rise to the contravention occurs outside New Zealand); and 20
  - (iii) is bound by news content agreements imposed through final offer arbitration under this Act: 25
- (c) an overseas operator may be required to give information, documents, or evidence under **Part 4**:
- (d) the offences in **section 111** apply to an overseas operator in respect of its conduct in New Zealand.

#### 12 Transitional, savings, and related provisions 30

The transitional, savings, and related provisions (if any) set out in **Schedule 1** have effect according to their terms.

#### 13 Act binds the Crown

This Act binds the Crown.

## Part 2

### Registered news media entities and operators

#### Subpart 1—Registered news media entities

- 14 Application for registration to participate in bargaining process**
- (1) A news media entity may apply to the Authority for registration to participate in the bargaining process. 5
- (2) The application must be made in the manner specified by the Authority (*see section 132*).
- (3) The Authority may refuse to consider the application if the applicant does not make the application in the specified manner. 10
- (4) The Authority may require the applicant to give the Authority additional information to assist the Authority to determine the application.
- 15 Registration decision**
- The Authority must register an applicant if the Authority is satisfied that—
- (a) the applicant is a news media entity; and 15
- (b) the news content the applicant produces is predominantly directed at a New Zealand audience.
- 16 News media entities that must not be registered**
- Despite **section 15**, the Authority must not register an applicant if the applicant— 20
- (a) is banned from participating in the bargaining process as a result of a decision under **section 18(2)**; or
- (b) is a designated terrorist entity within the meaning of the Terrorism Suppression Act 2002; or
- (c) in the opinion of the Authority, provides material support to a designated terrorist entity within the meaning of the Terrorism Suppression Act 2002. 25
- 17 Register of registered news media entities**
- (1) The Authority must keep and maintain a public register of registered news media entities on an Internet site maintained by or on behalf of the Authority. 30
- (2) The register must contain the following information for each registered news media entity:
- (a) the entity's name:
- (b) the entity's contact details:
- (c) when the entity was registered: 35



- (d) if the entity’s registration has been cancelled,—
  - (i) that fact; and
  - (ii) the date on which the cancellation took effect; and
  - (iii) if applicable, the period for which the entity is banned from participating in the bargaining process: 5
- (e) any other matters prescribed in regulations.

### 18 Cancellation of registration

- (1) The Authority must cancel a news media entity’s registration if satisfied that the news media entity no longer satisfies the criteria for registration in **section 15**. 10
- (2) The Authority may cancel a news media entity’s registration if satisfied that—
  - (a) the news media entity has contravened a requirement of this Act or legislation made under this Act on 1 or more occasions; and
  - (b) the entity’s contraventions, taken together, are sufficiently serious to justify banning the entity from participating in the bargaining process for a period of time. 15
- (3) **Subsections (1) and (2)** are subject to **subsection (5)**.
- (4) When the Authority cancels a news media entity’s registration under **subsection (2)**, the Authority must specify a period of not more than 5 years during which the news media entity is banned from participating in the bargaining process. 20
- (5) The Authority may cancel a registration under **subsection (1) or (2)** only if—
  - (a) the Authority gives the news media entity written notice, at least 40 working days before the decision is taken, of the following matters: 25
    - (i) the Authority’s proposed decision;
    - (ii) the reasons for the Authority’s proposed decision; and
  - (b) the Authority gives the news media entity an opportunity to make a submission and to be heard in relation to the proposed decision; and
  - (c) in the case of a decision under **subsection (2)**, the Authority considers that the proposed decision promotes the purpose of this Act specified in **section 3**. 30

### 19 Effect of cancellation of registration

- (1) If a registered news media entity’s (A) registration is cancelled, a bargaining process to which A is a party terminates. 35
- (2) However, if A is one of a group of 2 or more registered news media entities that are, collectively, a party to a bargaining process, the bargaining process may proceed with A removed from the group if—

- (a) the parties to the bargaining process (after A is removed) agree; or
- (b) the Authority is satisfied that, if the bargaining process continues after A is removed, the benefits to either or both parties of proceeding in this way will significantly outweigh any prejudice to the interests of either party.

5

## Subpart 2—Registered operators

### 20 Registration of operators as subject to bargaining process

- (1) The Authority may register an operator of a digital platform as an operator that is required to participate in the bargaining process (a **registered operator**) with 1 or more registered news media entities. 10
- (2) The Authority’s power to register an operator must be exercised in accordance with **sections 22 and 23**.
- (3) The Authority’s power may be exercised—
  - (a) on application by 1 or more registered news media entities under **section 21**; or 15
  - (b) on the Authority’s own initiative if the Authority considers that exercising the power would promote the purpose of this Act specified in **section 3**.
- (4) In this Act, an operator is **registered in respect of** a news media entity if it is registered as an operator that is required to participate in the bargaining process with that entity. 20

### 21 Application for registration

- (1) A news media entity, or group of news media entities, may apply to the Authority for registration of an operator.
- (2) The application must be made in the manner specified by the Authority (*see* **section 132**). 25
- (3) The Authority may refuse to consider the application if the applicant does not make the application in the specified manner.
- (4) The Authority may require the applicant to give the Authority additional information to assist the Authority to determine the application. 30

### 22 Grounds for registering an operator

- (1) The Authority may register an operator in respect of a registered news media entity only if, in the Authority’s opinion,—
  - (a) the operator’s digital platform makes news content produced by the news media entity available to people in New Zealand; and 35
  - (b) there is likely to be a bargaining power imbalance between the operator and the news media entity in respect of the terms on which the news

- media entity's news content may be made available by the operator's digital platform; and
- (c) the imbalance is—
- (i) more than minor or insignificant; and
  - (ii) in favour of the operator. 5
- (2) When deciding whether to register an operator, the Authority may take into account the following matters:
- (a) the size of, and resources available to, the operator and the news media entity:
  - (b) the extent to which the news media entity is reliant on the operator's digital platform to carry on its business: 10
  - (c) the extent to which the operator is reliant on the news content produced by the news media entity to carry on its business (including the extent to which the operator can substitute content produced by the news media entity for content produced by another news media entity): 15
  - (d) an estimate of the benefits and detriments (monetary or otherwise) for the operator and the news media entity of the news media entity's news content being made available by the operator's digital platform:
  - (e) the extent to which the news media entity has been able to negotiate the terms on which its news content is made available by the operator's digital platform, including— 20
    - (i) whether the operator has subjected the news media entity to unfair pressure or tactics or otherwise unfairly influenced the news media entity in respect of news content made available by the operator's digital platform and, if so, the nature and extent of that conduct; and 25
    - (ii) whether, taking into account the particular characteristics of the news media entity, the news media entity is able to protect its interests in respect of the news content it produces:
  - (f) any other matters that the Authority considers relevant. 30
- (3) When deciding whether to register an operator in respect of a group of news media entities, the Authority—
- (a) must consider the grounds for registration in **subsection (1)** in respect of each member of the group; and
  - (b) must register the operator in respect of a member of the group only if, in the Authority's opinion, those grounds are met in respect of that member. 35
- (4) For the purposes of **subsection (2)**, the Authority may, where relevant, take into account an operator or news media entity's interconnected bodies corporate (if any) (for example, by attributing the resources of, or benefits and 40

detriments that accrue to, an interconnected body corporate to the operator or news media entity).

### **23 Operator may be registered in respect of every registered news media entity**

- (1) Despite **section 22(1)**, the Authority may register an operator in respect of every registered news media entity (including entities that become registered after the operator is registered) if, in the Authority’s opinion, the criteria in **subsection (2)** are met. 5
- (2) The criteria are that—
- (a) the grounds in **section 22(1)** are met in respect of all registered news media entities whose news content is made available by the operator’s digital platform; and 10
- (b) it is reasonable to infer that the grounds in **section 22(1)** would be met in respect of all other news media entities if (as applicable)—
- (i) the operator’s digital platform made those entities’ news content available; and 15
- (ii) those entities were registered.

### **24 Registration decision: process**

- (1) The Authority may make a decision about registering an operator only if—
- (a) the Authority consults the operator about whether it should be registered; and 20
- (b) the Authority gives the operator and each registered news media entity to which the decision relates written notice, at least 20 working days before the decision is taken, of the following matters:
- (i) the Authority’s proposed decision: 25
- (ii) the reasons for the Authority’s proposed decision; and
- (c) the Authority gives the operator and each news media entity an opportunity to make a submission and to be heard in relation to the proposed decision.
- (2) If the Authority proposes to register the operator in respect of every registered news media entity under **section 23**, the requirement to engage with news media entities in **subsection (1)(b) and (c)** relates to the news media entities that are registered on the date on which written notice of the proposed decision is given. 30

### **25 Register of registered operators** 35

- (1) The Authority must keep and maintain a public register of registered operators on an Internet site maintained by or on behalf of the Authority.

- 
- (2) The register must contain the following information for each registered operator:
- (a) the operator’s name:
  - (b) the operator’s contact details:
  - (c) the digital platforms the operator operates: 5
  - (d) the registered news media entities the operator is registered in respect of:
  - (e) when the operator was registered in respect of each of those entities:
  - (f) whether the operator is exempt from the bargaining process and where the terms and conditions of that exemption (if any) can be found:
  - (g) any other matters prescribed in regulations. 10

### Subpart 3—Duties of people engaging in news content bargaining

#### *Duty to comply with bargaining code*

#### **26 Duty to comply with bargaining code**

- (1) News media entities and operators must comply with the bargaining code.
- (2) A person who contravenes this section is liable to a civil liability remedy (including an order to pay a pecuniary penalty). 15

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#### **Guidance note**

See **subpart 4 of Part 5** for further provisions about civil liability.

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#### *Duty to bargain in good faith*

#### **27 Duty to bargain in good faith** 20

- (1) News media entities and operators engaging in news content bargaining must do so in good faith.
- (2) The good-faith obligations of a party to news content bargaining are owed to the party on the other side of that bargaining.
- (3) If 2 or more registered news media entities are collectively bargaining, each of those news media entities also owes obligations of good faith to the other news media entities. 25
- (4) A person who contravenes this section is liable to a civil liability remedy (including an order to pay a pecuniary penalty).

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#### **Guidance note** 30

See **subpart 4 of Part 5** for further provisions about civil liability.

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## Part 3 Bargaining process

### Subpart 1—General

#### *Scope of bargaining process*

- 28 Scope of bargaining process** 5
- (1) The bargaining process under this Part—
- (a) is limited to matters that relate to the registered operator party’s digital platform making available news content produced by the registered news media entity party; and
- (b) must not be used to renegotiate the terms on which that news content may be made available by the operator’s digital platform under an existing news content agreement or contractual arrangement between the operator and the news media entity party (or, in the case of a group of news media entities bargaining collectively, 1 or more of the news media entities that make up the news media entity party). 10 15
- (2) **Subsection (1)(b)** does not prevent the bargaining process from being used, during the term of an agreement or arrangement, to address matters relating to the making available of news content after the relevant part of the agreement or arrangement ends.
- (3) Final offer arbitration, under **subpart 4**, is additionally limited to the matters that may be included in a party’s final offer (*see section 45*). 20
- 29 Parties may agree to address other matters at negotiation and mediation stage**
- Despite **section 28(1)**, the parties to a bargaining process may, by agreement, address other matters relating to news content produced by the news media entity party when engaging in negotiation under **subpart 2** and mediation under **subpart 3**. 25
- Bargaining process does not affect existing agreements*
- 30 Bargaining process does not affect existing agreements**
- (1) Existing news content agreements and contractual arrangements between the operator and the news media entity party (or 1 or more of the news media entities that make up the news media entity party) are not— 30
- (a) affected by—
- (i) initiation or termination of the bargaining process; or
- (ii) a news media entity’s withdrawal from the bargaining process; or 35

- (b) overridden by a news content agreement entered into through the bargaining process (including the arbitration stage of the bargaining process).
- (2) **Subsection (1)(b)** does not prevent—
- (a) the parties from agreeing changes to their existing arrangements (including through a news content agreement entered into at the negotiation or mediation stage of the bargaining process); or 5
- (b) a news content agreement selected at the arbitration stage of the bargaining process from making changes to those arrangements (if those changes are within the scope of the bargaining process). 10

*Duty to participate in bargaining process*

**31 Duty to participate in bargaining process**

- (1) The parties to a bargaining process must participate in the bargaining process.
- (2) A person who contravenes this section is liable to a civil liability remedy (including an order to pay a pecuniary penalty). 15

**Guidance note**

See **subpart 4 of Part 5** for further provisions about civil liability.

*Initiation of bargaining process*

**32 Initiation of bargaining process**

- (1) A registered news media entity, or group of 2 or more registered news media entities bargaining collectively, may initiate the bargaining process with an operator that is registered in respect of the entity, or each member of the group of entities, by giving the operator written notice. 20
- (2) However, a news media entity or group of entities may not initiate the bargaining process with an operator if the operator is exempt from the requirement to engage in the bargaining process with the entity or 1 or more of the members of the group of entities. 25
- (3) The written notice under **subsection (1)** must be given in the manner specified by the Authority (*see* **section 132**).

Subpart 2—Negotiation 30

**33 Negotiation period**

- (1) When the bargaining process is initiated, the parties must attempt to reach agreement through negotiation over a period of 90 days.
- (2) The negotiation period starts on the day on which the bargaining process is initiated. 35
- (3) The parties may agree to extend the negotiation period.

- (4) However, the total length of all the agreed extensions to the negotiation period must not exceed 30 days.

### **34 End of negotiation period**

- (1) The bargaining process ends at the negotiation stage if, within the negotiation period,— 5
- (a) the parties enter into 1 or more news content agreements covering the subject matter of the process; or
  - (b) the registered news media entity party to the process withdraws from the process.
- (2) The bargaining process moves from negotiation to mediation if— 10
- (a) the parties are unable to reach agreement within the negotiation period (including any agreed extensions); or
  - (b) the Authority decides to end the negotiation period early.
- (3) The Authority may, on the application of either party, end the negotiation period early if the Authority is satisfied that— 15
- (a) the parties have engaged in negotiations in respect of the matters to which the bargaining process relates for at least 90 days (including negotiations engaged in before initiation of the bargaining process); and
  - (b) the negotiations have been conducted in good faith.
- (4) The Authority must consult the parties before ending the bargaining process early. 20

## **Subpart 3—Mediation**

### **35 Mediation period**

- (1) If the bargaining process moves to mediation, the parties must attempt to reach agreement through mediation over a period of 90 days. 25
- (2) The mediation period starts on the day after the negotiation period ends.
- (3) The parties may agree to extend the mediation period.
- (4) However, the total length of all the agreed extensions to the mediation period must not exceed 30 days.

### **36 Appointment of mediator** 30

- (1) The parties must appoint an approved mediator, by agreement, within 15 working days of the start of the mediation period.
- (2) If the parties are unable to agree on an approved mediator within the required time, the Authority must promptly appoint an approved mediator.
- (3) The Authority must take the preferences of the parties into account when appointing an approved mediator. 35



**37 Procedure agreement**

- (1) Once a mediator is appointed, the parties and the mediator must enter into an agreement relating to the procedure for the mediation (a **procedure agreement**).
- (2) The procedure agreement may include 1 or more of the following: 5
- (a) who has authority to represent and bind the parties:
  - (b) who may attend the mediation, including any interested parties, legal counsel, and experts:
  - (c) requirements as to confidentiality and privilege in respect of the mediator, the parties, and any other persons attending the mediation, including who may be informed about any confidential matter: 10
  - (d) whether the mediator may engage an expert assessor for a stated or any other purpose:
  - (e) how the procedure agreement may be varied or terminated:
  - (f) any other matter that the mediator and the parties agree is appropriate to best meet the needs and interests of the parties, having regard to the nature of the issues between the parties. 15
- (3) A procedure agreement is binding on the parties in accordance with its provisions.
- (4) If the parties and the mediator fail to enter into an agreement within 15 working days of the mediator's appointment, the Authority may— 20
- (a) specify the procedure for the mediation; and
  - (b) require the mediation to be conducted in accordance with that procedure.

**38 Costs and expenses**

- (1) The parties to a mediation must— 25
- (a) pay their own costs and expenses in relation to the mediation process; and
  - (b) pay the costs and expenses of the mediation process, divided equally between the parties.
- (2) However, the Authority may, on the application either party, apportion the costs and expenses of the mediation process between the parties differently if the Authority considers that is necessary or desirable to promote the purpose of this Act specified in **section 3**. 30
- (3) If the Authority apportions the costs and expenses of the mediation process between the parties, each party is required to pay the costs and expenses apportioned to it (in addition to its own costs and expenses in relation to the mediation process). 35

**39 End of mediation period**

- (1) The bargaining process ends at the mediation stage if, during the mediation period,—
- (a) the parties enter into 1 or more news content agreements covering the subject matter of the process; or 5
  - (b) the registered news media entity party to the process withdraws from the process.
- (2) The bargaining process moves from mediation to final offer arbitration when one of the following occurs:
- (a) the parties do not reach an agreement within the mediation period (including any agreed extensions): 10
  - (b) the parties agree to end the mediation period early and move to arbitration:
  - (c) the mediator ends the mediation period early under **subsection (3)**.
- (3) A mediator may end the mediation period early, without the agreement of the parties, if the mediator is satisfied that there is no reasonable prospect that the parties will reach an agreement through mediation. 15
- (4) However, the mediator must consult the parties before ending the mediation period early.

Subpart 4—Final offer arbitration 20

*Commencement*

**40 Final offer arbitration**

Final offer arbitration commences on the day after the mediation process ends under **section 39(2)**.

*General rules of conduct* 25

**41 How arbitration must be conducted**

- (1) The Arbitration Act 1996 applies to a final offer arbitration under this Act.
- (2) However, the arbitration must be conducted in accordance with—
- (a) this subpart; and
  - (b) **Schedule 2** (additional modifications to Arbitration Act 1996 rules and requirements); and 30
  - (c) the bargaining code.
- (3) Subject to **subsections (1) and (2)**, the parties to a bargaining process and the arbitration panel for a final offer arbitration may determine the procedure for that arbitration in accordance with article 19 of Schedule 1 of the Arbitra- 35

tion Act 1996 (including by varying the procedure specified in that Act where they are permitted to do so under that Act).

- (4) An arbitration panel must disregard any procedure agreed by the parties that is not consistent with the Arbitration Act 1996 or **subsection (2)**.

### *Arbitration panel*

5

#### **42 Composition of arbitration panel**

A final offer arbitration must be conducted by a panel of 3 approved arbitrators.

#### **43 Appointment of panel members**

- (1) The members of an arbitration panel must be nominated for appointment to the panel as follows: 10
- (a) each party must, no later than 15 working days after the commencement of the arbitration, nominate 1 approved arbitrator for appointment to the panel:
  - (b) no later than 15 working days after the Authority has appointed both those members or alternative members under **subsection (3)** (the **appointed members**), the appointed members must together nominate 1 further approved arbitrator for appointment to the panel. 15
- (2) The Authority must appoint a nominated arbitrator to the panel unless the Authority considers the arbitrator has a conflict of interest that makes it inappropriate for the arbitrator to be on the panel (a **disqualifying conflict of interest**). 20
- (3) If a party or the appointed members fail to nominate an appointable arbitrator within the required time, the Authority must appoint an approved arbitrator to the panel instead. 25
- (4) When appointing arbitrators under **subsection (3)**, the Authority—
- (a) must take into account the preferences of the party that has failed to nominate an appointable member (if applicable); and
  - (b) must not appoint an arbitrator the Authority considers has a disqualifying conflict of interest. 30
- (5) The panel for a final offer arbitration must be appointed in accordance with the procedure specified in this section.

#### **44 Removal and replacement of panel members**

- (1) The Authority must remove an arbitrator from an arbitration panel if satisfied that— 35
- (a) the arbitrator no longer satisfies the criteria to be an approved arbitrator; or

- (b) the arbitrator has a disqualifying conflict of interest.
- (2) **Subsection (1)** applies in addition to articles 12 to 14 of Schedule 1 of the Arbitration Act 1996.
- (3) If 1 or more arbitrators cease to be members of the panel (for any reason), substitute members must be appointed in accordance with **section 43** until the panel has 3 members. 5
- (4) For the purposes of **subsection (3)**,—
- (a) the person who was responsible for nominating the panel member that the substitute member is replacing (the **original member**) is also responsible for nominating the substitute member (even if the Authority appointed the original member without a nomination because the person failed to nominate an appointable arbitrator); and 10
- (b) the panel member nominated by the appointed members must be nominated by both appointed members; and
- (c) **section 43(1)** applies as if the time for the parties or the appointed members to nominate an arbitrator ran from the date on which the previous arbitrator ceased to be a member of the panel (or, if the appointed members cannot nominate an arbitrator on that date because 1 or both of the appointed members also need to be replaced, the date on which there are 2 appointed members). 15  
20

*Submission of final offers by parties*

**45 Parties must submit final offers**

- (1) The parties to the arbitration must each submit a final offer to the arbitration panel.
- (2) The final offer must offer an agreement that— 25
- (a) is, unless otherwise agreed by the parties, for a term of up to 5 years; and
- (b) requires the operator to pay a monetary amount to each news media entity as consideration for the operator’s digital platform making the news content produced by the entity available in 1 or more specified ways during the term of the agreement; and 30
- (c) specifies, for the purposes of **paragraph (b)**, the ways that each news media entity’s content may be made available by the operator’s digital platform; and
- (d) includes any mandatory terms prescribed in regulations; and
- (e) does not include terms other than— 35
- (i) those necessary for the purposes of **paragraphs (a) to (d)**; and
- (ii) other optional terms prescribed in regulations.

- (3) An offer that requires the operator to pay \$0 to a news media entity or provides for the monetary amount to be determined using a formula or other method of calculation satisfies the requirement in **subsection (2)(b)**.
- (4) If the registered news media entity party to the arbitration is a group of 2 or more news media entities bargaining collectively, those news media entities must submit a single final offer. 5
- 46 Failure to submit a final offer**
- (1) If one of the parties does not submit a final offer by the deadline for submission of final offers, the arbitration panel may—
- (a) give the party a further opportunity to submit a final offer; or 10
- (b) make its decision about selection of final offers under **section 49** based on the offer that has been submitted.
- (2) If both of the parties do not submit their final offers by the deadline for submission, the panel may—
- (a) give the parties a further opportunity to submit their final offers; or 15
- (b) terminate the arbitration.
- (3) Before making a decision under **subsection (1) or (2)**, the panel must give the parties an opportunity to make a submission and to be heard in relation to the whether the party or parties should have a further opportunity to submit their final offer. 20
- 47 Exchange of final offers**
- (1) If both parties have submitted their final offers, the arbitration panel must provide each party with a copy of the other party's final offer.
- (2) If only 1 party (**A**) has submitted a final offer, the panel must not provide, or otherwise disclose the contents of, A's final offer to the other party (**B**) unless— 25
- (a) B submits its final offer; or
- (b) the panel has decided to make its decision based on A's offer under **section 46(1)(b)**; or
- (c) A consents to A's offer being disclosed to B; or 30
- (d) the panel is otherwise satisfied that providing A's offer to B will not give B an unfair advantage in the arbitration.
- 48 Withdrawal and amendment of final offers**
- (1) A party may not withdraw or amend its offer if—
- (a) the deadline for submission of final offers has passed; or 35
- (b) the panel has given it a copy of the other party's final offer.

- (2) However, a party may, at any time, withdraw its offer or amend its offer to correct an error if the other party consents to the withdrawal or amendment.

*Selection of final offer by arbitration panel*

**49 Selection of final offer by panel**

- (1) An arbitration panel makes its decision by selecting one of the final offers. 5
- (2) A panel must select a final offer that, in its opinion, fairly compensates the news media entity party for that party's news content being made available by the operator's digital platform in accordance with the terms of the offer.
- (3) **Subsection (2)** is subject to **subsections (4) and (5)**.
- (4) The panel must not select an offer that, in its opinion,— 10
- (a) is highly likely to have a serious adverse effect on—
- (i) people in New Zealand's access to New Zealand news content; or
- (ii) the production of news content for a New Zealand audience, including the quality and quantity of that content; or
- (b) is otherwise inconsistent with the purpose of this Act specified in **section 3**. 15
- (5) If the panel considers that both offers fairly compensate the news media entity party, it must select the offer that, in its opinion, better supports sustainable production of New Zealand news content.

**50 Matters panel must have regard to** 20

- (1) When deciding whether to select a final offer, the panel must have regard to the following matters:
- (a) the benefits and detriments to each party (monetary or otherwise) of the operator's digital platform making the news content available:
- (b) the reasonable cost to the news media entity party of producing the news content: 25
- (c) the reasonable cost to the operator of making the news content available in New Zealand:
- (d) whether the terms of an offer would place an undue burden on the commercial interests of either party: 30
- (e) any other matters the panel considers relevant to achieving the purpose of this Act specified in **section 3**.
- (2) For the purposes of **subsection (1)**, the panel may, where relevant, take into account a party's interconnected bodies corporate (if any) (for example, by attributing to the party benefits, detriments, and costs that accrue to the party's interconnected body corporate). 35

**51 No selectable offer**

- (1) If the panel is unable to select a final offer (including where one party has submitted an offer that cannot be selected and the other party has failed to submit an offer), the panel must—
- (a) give each party a reasonable opportunity to submit a new final offer; and 5
  - (b) determine the proceeding by selecting one of the final offers submitted (in accordance with **section 49**).
- (2) If no selectable offer is submitted under **subsection (1)(a)** (or no offers are submitted), the panel may—
- (a) give the parties a further opportunity to submit an offer under **subsection (1)(a)**; or 10
  - (b) terminate the arbitration.

*Form, content, and status of panel's decision***52 Form and content of decision**

- (1) An arbitration panel must— 15
- (a) give its decision in writing; and
  - (b) give written reasons for its decision.
- (2) However, the arbitration panel does not need to give reasons for its decision if the decision is an award on agreed terms (within the meaning given in article 30 of Schedule 1 of the Arbitration Act 1996). 20
- (3) The panel must give a copy of its decision and reasons (if any) to each party and the Authority.

**53 Status of final offer selected**

- (1) The final offer selected by an arbitration panel when it makes its decision—
- (a) is, for the purposes of this Act, a news content agreement between the parties; and 25
  - (b) must, for the purposes of enforcement, be treated as a contract entered into by the parties.
- (2) The parties to the final offer selected may vary the terms of that final offer by agreement. 30
- (3) However, the requirements in **section 45(2)** continue to apply to the final offer, and a variation to the final offer that is inconsistent with those requirements has no effect to the extent of the inconsistency.

*Costs and expenses***54 Costs and expenses**

- (1) The parties to an arbitration must meet their own costs and expenses in relation to the arbitration process.
- (2) The parties must pay the arbitration panel's costs and expenses. 5
- (3) The arbitration panel's costs and expenses—
  - (a) may be apportioned between the parties by agreement; or
  - (b) if the parties are unable to agree, must be apportioned between the parties by the panel.
- (4) When deciding how to apportion costs under **subsection (3)(b)**, the panel may, without limitation, take into account— 10
  - (a) the conduct of the parties to the arbitration during the arbitration process; and
  - (b) each party's ability to pay the costs.
- (5) The arbitration panel may not order a party to give security for costs. 15

*Authority may provide administrative and technical assistance***55 Administrative and technical assistance**

- (1) The Authority may provide the panel with administrative assistance and assistance in relation to technical matters.
- (2) The Authority's assistance in relation to technical matters must— 20
  - (a) be given in the form of a submission to the panel; and
  - (b) be limited to—
    - (i) impartial factual information that is relevant to the panel's evaluation of the parties' final offers; and
    - (ii) impartial information that relates to relevant economic principles. 25
- (3) If the Authority makes a submission under this section, the panel must give the parties a reasonable opportunity to respond to the Authority's submission before the panel selects or rejects a final offer.

**Subpart 5—Exemptions from bargaining process****56 Exemptions from bargaining process** 30

- (1) The Authority may exempt an operator of a digital platform from the bargaining process, on the terms and conditions (if any) it thinks fit, if, in the Authority's opinion,—
  - (a) the operator already makes a fair contribution to sustainable production of New Zealand news content; and 35



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- (b) granting the operator an exemption is necessary or desirable to promote the purpose of this Act as specified in **section 3**; and
- (c) the exemption granted is not broader than is reasonably necessary to achieve its purpose.
- (2) When deciding whether to grant an application, the Authority must consider the following: 5
- (a) the size of, and resources available to, the operator:
- (b) the extent to which the news content agreements the operator has entered into (under this Act or otherwise) and any other arrangements the operator has put in place to support production of New Zealand news content, taken as a whole,— 10
- (i) provide for fair compensation to news media entities for the news content made available by the operator’s digital platform; and
- (ii) make a fair contribution towards the production of news content by— 15
- (A) Māori news media entities; and
- (B) a diverse range of other news media entities, including entities in the non-profit and for-profit sectors, smaller entities, and entities that produce news content that is primarily relevant to particular groups specified in **section 5(2)**; and 20
- (iii) contain terms, or otherwise give rise to commercial pressures, that have the potential to undermine a news media entity’s freedom of expression or journalistic independence:
- (c) the extent to which requiring the operator to engage in the bargaining process is likely to result in agreements and other arrangements that contribute to sustainable production of news content by news media entities: 25
- (d) how those additional benefits (if any) compare with the costs, monetary or otherwise, that are likely to be incurred by the operator and news media entities when engaging in the bargaining process: 30
- (e) the extent to which the operator has complied with its obligations under this Act and any legislation made under this Act:
- (f) whether the operator is currently engaged in bargaining (including arbitration) under the bargaining process. 35
- (3) For the purposes of **subsection (2)**, the Authority may, where relevant,—
- (a) take into account an operator’s interconnected bodies corporate (if any) (for example, when considering the size of, and resources available to, the operator); and

- (b) attribute news content agreements and other arrangements entered into by the operator's interconnected bodies corporate (if any) to the operator.

### 57 Application for exemption from bargaining process

- (1) An operator of a digital platform may apply to the Authority for an exemption from the bargaining process (*see* **section 56**). 5
- (2) The application must be made in the manner specified by the Authority (*see* **section 132**).
- (3) The Authority may refuse to consider the application if the applicant does not make the application in the specified manner.
- (4) The Authority may require the applicant to give the Authority additional information to assist the Authority to determine the application. 10

### 58 Exemption decision: process

- (1) The Authority may make a decision about granting an exemption to an operator only if—
- (a) the Authority consults the following persons about whether the exemption should be granted: 15
- (i) news media entities registered in respect of the operator;
- (ii) any other person the Authority considers appropriate; and
- (b) the Authority gives the operator, each news media entity registered in respect of the operator, and any person consulted under **paragraph (a)(ii)**, written notice, at least 20 working days before the decision is taken, of the following matters: 20
- (i) the Authority's proposed decision;
- (ii) the reasons for the Authority's proposed decision; and
- (c) the Authority gives the persons given written notice under **paragraph (b)** an opportunity to make submissions and to be heard in relation to the proposed decision. 25
- (2) Written notice under **subclause (1)(b)** must be given to the news media entities that are registered in respect of the operator at the time the notice is given. 30

### 59 Term of exemption may not exceed 5 years

An exemption granted under this subpart may continue in force for not more than 5 years (and at the close of the date that is 5 years after the exemption first comes into force, the exemption must be treated as having been revoked unless it is sooner revoked or expires). 35

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- 60 Notification of exemption decision**
- (1) When the Authority decides a registered operator’s exemption application, it must give the operator written notice of its decision.
- (2) The written notice must—
- (a) be given within 20 working days after the date of the decision; and 5
  - (b) state the reasons for the decision; and
  - (c) if the decision is a decision to grant the application, state—
    - (i) the period the exemption is granted for; and
    - (ii) the terms and conditions (if any) of the exemption.
- 61 Effect of exemption** 10
- (1) If the operator of a digital platform holds an exemption,—
- (a) a registered news media entity may not initiate the bargaining process under **section 32** with the operator; and
  - (b) any bargaining process involving the operator and a registered news media entity terminates. 15
- (2) **Subsection (1)** is subject to the terms and conditions of the operator’s exemption (for example, a term or condition that allows an existing bargaining process to continue or a specified news media entity to initiate bargaining).
- 62 Compliance with terms and conditions of exemption**
- (1) An exempt operator must comply with the terms and conditions of its exemption. 20
- (2) A person who contravenes this section is liable to a civil liability remedy (including an order to pay a pecuniary penalty).
- 
- Guidance note**
- See **subpart 4 of Part 5** for further provisions about civil liability. 25
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- 63 Variation and revocation**
- (1) The Authority must revoke an exemption if the Authority is no longer satisfied the exemption is appropriate based on the criteria in **section 56(1)**.
- (2) The Authority may revoke an exemption if the Authority is satisfied that—
- (a) the exemption holder has acted in a manner inconsistent with the requirements of this Act or any legislation made under this Act; or 30
  - (b) the exemption holder has not complied with a term or condition of the exemption; or
  - (c) the exemption holder gave information that was false or misleading in a material particular, or failed to give any material information that it should have given, when applying for the exemption. 35

- (3) The Authority may modify the terms or conditions of an exemption, including by imposing new terms or conditions,—
- (a) in the circumstances specified in **subsection (2)(a) to (c)**; or
  - (b) if the Authority is satisfied the modification is necessary or desirable to ensure that the exemption continues to—
    - (i) promote the purpose of this Act specified in **section 3**; or
    - (ii) achieve the exemption’s purpose.
- (4) **Subsections (1) to (3)** are subject to **subsection (5)**.
- (5) The Authority may make a decision under **subsections (1) to (3)** only if—
- (a) the Authority gives the exemption holder written notice, at least 20 working days before the decision is taken, of the following matters:
    - (i) the Authority’s proposed decision:
    - (ii) the reasons for the Authority’s proposed decision; and
  - (b) the Authority gives the exemption holder an opportunity to make a submission and to be heard in relation to the proposed decision; and
  - (c) in the case of a decision under **subsection (2) or (3)**, the Authority considers whether the proposed decision promotes the purpose of this Act specified in **section 3**.
- 64 Public record of exemptions and exemption decisions**
- (1) The Authority must keep and maintain a public register that lists all of the exemptions granted by the Authority under **section 56** that are currently in force (if any) on an Internet site maintained by or on behalf of the Authority.
- (2) The register must contain the following information:
- (a) the name of the exemption holder;
  - (b) the period the exemption is granted for;
  - (c) any conditions imposed on the exemption (including the date on which those conditions were imposed if that is different to the date on which that exemption was granted);
  - (d) a copy of the exemption decision or information that enables a person to access a copy of the decision;
  - (e) any other matters prescribed in regulations.
- (3) The Authority may redact information from the publicly available version of the exemption decision if the Authority is satisfied that is necessary or desirable to protect—
- (a) the privacy of an individual; or
  - (b) confidential or commercially sensitive information.

## Subpart 6—Miscellaneous

### *Parties must give Authority copy of news content agreement*

#### **65 Parties must give Authority copy of news content agreement**

- (1) If the parties to a bargaining process enter into a news content agreement covering some or all of the matters to which the bargaining process relates, the parties must, as soon as is reasonably practicable after the agreement is entered into, give the Authority a copy of the agreement. 5
- (2) A person who contravenes this section is liable to a civil liability remedy (including an order to pay a pecuniary penalty). 10

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#### **Guidance note**

See **subpart 4 of Part 5** for further provisions about civil liability.

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### *Approval of mediators and arbitrators*

#### **66 Approved mediators and arbitrators**

- (1) The Authority must maintain a list of people it has approved to act as mediators or arbitrators under this Act. 15
- (2) The Authority may approve a person to act as a mediator or an arbitrator if it is satisfied that the person—
  - (a) holds a relevant qualification (for example, a qualification in law, mediation, or arbitration) or has relevant training; and
  - (b) has the personal attributes, knowledge, and experience to be capable of performing the functions of a mediator or an arbitrator (as applicable) under this Act. 20
- (3) The Authority may approve a class of person to act as a mediator or an arbitrator if it is satisfied that members of the class are likely to satisfy the requirements in **subsection (2)**. 25
- (4) The list maintained by the Authority must be made available on the Authority's Internet site.

## **Part 4**

### **Information gathering**

#### Subpart 1—General information-gathering powers 30

#### **67 Authority may require a person to supply information, produce documents, or give evidence**

- (1) If the Authority considers it necessary or desirable for the purposes of performing or exercising its functions, powers, or duties under this Act or any

- legislation made under this Act, the Authority may, by written notice served on any person, require the person—
- (a) to supply to the Authority, within the time and in the manner specified in the notice, any information or class of information specified in the notice; or 5
  - (b) to produce to the Authority, or to a person specified in the notice acting on its behalf in accordance with the notice, any document or class of documents specified in the notice (within the time and in the manner specified in the notice); or
  - (c) if necessary, to reproduce, or assist in reproducing, in usable form, information recorded or stored in any document or class of documents specified in the notice (within the time and in the manner specified in the notice); or 10
  - (d) to appear before the Authority, or a specified person, at a time and place specified in the notice to give evidence, either orally or in writing, and produce any document or class of documents specified in the notice. 15
- (2) The Authority may also exercise its powers under **subsection (1)** for the purposes of complying with the request of an overseas regulator under **section 72** or otherwise co-operating with an overseas regulator.
- (3) Information supplied in response to a notice under **subsection (1)(a)** must be— 20
- (a) given in writing; and
  - (b) signed in the manner specified in the notice.
- (4) If a document is produced in response to a notice under **subsection (1)**, the Authority, or the person to whom the document is produced, may— 25
- (a) inspect and make records of that document; and
  - (b) take copies of the document or extracts from the document.
- (5) In this section and **sections 68 and 69**, **specified person** means—
- (a) a member or an employee of the Authority; or
  - (b) another person to whom the board of the Authority has delegated the power to receive the relevant evidence (being a person that the Authority is satisfied is suitably qualified or trained, or is a member of a class of persons who are suitably qualified or trained, to exercise the power). 30
- 68 Powers of Authority to receive evidence**
- (1) The Authority may receive evidence through a specified person, or any 2 or more specified persons. 35
  - (2) The Authority may receive in evidence, whether admissible in a court of law or not, any statement, document, information, or matter that,—

(a)	in the opinion of the Authority or the specified person who is receiving it, may assist the Authority in dealing effectively with any matter before it; or	
(b)	the Authority may receive under <b>section 72</b> .	
<b>69</b>	<b>How evidence may be given</b>	5
(1)	The Authority may receive evidence—	
(a)	given on oath:	
(b)	not given on oath:	
(c)	if the specified person who is receiving the evidence permits it, given by a written statement:	10
(d)	if the specified person who is receiving the evidence permits it, given by a written statement verified on oath:	
(e)	given by audio-visual communication, if the Authority and the person giving the evidence agree.	
(2)	A specified person may administer an oath for the purpose of a person giving evidence on oath.	15
<b>70</b>	<b>Witnesses' expenses</b>	
(1)	If a person has appeared as a witness (whether or not under a notice under <b>section 67</b> ), the Authority may, if it thinks fit, order any sum to be paid to that witness for their expenses.	20
(2)	That sum must not exceed the amount that would be payable to the witness if their attendance had been as a witness for the Crown in a criminal case in accordance with regulations for the time being in force for the payment of witnesses for the Crown in criminal cases.	
	<b>Subpart 2—Sharing information and documents</b>	25
	<i>Power to share information and documents with other law enforcement or regulatory agencies and overseas regulators</i>	
<b>71</b>	<b>Sharing information and documents with law enforcement or regulatory agencies and overseas regulators</b>	
(1)	The Authority may provide to a law enforcement or regulatory agency or an overseas regulator any information, or a copy of any document, that the Authority—	30
(a)	holds in relation to the performance or exercise of the Authority's functions, powers, or duties under this Act or any legislation made under this Act; and	35
(b)	considers may assist—	

- (i) the law enforcement or regulatory agency in the performance or exercise of the law enforcement or regulatory agency's functions, powers, or duties under any legislation; or
  - (ii) the overseas regulator in the performance or exercise of the overseas regulator's functions, powers, or duties under foreign law. 5
- (2) The Authority may provide information, or a copy of a document, under this section only if the Authority is satisfied that—
  - (a) doing so will not have a substantial negative effect on the performance of its other functions; and
  - (b) appropriate protections are or will be in place for the purpose of maintaining the confidentiality of anything provided (in particular, information that is personal information within the meaning of the Privacy Act 2020). 10
- (3) The Authority may use any information, or a copy of any document, provided to it by a law enforcement or regulatory agency under any legislation, or by an overseas regulator, in the Authority's performance or exercise of its functions, powers, or duties under this Act or any legislation made under this Act. 15
- (4) This section applies despite anything to the contrary in any contract, deed, or document.
- (5) Nothing in this section limits the Privacy Act 2020. 20

*Power to act on requests of overseas regulators*

**72 Power of Authority to act on requests of overseas regulators**

- (1) An overseas regulator may request the Authority to inquire into any matter related to the functions of that overseas regulator.
- (2) The Authority may obtain information, documents, or evidence that, in the Authority's opinion, is likely to assist the Authority in complying with that request by— 25
  - (a) exercising its powers under **section 67** or authorising a person under **section 75** to exercise powers under **section 67(1)(a) to (c)**; or
  - (b) exercising its powers to receive evidence. 30
- (3) If the powers under **section 67** are exercised for the purposes of complying with that request, or otherwise co-operating with an overseas regulator, that fact must be specified in the notice that is served under **section 67**.
- (4) The Authority may transmit the information, documents, or evidence it obtains to the overseas regulator in the manner that the Authority thinks fit. 35

**73 Authority's consideration of requests**

- (1) The Authority may comply with a request under **section 72** only if the Authority is satisfied that—



- (a) compliance will not have a substantial negative effect on the performance of its other functions; and
  - (b) appropriate protections are or will be in place for the purpose of maintaining the confidentiality of anything provided (in particular, information that is personal information within the meaning of the Privacy Act 2020); and 5
  - (c) it is appropriate to do so after taking into account any matters the Authority thinks relevant.
- (2) The matters the Authority may take into account under **subsection (1)** include, without limitation,— 10
- (a) whether the Authority is likely to be able to obtain the requested information, documents, or evidence:
  - (b) the cost to the Authority of complying with the request:
  - (c) whether the overseas regulator could more conveniently have the request satisfied by another source: 15
  - (d) the extent to which the functions of the overseas regulator correspond with the functions of the Authority:
  - (e) whether the overseas regulator would be likely to comply with a similar request made by the Authority and whether any arrangement with the overseas regulator to that effect exists: 20
  - (f) whether, in the Authority’s opinion, it would be more appropriate for the request to be dealt with under the Mutual Assistance in Criminal Matters Act 1992.

### *Conditions*

- 74 Authority may impose conditions on provision of information or documents** 25
- (1) The Authority may impose any conditions in relation to providing information, or a copy of a document, to a law enforcement or regulatory agency or an overseas regulator (whether provided in compliance with a request or otherwise).
- (2) The Authority must, when deciding whether to impose conditions, have regard to whether conditions are necessary or desirable in order to protect the privacy of any individual. 30
- (3) Conditions imposed under **subsection (1)** may include, without limitation, conditions relating to—
- (a) maintaining the confidentiality of anything provided (in particular, information that is personal information within the meaning of the Privacy Act 2020): 35
  - (b) the storing of, the use of, or access to anything provided:
  - (c) the copying, returning, or disposing of copies of documents provided:

- (d) payment of the costs incurred by the Authority in providing anything or in generally complying with a request.

### Subpart 3—Miscellaneous provisions relating to information-gathering powers

*Authority may authorise person to obtain information or documents* 5

#### **75 Power to authorise person to obtain information or documents**

- (1) The Authority may, in accordance with **section 76**, authorise any person to exercise any of the powers under **section 67(1)(a) to (c)** if exercising that power is for the purpose of—
- (a) this Act or any legislation made under this Act; or 10
- (b) complying with the request of an overseas regulator under **section 72** or otherwise co-operating with an overseas regulator.
- (2) An authorisation under **subsection (1)** may relate to a particular case, or a class or classes of cases, specified by the Authority.
- (3) For the purposes of **subsection (1)**, a notice served under **section 67(1)(a) to (c)** may require the information or documents (as the case may be) to be supplied or produced to a person authorised under **subsection (1)** (rather than to the Authority). 15
- (4) The fact that any person authorised by the Authority exercises, or attempts to exercise, any of the powers in **section 67(1)(a) to (c)** is sufficient evidence that the exercise of the power has been authorised by the Authority unless there is evidence to the contrary. 20
- (5) Section 73 of the Crown Entities Act 2004 does not limit this section.

#### **76 Requirements for persons authorised to obtain information or documents**

- (1) The Authority must not authorise a person under **section 75** unless the Authority is satisfied that the person is suitably qualified or trained, or the person is a member of a class of persons who are suitably qualified or trained, to exercise a power under **section 67(1)(a) to (c)**. 25
- (2) A person authorised by the Authority to exercise a power under **section 67(1)(a) to (c)** must, if requested at the time of exercising the power, produce evidence of that person's authority to exercise the power. 30

#### **77 Non-disclosure of information or documents from exercise of powers under section 67 except in certain circumstances**

- (1) A person authorised under **section 75** must not publish or disclose to any other person any information or documents acquired in the course of exercising powers under **section 67** except— 35
- (a) to the Authority; or

- (b) as directed by the Authority in accordance with **section 82(3)**; or
- (c) in accordance with the Official Information Act 1982 or the Privacy Act 2020.
- (2) A person authorised under **section 75** who wilfully contravenes **subsection (1)** commits an offence and is liable on conviction to a fine not exceeding \$500,000. 5

### 78 Protection from liability for persons exercising powers

Without limiting any other statutory protection from liability, no person is liable for any act done or omitted to be done by the person in the exercise or intended exercise of the person's powers under **section 67 or 77** unless the person acts in bad faith. 10

### *Privileges*

### 79 Witnesses and counsel to have privileges of witnesses and counsel in court

- (1) Every person has the same privileges in relation to providing information and documents to, and answering questions before, the Authority, a member or an employee or a delegate of the Authority, or a person authorised under **section 75**, as witnesses have in proceedings before a court. 15
- (2) If a power under **section 67** or the Authority's power to receive evidence is exercised for the purposes of complying with a request from an overseas regulator under **section 72** or otherwise co-operating with an overseas regulator, the person in respect of whom the power is exercised has the privilege against self-incrimination referred to in section 60 of the Evidence Act 2006, applied with all necessary modifications as if the reference to an offence under New Zealand law were a reference to an offence under foreign law. 20
- (3) **Subsection (2)** does not limit any other privilege that the person may have. 25
- (4) Every person appearing as counsel before the Authority, or a member or an employee or a delegate of the Authority, has the same privileges as counsel have in proceedings before a court.

### **Guidance note**

The privileges of a witness include the privilege against self-incrimination and the other privileges set out in subpart 8 of Part 2 of the Evidence Act 2006. 30

### *Effect of proceedings on exercise of powers*

### 80 Effect of proceedings

- (1) If a person commences a proceeding in any court in respect of the exercise of any powers conferred by **section 67**, until a final decision in relation to the proceeding is given,— 35

- (a) the powers may be, or may continue to be, exercised as if the proceeding had not been commenced; and
  - (b) no person is excused from fulfilling their obligations under that section by reason of the proceeding.
- (2) However, the High Court may make an interim order overriding the effect of **subsection (1)**, but only if the High Court is satisfied that—
- (a) the applicant has established a prima facie case that the exercise of the power in question is unlawful; and
  - (b) the applicant would suffer substantial harm from the exercise or discharge of the power or obligation; and
  - (c) if the power or obligation is exercised or discharged before a final decision is made in the proceeding, none of the remedies specified in **subsection (3)**, or any combination of those remedies, could subsequently provide an adequate remedy for that harm; and
  - (d) the terms of that order do not unduly hinder or restrict the Authority in performing or exercising its functions, powers, or duties under this Act or any secondary legislation made under this Act.
- (3) The remedies are as follows:
- (a) any remedy that the High Court may grant in making a final decision in relation to the proceeding (for example, a declaration):
  - (b) any damages that the applicant may be able to claim in concurrent or subsequent proceedings:
  - (c) any opportunity that the applicant may have, as defendant in a proceeding, to challenge the admissibility of any evidence obtained as a result of the exercise or discharge of the power or obligation.

### **81 Effect of final decision that exercise of powers under section 67 unlawful**

- (1) This section applies in any case where it is declared, in a final decision given in any proceedings in respect of the exercise of any powers conferred by **section 67**, that the exercise of any powers conferred by that section is unlawful.
- (2) If this section applies, to the extent to which the exercise of those powers is declared unlawful, the Authority must ensure that, immediately after the decision of the court is given,—
- (a) any information obtained as a consequence of the exercise of powers declared to be unlawful and any record of that information are destroyed; and
  - (b) any documents, or extracts from documents, obtained as a consequence of the exercise of powers declared to be unlawful are returned to the person previously having possession of them, or previously having them under their control, and any copies of those documents or extracts are destroyed; and

- (c) any information derived from or based on such information, documents, or extracts is destroyed.
- (3) However, the court may, in the court’s discretion, order that any information, record, or copy of any document or extract from a document may, instead of being destroyed, be retained by the Authority subject to any terms and conditions that the court imposes. 5
- (4) No information, and no documents or extracts from documents, obtained as a consequence of the exercise of any powers declared to be unlawful, and no record of any such information or document,—
- (a) is admissible as evidence in any civil proceedings unless the court hearing the proceedings in which the evidence is sought to be adduced is satisfied that there was no unfairness in obtaining the evidence: 10
- (b) is admissible as evidence in any criminal proceedings if the evidence is excluded under section 30 of the Evidence Act 2006:
- (c) may otherwise be used in connection with the exercise of any power conferred by this Act or any legislation made under this Act unless the court that declared the exercise of the powers to be unlawful is satisfied that there was no unfairness in obtaining the evidence. 15

### *Confidentiality*

- 82 Confidentiality of information and documents held by or on behalf of Authority** 20
- (1) This section applies to the following information and documents:
- (a) information and documents supplied or disclosed to, or obtained by, the Authority under this Act or any legislation made under this Act:
- (b) information and documents supplied or disclosed to, or obtained by, a person authorised under **section 75** (an **authorised person**) under **subpart 1**: 25
- (c) information derived from information and documents referred to in **paragraph (a) or (b)**.
- (2) The Authority must not publish or disclose, or direct an authorised person to publish or disclose, any information or document to which this section applies unless— 30
- (a) the information or document is available to the public under any legislation or is otherwise publicly available; or
- (b) the information is in a statistical or summary form; or 35
- (c) the publication or disclosure of the information or document is for the purposes of, or in connection with, the performance or exercise of any function, power, or duty conferred or imposed on the Authority by this Act or any legislation made under this Act; or

- (d) the publication or disclosure of the information or document is to a law enforcement or regulatory agency under **subpart 2**; or
  - (e) the publication or disclosure of the information or document is to an overseas regulator under **subpart 2** or otherwise for the purpose of assisting the Authority to co-operate with an overseas regulator; or 5
  - (f) the publication or disclosure of the information or document is to a person who the Authority is satisfied has a proper interest in receiving the information or document; or
  - (g) the publication or disclosure of the information or document is with the consent of the person to whom the information or document relates or of the person to whom the information or document is confidential. 10
- (3) The Authority must not publish or disclose, or direct an authorised person to publish or disclose, any information or document under **subsection (2)(f)** unless the Authority is satisfied that appropriate protections are or will be in place for the purpose of maintaining the confidentiality of the information or document (in particular, information that is personal information within the meaning of the Privacy Act 2020). 15

### **83 Conditions relating to publication or disclosure of information or documents**

- (1) The Authority may, by written notice to a person to whom any information or document is published or disclosed under **section 82(2)(c), (f), or (g)**, impose any conditions in relation to the publication, disclosure, or use of the information or document by the person. 20
- (2) The Authority must, in considering what conditions to impose, have regard to whether conditions are necessary or desirable in order to— 25
  - (a) avoid disclosure of a trade secret; or
  - (b) avoid unreasonable prejudice to the commercial position of the person who supplied, or is the subject of, the information or document; or
  - (c) protect the privacy of any individual.
- (3) Without limiting **subsection (1)**, the conditions may relate to the following matters: 30
  - (a) maintaining the confidentiality of anything provided (in particular, information that is personal information within the meaning of the Privacy Act 2020):
  - (b) the storing of, the use of, or access to anything provided: 35
  - (c) the copying, returning, or disposing of copies of documents provided.
- (4) A person who refuses or fails, without reasonable excuse, to comply with any conditions imposed under this section commits an offence and is liable on conviction to a fine not exceeding \$500,000.

## Part 5 Enforcement

### Subpart 1—Power to accept undertakings

- 84 Authority may accept undertakings** 5
- (1) The Authority may accept a written undertaking given by, or on behalf of, a person in connection with any matter relating to the enforcement of this Act or legislation made under this Act.
  - (2) The person may withdraw or vary the undertaking with the consent of the Authority.
- 85 Matters included in undertakings** 10
- (1) An undertaking under **section 84** may, without limitation, include either or both of the following:
    - (a) an undertaking to pay compensation to any person or otherwise take action to avoid, remedy, or mitigate any actual or likely adverse effects arising from a contravention, or possible contravention, of this Act or legislation made under this Act. 15
    - (b) an undertaking to pay to the Authority all or part of the Authority's costs incurred in investigating, or bringing proceedings in relation to, a contravention, or possible contravention, of this Act or legislation made under this Act. 20
  - (2) If the Authority accepts an undertaking that involves payment of compensation to any person, or payment of the Authority's costs, the Authority must make the following information publicly available:
    - (a) the amount of the compensation, or of the Authority's costs, that has been undertaken to be paid; and 25
    - (b) a brief description of the circumstances and nature of the contravention or possible contravention of this Act or legislation made under this Act to which the undertaking relates.
  - (3) In this section, **contravention** means either of the following:
    - (a) an actual contravention: 30
    - (b) involvement in a contravention (*see section 110*).
- 86 Enforcement of undertakings**
- (1) If the Authority considers that a person has breached an undertaking given under **section 84**, the Authority may apply to the High Court for an order.
  - (2) The court may make any 1 or more of the following orders if it is satisfied that the person has breached a term of the undertaking: 35
    - (a) an order directing the person to comply with the term:

- (b) an order directing the person to pay to the Crown an amount not exceeding the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach:
- (c) any order that the court thinks appropriate that directs the person to compensate any other person who has suffered loss or damage as a result of the breach: 5
- (d) an order for any consequential relief that the court thinks appropriate.

### Subpart 2—Power to issue corrective notices

#### 87 Authority may give notice to take corrective action

- (1) This section applies if the Authority is satisfied that a person— 10
  - (a) has contravened a civil liability provision; or
  - (b) is likely to contravene a civil liability provision; or
  - (c) has attempted to contravene a civil liability provision; or
  - (d) has been involved in a contravention of a civil liability provision.
- (2) The Authority may, by written notice given to the person, require the person to take any steps specified in the notice to— 15
  - (a) avoid, remedy, or mitigate any actual or likely adverse effects arising from a contravention or possible contravention; or
  - (b) ensure that a contravention is not continued or repeated; or
  - (c) ensure that a contravention does not occur. 20
- (3) The notice must specify a reasonable period within which the required steps must be taken.
- (4) If the Authority is satisfied that, by engaging in any conduct, the person is contravening or is likely to, or is attempting to, contravene a civil liability provision, the Authority may act under **subsection (2)**— 25
  - (a) whether or not the person has previously contravened the provision; and
  - (b) whether or not there is an imminent danger of substantial damage to any person if the provision is contravened.

#### 88 Person must comply with corrective notice

- (1) A person who is given a notice under this subpart must comply with the notice within the time frame, and in the manner, specified in the notice. 30
- (2) A person who contravenes this section is liable to a civil liability remedy (including an order to pay a pecuniary penalty).

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#### Guidance note

See **subpart 4 of Part 5** for further provisions about civil liability. 35

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**89 Procedural matters relating to corrective notice**

The Authority may exercise a power under **section 87** only if—

- (a) the Authority has had regard to whether exercising the power promotes the purpose of this Act specified in **section 3**; and
- (b) the Authority gives the person to whom the notice is proposed to be directed (A) at least 20 working days' written notice of the following matters before Authority exercises the power:
  - (i) that the Authority may exercise the power; and
  - (ii) the reasons why it is considering exercising that power; and
- (c) the Authority gives A or A's representative an opportunity to make written submissions and to be heard on the matter within that notice period.

**Subpart 3—Power to require warning to be disclosed****90 Authority may require its warning to be disclosed**

- (1) If the Authority has issued a warning about potential non-compliance with this Act or legislation made under this Act to a relevant person, the Authority may, by written notice given to the relevant person, require the relevant person to do either or both of the following:
  - (a) prominently disclose a copy of the warning on 1 or more Internet sites maintained by or on behalf of the relevant person;
  - (b) ensure that every document or other communication of the kind that is specified in the notice and that is distributed by or on behalf of the relevant person contains a copy of the warning in a prominent position or is accompanied by a copy of the warning.
- (2) The Authority may impose the requirement on the terms and conditions (if any) that it thinks fit.
- (3) In this subpart, **relevant person** means a person who is or has been—
  - (a) a news media entity; or
  - (b) an operator of a digital platform.

**91 Person must comply with disclosure notice**

- (1) A person who is given a notice under this subpart must comply with the notice within the time frame, and in the manner, specified in the notice.
- (2) A person who contravenes this section is liable to a civil liability remedy (including an order to pay a pecuniary penalty).

**Guidance note**

See **subpart 4 of Part 5** for further provisions about civil liability.

**92 Procedural matters relating to disclosure notice**

The Authority may exercise a power under **section 90** only if—

- (a) the Authority has had regard to whether exercising the power promotes the purpose of this Act specified in **section 3**; and
- (b) the Authority gives the relevant person at least 20 working days' written notice of the following matters before Authority exercises the power:
  - (i) that the Authority may exercise the power; and
  - (ii) the reasons why it is considering exercising that power; and
- (c) the Authority gives the relevant person or the relevant person's representative an opportunity to make written submissions and to be heard on the matter within that notice period.

**93 Authority must publish disclosure notice**

If the Authority gives a notice under this subpart,—

- (a) it must, immediately after exercising that power, publish the following:
  - (i) the notice: 15
  - (ii) the reasons for giving the notice:
  - (iii) any other information the Authority thinks relevant in the circumstances; and
- (b) it may make the matters in **paragraph (a)** publicly available by any other means; and 20
- (c) it may notify any other person of the matters in **paragraph (a)**.

## Subpart 4—Civil liability

**94 Civil liability remedies available under this subpart**

- (1) The following remedies (**civil liability remedies**) are available under this subpart: 25
  - (a) a pecuniary penalty order:
  - (b) an injunction.
- (2) Those remedies are available for contraventions of civil liability provisions.
- (3) A **civil liability provision** is any of the following:
  - (a) **section 26** (duty to comply with bargaining code): 30
  - (b) **section 27** (duty to bargain in good faith):
  - (c) **section 31** (duty to participate in bargaining process):
  - (d) **section 62** (compliance with terms and conditions of exemption):
  - (e) **section 65** (parties must give Authority copy of news content agreement): 35

- (f) **section 88** (person must comply with corrective notice):
- (g) **section 91** (person must comply with disclosure notice):
- (h) **section 119** (terms and conditions not required for exemption).

*Pecuniary penalty orders*

- 95 When High Court may make pecuniary penalty order** 5
- (1) The High Court may, on the application of the Authority, order a person to pay to the Crown the pecuniary penalty that the court determines to be appropriate if the court is satisfied that the person has—
- (a) contravened a civil liability provision; or
  - (b) attempted to contravene a civil liability provision; or 10
  - (c) been involved in a contravention of a civil liability provision.
- (2) In this subpart, the relevant conduct is the conduct giving rise to the contravention, attempted contravention, or involvement in the contravention referred to in **subsection (1)**.
- 96 Maximum penalty (Tier 1)** 15
- (1) This section applies to a contravention, an attempted contravention, or an involvement in a contravention of any of the following:
- (a) **section 31** (duty to participate in bargaining process):
  - (b) **section 62** (compliance with terms and conditions of exemption).
- (2) The maximum amount of a pecuniary penalty is— 20
- (a) \$500,000 for a contravention, an attempted contravention, or an involvement in a contravention by an individual; or
  - (b) in any other case, the greater of the following:
    - (i) \$10 million:
    - (ii) either the amount referred to in **subsection (3)(a)** or the amount referred to in **subsection (3)(b)**. 25
- (3) For the purposes of **subsection (2)(b)(ii)**, the amounts are as follows:
- (a) if it can be readily ascertained and if the court is satisfied that the contravention (if any) occurred in the course of producing a commercial gain, 3 times the value of any commercial gain resulting from the contravention; or 30
  - (b) if the commercial gain cannot readily be ascertained, 10% of the turnover of the person who is liable to pay the penalty and all its interconnected bodies corporate (if any) in each accounting period in which the contravention (if any) occurred. 35

**97 Maximum penalty (Tier 2)**

- (1) This section applies to a contravention, an attempted contravention, or an involvement in a contravention of any of the following:
- (a) **section 26** (duty to comply with bargaining code):
  - (b) **section 27** (duty to bargain in good faith): 5
  - (c) **section 119** (terms and conditions not required for exemption).
- (2) The maximum amount of a pecuniary penalty is—
- (a) \$200,000 for a contravention, an attempted contravention, or an involvement in a contravention by an individual; or
  - (b) in any other case, the greater of the following: 10
    - (i) \$3 million:
    - (ii) either the amount referred to in **subsection (3)(a)** or the amount referred to in **subsection (3)(b)**.
- (3) For the purposes of **subsection (2)(b)(ii)**, the amounts are as follows:
- (a) if it can be readily ascertained and if the court is satisfied that the contravention (if any) occurred in the course of producing a commercial gain, the value of any commercial gain resulting from the contravention; or 15
  - (b) if the commercial gain cannot readily be ascertained, 3% of the turnover of the person who is liable to pay the penalty and all its interconnected bodies corporate (if any) in each accounting period in which the contravention (if any) occurred. 20

**98 Maximum penalty (Tier 3)**

- (1) This section applies to a contravention, an attempted contravention, or an involvement in a contravention of any of the following: 25
- (a) **section 65** (parties must give Authority copy of news content agreement):
  - (b) **section 88** (person must comply with corrective notice):
  - (c) **section 91** (person must comply with disclosure notice).
- (2) The maximum amount of a pecuniary penalty is— 30
- (a) \$30,000 for a contravention, an attempted contravention, or an involvement in a contravention by an individual; or
  - (b) \$300,000 in any other case.

**99 Considerations for court in determining pecuniary penalty**

- (1) In determining an appropriate pecuniary penalty that a person (A) must pay, the court must have regard to all relevant matters, including— 35
- (a) the nature and extent of A's conduct; and

- (b) the nature and extent of any loss or damage suffered by any person because of A's conduct; and
  - (c) any gains made or losses avoided by A; and
  - (d) whether a person has paid an amount of compensation, reparation, or restitution, or taken other steps to avoid or mitigate any actual or potential adverse effects arising from A's conduct; and 5
  - (e) the circumstances in which A's conduct took place; and
  - (f) whether A has previously been found by a court in a proceeding under this Act, or any other legislation, to have engaged in any similar conduct; and 10
  - (g) the size of, and resources available to, A.
- (2) In this section, **A's conduct** means the conduct of A for which A is liable to the pecuniary penalty.

### *Injunctions*

- 100 High Court may grant injunctions** 15
- The High Court may, on application by the Authority or any other person, grant an injunction—
- (a) restraining a person from engaging or continuing to engage in conduct that constitutes or would constitute a contravention, an attempted contravention, or an involvement in a contravention of a civil liability provision; or 20
  - (b) requiring a person to do an act or a thing if—
    - (i) that person has refused or failed, is refusing or failing, or is proposing to refuse or fail to do that act or thing; and
    - (ii) the refusal or failure was, is, or would be a contravention of a civil liability provision. 25
- 101 When court may grant restraining injunctions**
- (1) The court may grant an injunction restraining a person from engaging in conduct of a particular kind if—
    - (a) it is satisfied that the person has engaged in conduct of that kind; or 30
    - (b) it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind.
  - (2) The court may grant an interim injunction restraining a person from engaging in conduct of a particular kind if in its opinion it is desirable to do so.
  - (3) **Subsections (1)(a) and (2)** apply whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind. 35

- (4) **Subsections (1)(b) and (2)** apply whether or not—
- (a) the person has previously engaged in conduct of that kind; or
  - (b) there is an imminent danger of substantial damage to any other person if that person engages in conduct of that kind.
- 102 When court may grant performance injunctions** 5
- (1) The court may grant an injunction requiring a person to do an act or a thing that they are required to do under a civil liability provision if—
- (a) it is satisfied that the person has refused or failed to do that act or thing; or
  - (b) it appears to the court that, if an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing. 10
- (2) The court may grant an interim injunction requiring a person to do an act or a thing that they are required to do under a civil liability provision if in its opinion it is desirable to do so.
- (3) **Subsections (1)(a) and (2)** apply whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing. 15
- (4) **Subsections (1)(b) and (2)** apply whether or not—
- (a) the person has previously refused or failed to do that act or thing; or
  - (b) there is an imminent danger of substantial damage to any other person if the person refuses or fails to do that act or thing. 20
- 103 Authority’s undertaking as to damages not required**
- (1) If the Authority applies to the High Court for the grant of an interim injunction under this subpart, the court must not, as a condition of granting an interim injunction, require the Authority to give an undertaking as to damages. 25
- (2) In determining the Authority’s application for the grant of an interim injunction, the court must not take into account that the Authority is not required to give an undertaking as to damages.
- Rules of procedure*
- 104 Rules of civil procedure and civil standard of proof apply** 30
- A proceeding under this subpart is a civil proceeding and the usual rules of court and rules of evidence and procedure for civil proceedings apply (including the standard of proof and the court’s powers in respect of enforcement and contempt of court).
- 105 Limit on proceedings** 35
- (1) A proceeding under this subpart may be commenced within 3 years after the conduct giving rise to the contravention, attempted contravention, or involve-

ment in the contravention was discovered or ought reasonably to have been discovered.

- (2) However, no proceeding under this subpart may be commenced 10 years or more after the conduct giving rise to the contravention, attempted contravention, or involvement in the contravention occurred. 5

*Relationship between proceedings and orders*

**106 More than 1 civil liability remedy may be given for same conduct**

The court may grant a civil liability remedy of one kind against a person even though the court has granted another civil liability remedy of a different kind against the person for the same conduct. 10

**107 Only 1 pecuniary penalty order may be made for same conduct**

If conduct by a person constitutes a contravention, an attempted contravention, or an involvement in the contravention of 2 or more provisions,—

- (a) a proceeding may be brought against that person for the contravention, attempted contravention, or involvement in the contravention of any 1 or more of the provisions; but 15
- (b) no person is liable to more than 1 pecuniary penalty order for the same conduct.

**108 No pecuniary penalty and criminal penalty for same conduct**

A person cannot be ordered to pay a pecuniary penalty and be liable for a fine or to imprisonment under this Act or any other Act for the same conduct. 20

**Subpart 5—Miscellaneous provisions relating to enforcement**

**109 Jurisdiction of High Court**

The High Court may hear and determine applications for orders, or for the court to exercise any other power, under any provision of **subpart 1 or 4**. 25

**110 Involvement in contravention**

In this Act, a person is **involved in a contravention** if the person—

- (a) has aided, abetted, counselled, or procured the contravention; or
- (b) has induced, whether by threats or promises or otherwise, the contravention; or 30
- (c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or
- (d) has conspired with others to effect the contravention.

## Subpart 6—Offences

- 111 Offences relating to information-gathering powers and misleading or deceiving Authority**
- (1) A person must not,—
- (a) without reasonable excuse, refuse or fail to comply with a notice under **section 67**; or 5
  - (b) in purported compliance with such a notice, provide information, or produce a document, or give evidence, knowing it to be false or misleading. 10
- (2) A person must not attempt to deceive or knowingly mislead the Authority in relation to any matter before it. 10
- (3) A person must not, having been required under a notice under **section 67(1)(d)** to appear before the Authority or a specified person referred to in that provision, without reasonable excuse,—
- (a) refuse or fail to appear before the Authority or the specified person; or 15
  - (b) refuse to take an oath or affirmation as a witness; or
  - (c) refuse to answer any question; or
  - (d) refuse or fail to produce any document or information that the person is required to produce. 15
- (4) For the purposes of **subsection (3)**, a person who is a body corporate contravenes that subsection if it is required to appear under **section 67(1)(d)** and, without reasonable excuse, an authorised representative on its behalf refuses or fails to appear, refuses to take an oath or affirmation as a witness, refuses to answer any question, or refuses or fails to provide any document or information that the body corporate is required to provide. 20
- (5) A person who contravenes **subsection (1), (2), or (3)** commits an offence and is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$500,000; 25
  - (b) in any other case, to a fine not exceeding \$10 million.
- (6) A proceeding for an offence against **subsection (5)** may be commenced within 3 years after the matter giving rise to the contravention was discovered or ought reasonably to have been discovered. 30



## Part 6 Miscellaneous

### Subpart 1—Bargaining code

#### *Authority must issue bargaining code*

- |   |    |
|---|----|
| <b>112 Authority must issue bargaining code</b>   | 5  |
| (1) The Authority must issue a bargaining code.   |    |
| (2) Before issuing the code, the Authority must—  |    |
| (a) consider the purpose of the bargaining code specified in <b>section 113</b> ; and   |    |
| (b) consult—  | 10 |
| (i) the Minister; and   |    |
| (ii) the persons, or representatives of the persons, that the Authority considers will be substantially affected by the code.   |    |
| (3) The bargaining code is secondary legislation ( <i>see</i> Part 3 of the Legislation Act 2019 for publication requirements).   | 15 |
| <br>  |    |
| <b>113 Purpose of bargaining code</b>   |    |
| The purpose of the bargaining code is to facilitate fair and efficient news content bargaining.   |    |
| <br>  |    |
| <b>114 Content of bargaining code</b>   |    |
| (1) The bargaining code may contain any provisions that are necessary or desirable to promote the purpose of the code, including—                                       | 20 |
| (a) provisions that specify how the bargaining process must be conducted, including by—   |    |
| (i) specifying the procedure that must be followed by the parties, mediators, arbitration panels, and other people involved in the bargaining process; and              | 25 |
| (ii) requiring the parties to the bargaining process to share information for the purposes of the bargaining process; and   |    |
| (iii) imposing obligations in respect of the bargaining process on the parties, mediators, arbitration panels, and other people involved in the bargaining process; and | 30 |
| (b) provisions specifying fees and charges that must be paid in respect of the bargaining process; and  |    |
| (c) provisions imposing obligations on news media entities and operators engaged in news content bargaining outside of the bargaining process,                          | 35 |

- including obligations to share information for the purposes of the bargaining; and
- (d) provisions relating to information shared under the bargaining code, including how that information may or must be used, handled, or disposed of by the person the information has been given to; and 5
- (e) provisions prescribing more detailed requirements relating to the good-faith obligations of parties to news content bargaining (*see section 27*).
- (2) However, the bargaining code must include any provisions the Authority considers are necessary to ensure that news media entities and operators—
- (a) have access to the information they need to engage in fair and efficient news content bargaining; and 10
- (b) engage in news content bargaining in a way that respects the cultural and ethnic background of the people participating in the process.
- Subpart 2—Exemption from specified provisions of Commerce Act 1986 for collective bargaining 15
- 115 Interpretation**
- In this subpart,—
- collective bargaining** means 2 or more registered news media entities engaging in collective bargaining with a registered operator in respect of matters relating to the operator’s digital platform making available news content produced by the news media entities 20
- collective bargaining agreement** means an agreement between 2 or more registered news media entities to engage in collective bargaining.
- 116 Registered news media entities exempt from specified provisions of Commerce Act 1986** 25
- (1) This section exempts registered news media entities from the provisions of the Commerce Act 1986 specified in **subsection (2)** in the circumstances specified in **subsections (3) and (4)**.
- (2) The provisions registered news media entities are exempt from are—
- (a) section 27 of the Commerce Act 1986; and 30
- (b) sections 30 and 30C(1) of the Commerce Act 1986 to the extent that they apply to price fixing.
- (3) Nothing in those provisions—
- (a) applies to anything done by a registered news media entity for the purposes of— 35
- (i) entering into a collective bargaining agreement; or

- (ii) engaging in collective bargaining in accordance with a collective bargaining agreement; or
- (b) affects the enforceability of that collective bargaining agreement.
- (4) The exemption in **subsection (3)** applies only if the following criteria are met: 5
  - (a) the collective bargaining agreement—
    - (i) does not contain a prohibited provision (*see* **section 117(1) and (2)**); and
    - (ii) is recorded in writing; and
    - (iii) is notified in accordance with **section 121(1) to (4)**: 10
  - (b) the registered news media entities comply with—
    - (i) the terms of their collective bargaining agreement; and
    - (ii) terms and conditions (if any) imposed on the entities by the Authority (*see* **section 118**); and
    - (iii) a direction (if any) not to enter into, or engage in collective bargaining under, an agreement (*see* **section 120**). 15
- (5) In this section, **price fixing** has the meaning given in section 30A of the Commerce Act 1986.

### 117 Prohibited provisions

- (1) A collective bargaining agreement must not contain a prohibited provision. 20
- (2) In this section, a provision is a **prohibited provision** if the provision—
  - (a) has the purpose, or has or is likely to have the effect, of any of the following:
    - (i) preventing, restricting, or limiting the supply of goods or services from a party to the collective bargaining agreement to an operator of a digital platform: 25
    - (ii) preventing, restricting, or limiting a party to the agreement for collective bargaining from entering into or arriving at an agreement with a registered operator other than in accordance with the collective bargaining agreement; or 30
  - (b) is prohibited from being included in a collective bargaining agreement by regulations made under this section.
- (3) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations prohibiting additional types of provision from being included in a collective bargaining agreement. 35
- (4) The Minister may recommend that regulations be made only—
  - (a) after taking into account—
    - (i) the purpose of this Act specified in **section 3**; and

- (ii) the effect the provisions are likely to have on any efficiencies or lessening in competition that may result from registered news media entities engaging in collective bargaining under this subpart; and
- (b) after consulting— 5
- (i) the Commission; and
- (ii) the Authority; and
- (iii) the persons, or representatives of the persons, that the Minister considers will be substantially affected by the regulations.
- (5) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 10
- 118 Terms and conditions**
- (1) The Authority may impose terms and conditions on a registered news media entity in respect of its engagement in collective bargaining under this subpart (including a registered news media entity’s entry into an agreement to engage in collective bargaining). 15
- (2) The Authority may impose any terms or conditions it considers necessary or desirable to—
- (a) promote the purpose of this Act specified in **section 3**; or
- (b) mitigate any lessening of competition that may result from the news media entity being exempt from the provisions of the Commerce Act 1986 specified in **section 116(2)**. 20
- (3) The terms and conditions may relate to 1 or more of the following:
- (a) the conduct a registered news media entity may and may not engage in:
- (b) provision of information to the Authority: 25
- (c) the contents of a collective bargaining agreement or a prospective collective bargaining agreement (including conditions requiring changes to be made to the agreement or prospective agreement).
- (4) **Subsection (3)** does not limit **subsection (2)**.
- (5) Before imposing terms or conditions under **subsection (1)**, the Authority must— 30
- (a) give the registered news media entity written notice, at least 20 working days before the terms or conditions are imposed, of the following matters:
- (i) the Authority’s proposed terms or conditions: 35
- (ii) the reasons for the Authority’s proposed terms or conditions; and
- (b) give the registered news media entity an opportunity to make a submission and to be heard in relation to the proposed terms or conditions.

**119 Terms and conditions not required for exemption**

- (1) Despite **section 116(3) and (4)(b)(ii)**, the Authority may specify, when imposing a term or condition under **section 118**, that compliance with the term or condition is not required for the criterion in **section 116(4)(b)(ii)** to be met. 5
- (2) A registered news media entity that contravenes a term or condition to which **subsection (1)** applies is liable to a civil liability remedy (including an order to pay a pecuniary penalty).

**Guidance note**

See **subpart 4 of Part 5** for further provisions about civil liability. 10

**120 Direction not to enter into agreement or engage in bargaining**

- (1) The Authority may issue a direction that a registered news entity must not enter into, or engage in collective bargaining under, a specified collective bargaining agreement.
- (2) The Authority may issue a direction under **subsection (1)** if the Authority is satisfied that the adverse impact the prohibited conduct is likely to have on competition significantly outweighs the public benefit of any additional support for production of news content the prohibited conduct is likely to secure. 15
- (3) Before issuing a direction, the Authority must— 20
- (a) give the registered news media entity written notice, at least 20 working days before the direction is issued, of the following matters:
- (i) the Authority’s proposed direction;
- (ii) the reasons for the Authority’s proposed direction; and
- (b) give the registered news media entity an opportunity to make a submission and to be heard in relation to the proposed direction. 25

**121 Notification requirements for collective bargaining agreements**

- (1) Registered news media entities seeking to agree a collective bargaining agreement must give the Authority a copy of the proposed agreement before they enter into it. 30
- (2) The registered news media entities must not enter into the proposed agreement until at least 20 working days after the proposed agreement is provided to the Authority.
- (3) However, the Authority may authorise the registered news media entities to enter into the agreement within the 20-working-day period by giving the entities written notice that they may enter into the agreement. 35
- (4) The parties to a collective bargaining agreement must, as soon as reasonably practicable after the agreement is entered into,—

- (a) notify the Authority they have entered into the agreement; and
  - (b) give the Authority a copy of the agreement.
- (5) The Authority must notify the Commission that the agreement has been entered into and give the Commission a copy of the agreement.

## **122 Register of collective bargaining agreements** 5

- (1) The Authority must keep and maintain a public register that lists all collective bargaining agreements that have been notified to the Authority under **section 121(4)** (if any) on an Internet site maintained by or on behalf of the Authority.
- (2) The register must contain the following information:
- (a) the date on which the agreement was entered into: 10
  - (b) the parties to the agreement:
  - (c) the registered operator the parties are engaging in collective bargaining with (including the digital platform the operator operates):
  - (d) any other matters prescribed in regulations.
- (3) The Authority must remove a collective bargaining agreement from the register if the Authority is satisfied that the collective bargaining the agreement covers has concluded (with or without a news content agreement between the parties to the bargaining). 15

### Subpart 3—Regulations

## **123 Regulations** 20

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for 1 or more of the following purposes:
- (a) prescribing procedures, requirements, and other matters, not inconsistent with this Act, for any register kept under this Act, including matters that relate to— 25
    - (i) the operation of the register:
    - (ii) the form of the register:
    - (iii) the information to be contained in the register:
    - (iv) access to the register:
    - (v) search criteria for the register: 30
    - (vi) circumstances in which amendments must be made to the register:
  - (b) providing for anything this Act says may or must be provided for by regulations:
  - (c) providing for anything incidental that is necessary for carrying out, or giving full effect to, this Act. 35

- (2) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

**124 Minister must consult Authority about regulations**

The Minister must consult the Authority before making a recommendation under **section 123**.

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**125 Miscellaneous provisions relating to fees and charges**

- (1) Regulations may authorise a person to whom a fee or charge is payable to refund or waive, in whole or in part and on any conditions that may be prescribed, the fee or charge in relation to any person.
- (2) A person to whom a prescribed fee or charge is payable may refuse to perform a function or exercise a power until the prescribed fee or charge is paid.
- (3) Any fee, charge, or other amount payable to a person under this Act is recoverable by the person in any court of competent jurisdiction as a debt due to the person.

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Subpart 4—Miscellaneous

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*Functions of Authority*

**126 Functions of Authority**

The Authority's functions are as follows:

- (a) to administer the bargaining process and facilitate fair and efficient news content bargaining, including by—
- (i) determining whether news media entities and operators of digital platforms should be registered; and
- (ii) determining whether operators should be exempt from the bargaining process; and
- (iii) monitoring whether registrations and exemptions should be varied or revoked; and
- (iv) developing and maintaining a bargaining code applicable to news content bargaining; and
- (v) approving and appointing mediators and arbitrators; and
- (vi) issuing guidance in respect of news content bargaining; and
- (vii) providing administrative and technical assistance to arbitration panels:
- (b) to monitor, investigate, and enforce compliance with this Act and any legislation made under this Act (including by issuing warnings about potential non-compliance):
- (c) to keep under review and report on—

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- (i) domestic and international developments relating to news content made available by digital platforms, including the regulatory approaches adopted in other comparable jurisdictions; and
- (ii) matters relating to news content agreements and the operation of this Act and any legislation made under this Act, including the impact (if any) those matters have on production of New Zealand news content by news media entities and Māori news media entities: 5
- (d) to co-operate with—
  - (i) other law enforcement or regulatory agencies (including under **section 71**); and 10
  - (ii) overseas regulators (including under **section 72**):
- (e) to perform and exercise the functions, powers, and duties conferred or imposed on it by or under this Act or any legislation made under this Act. 15

*Annual report on matters relating to news content*

**127 Authority must prepare annual report on matters relating to news content**

- (1) The Authority must, as soon as practicable after the end of each financial year, prepare an annual report on matters relating to news content made available by digital platforms. 20
- (2) The report may include any information the Authority considers relevant to—
  - (a) understanding current trends (both domestic and international) in relation to news content made available by digital platforms, including regulatory approaches in other comparable jurisdictions; and
  - (b) evaluating how effective news content agreements and this Act have been in supporting the production of a diverse range of New Zealand news content. 25
- (3) However, it must include the following:
  - (a) an assessment of the value of the news content agreements—
    - (i) entered into during the period the report relates to; and 30
    - (ii) in force during that period:
  - (b) information about how those agreements are distributed—
    - (i) between different types of news media entity, including Māori news media entities; and
    - (ii) relative to the costs news media entities incur to produce their news content: 35
  - (c) an evaluation of the effect (if any) the news content agreements have had on the production of news content:



- (d) the following information about each exemption from the bargaining process granted under **section 56** during the period the report relates to:
- (i) the information specified in **section 64(2)** (public record of exemptions and exemption decisions): 5
  - (ii) a summary of the Authority’s reasons for granting the exemption.
- (4) The Authority must not include commercially sensitive information in an annual report unless the Authority—
- (a) consults the persons the Authority considers are likely to be adversely affected by the proposed disclosure of the information; and 10
  - (b) is satisfied the public interest in the disclosure of the information outweighs any likely adverse effect of the disclosure on any person.
- (5) In this section and **section 128**, **financial year** has the same meaning as in section 2(1) of the Public Finance Act 1989.
- 128 Authority must give report to Minister and publish it** 15
- (1) The Authority must give the annual report on matters relating to news content to the Minister no later than the date on which the Authority is required to give the Minister its annual report prepared under section 150 of the Crown Entities Act 2004 for the same financial year.
- (2) The Authority must publish the annual report on matters relating to news content— 20
- (a) within 10 working days after the Authority gives the report to the Minister; and
  - (b) if the Minister presents the report to the House of Representatives during that period, as soon as is reasonably practicable after the Minister presents the report. 25
- 129 Minister must present report to House of Representatives**
- The Minister must present the annual report on matters relating to news content to the House of Representatives—
- (a) within 5 working days after receiving the final report; or 30
  - (b) if Parliament is not in session, as soon as possible after the commencement of the next session of Parliament.
- 130 First annual report**
- Despite **section 127(1)**, the first report prepared under **section 127**—
- (a) must be prepared after the end of the first financial year that begins after this section comes into force; and 35
  - (b) relates to a period that starts on the day this section comes into force and ends at the end of that financial year.

*Power to approve standards codes***131 Authority may approve standards codes**

- (1) The Authority may approve a code as a standards code if the Authority is satisfied that the code—
- (a) applies to the production or publication of news content by 1 or more news media entities; and 5
  - (b) contains requirements comparable to a standards code, statement of principles, or similar set of requirements maintained by a recognised regulatory body; and
  - (c) provides for, or is supported by, a mechanism that allows for effective and impartial resolution of complaints about breaches of the code. 10
- (2) The Authority must maintain a list of approved standards codes on its Internet site.
- (3) In this section, a **code** includes a code published by 1 or more news media entities or by an organisation or a group to which those news media entities belong. 15

*Power to specify how thing is done***132 Authority may specify how thing is done**

- (1) This section applies if this Act provides for a thing to be done in the manner specified by the Authority. 20
- (2) If this section applies, the Authority may—
- (a) specify any of the following matters:
    - (i) by whom, when, where, and how the thing may be done;
    - (ii) the form that must be used in connection with doing the thing;
    - (iii) what information or other evidence or documents must be provided in connection with the thing: 25
    - (iv) requirements with which information, evidence, or documents that are provided in connection with the thing must comply;
    - (v) if the thing is an application to the Authority, that fees or charges must be paid in connection with the application; and 30
  - (b) specify different matters for different classes of applicant or other circumstances.
- (3) A decision by the Authority under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

*Notices***133 Notices**

- (1) A notice served or given by the Authority for the purposes of this Act is sufficiently served or given if it is—
- (a) in writing; and 5
  - (b) signed by 1 or more of the members or by any person purporting to act with the authority of the Authority; and
  - (c) served or given in accordance with **section 134**.
- (2) All documents purporting to be signed by or on behalf of the Authority must, in all courts and in all proceedings under this Act, be treated as having been so signed with due authority unless the contrary is proved. 10

**134 Service of notices**

- (1) Any notice or other document that must be served on or given to a person for the purposes of this Act may—
- (a) be served on or given to an individual— 15
    - (i) by delivering it personally or by an agent (such as a courier) to the person; or
    - (ii) by sending it by post addressed to the person at the person's usual or last known place of residence or business; or
    - (iii) by sending it by email to the person's email address provided by the person for the purpose; or 20
    - (iv) in any other manner a District Court Judge directs:
  - (b) be served on or given to a company by serving it on the company in a manner provided for in section 388 of the Companies Act 1993:
  - (c) be served on or given to an overseas company by serving it on the overseas company in a manner provided for in section 390 of the Companies Act 1993: 25
  - (d) be served on or given to any other body corporate by serving it on the body corporate in a manner in which it could be served if the body corporate were a company: 30
  - (e) be served on or given to the person in the manner prescribed in regulations.
- (2) In the absence of proof to the contrary, a notice, document, or notification sent to a person in accordance with—
- (a) **subsection (1)(a)(ii)** must be treated as having been served on or given to the person when it would have been delivered in the ordinary course of post; and, in proving the delivery, it is sufficient to prove that the letter was properly addressed and posted: 35

- (b) **subsection (1)(a)(iii)** must be treated as having been served on or given to the person on the second working day after the day on which it is sent.
- (3) Section 392 of the Companies Act 1993 applies for the purposes of **subsection (1)(b) to (d)**. 5
- (4) If a person is absent from New Zealand, a notice served on or given to the person's agent in New Zealand in accordance with **subsection (1)** must be treated as having been served on the person.
- (5) If a person has died, the notice may be served or given, in accordance with **subsection (1)**, on their personal representative. 10
- (6) In this section, **company** and **overseas company** have the meanings given in section 2(1) of the Companies Act 1993.

**135 Section 134 does not apply to legal proceedings or final offer arbitration**

**Section 134** does not apply to service of a notice or other document for the purposes of legal proceedings or a final offer arbitration under this Act. 15

*Review of this Act*

**136 Review of this Act**

- (1) The Minister must, within 5 years of the date on which this Act comes into force,—
- (a) commence a review of its operation; and 20
- (b) prepare a report on that review.
- (2) The Minister must ensure that, during the review, the people and organisations that the Minister thinks appropriate are consulted.
- (3) The Minister must present the report to the House of Representatives as soon as practicable after it has been completed. 25

**Schedule 1**  
**Transitional, savings, and related provisions**

**s 12**

**Part 1**  
**Provisions relating to this Act as enacted**

5

There are no transitional, savings, or related provisions in this Act as enacted.

**Schedule 2**  
**Additional modifications to Arbitration Act 1996 rules and requirements**

s 41

*Relationship between this schedule and Arbitration Act 1996* 5

**1 Relationship between this schedule and Arbitration Act 1996**

A provision of the Arbitration Act 1996 applied or modified by **clause 3(1), 4(2), or 5** of this schedule remains subject to an inconsistent provision of this Act or legislation made under this Act (*see* section 9(1) of the Arbitration Act 1996). 10

*Place of arbitration and applicable law*

**2 Place of arbitration and applicable law**

- (1) The place of arbitration for a final offer arbitration is New Zealand.
- (2) The law of New Zealand applies to the arbitration (including the matters in dispute). 15

*Application of Schedule 2 of Arbitration Act 1996*

**3 Application of Schedule 2 of Arbitration Act 1996**

- (1) The following provisions of Schedule 2 of the Arbitration Act 1996 apply to a final offer arbitration:
- (a) clause 2: 20
- (b) clause 3:
- (c) clause 6(3) to (6).
- (2) The other provisions of Schedule 2 of the Arbitration Act 1996 do not apply to a final offer arbitration (and cannot be applied by the parties by agreement).

*Parties do not submit statements of claim or defence* 25

**4 Parties are not claimants or respondents for purposes of Arbitration Act 1996**

- (1) A party to a final offer arbitration does not submit a statement of claim or statement of defence and is not a claimant or respondent in respect of its final offer. 30
- (2) However,—
- (a) section 2 of the Arbitration Act 1996 applies as if the reference in paragraph (b)(i) of the definition of confidential information to a party's

statement of claim or statement of defence were a reference to a party's final offer; and

- (b) article 16(2) of Schedule 1 of the Arbitration Act 1996 applies as if the reference to the submission of the statement of defence were a reference to submission of the final offer of the party seeking to raise a plea that the arbitration panel does not have jurisdiction; and 5
- (c) in article 17B(1)(c) and (3) of Schedule 1 of the Arbitration Act 1996, a party whose final offer is selected by the panel succeeds on the merits of the claim; and
- (d) article 25(d) of Schedule 1 of the Arbitration Act 1996 applies where either party fails to do what is required to progress the arbitration and allows the panel to terminate the arbitration or give directions, with or without conditions, for the arbitration's speedy determination; and 10
- (e) article 32(2)(a) of Schedule 1 of the Arbitration Act 1996 applies when the news media entity party withdraws from the arbitration process and allows the operator to object to termination of the arbitration in those circumstances. 15

*Modifications to rules for challenging appointment of panel members*

**5 Modification to rules for challenging appointment of panel members**

Article 12 of Schedule 1 of the Arbitration Act 1996 applies as if— 20

- (a) the qualifications agreed by the parties include that the person satisfies the criteria to be an approved arbitrator under **section 66** of this Act; and
- (b) a prospective arbitrator is also required to disclose to the Authority any circumstances likely to give rise to justifiable doubts about that person's impartiality or independence. 25

*No interest payable in respect of final offer selected*

**6 No interest payable in respect of final offer selected**

- (1) Article 31(5) of Schedule 1 of the Arbitration Act 1996 does not apply to an amount payable under a final offer selected by the arbitration panel. 30
- (2) The arbitration panel may not award interest in respect of an amount payable under a final offer under section 12(1)(b) of the Arbitration Act 1996.
- (3) However, the panel may select a final offer, that, as one of the terms of the offer, requires interest to be paid in respect of an amount payable under the offer. 35