



REPUBLIC OF NAURU

COMMUNICATIONS AND BROADCASTING ACT 2018

No. 21 of 2018

An Act to repeal the *Telecommunications and Regulatory Affairs Act 2017*, to establish the Nauru Communications Authority and to provide for its powers and functions and for related purposes

Certified: 10th May 2018

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Enacted by the Parliament of Nauru as follows:

PART 1 - PRELIMINARY

1 Short title

This Act may be cited as the *Communications and Broadcasting Act 2018*.

2 Commencement

This Act commences upon certification by the Speaker.

3 General objectives of the Act

The general objectives of the Act are to:

- (a) separate the role, functions and powers of the Department of Information, Communication, Technology and Media and the Nauru Communications Authority;
- (b) establish the Nauru Communications Authority;
- (c) establish the powers and functions of the Authority;
- (d) facilitate and promote the development of the Telecommunications sector in order to promote social and economic development;
- (e) promote accessibility of quality telecommunication services to all Nauruans regardless of location;
- (f) promote efficient, competitive and reliable communications services;
- (g) promote fair and sustainable competitive environment for all service providers;
- (h) provide a mechanism for consideration of complaints for the provision of telecommunication services;
- (i) encourage sustainable foreign and domestic investments in the Telecommunications sector;
- (j) establish a licensing regime which is fair and sustainable for all service providers; and
- (k) monitor retail rates and charges for the provision of telecommunication services.

4 Definitions

In this Act, unless the context requires otherwise:

'apparatus' means any object integral for the purpose of effecting radio communications but does not include a satellite;

'Authority' means the Nauru Communications Authority established under section 5;

'broadcasting' means a transmission service in which transmissions (whether sound transmission, television transmission or other transmission) are intended for direct reception by the public;

'cable' – means: optic fibre, copper, or other conducting cables;

'carry' includes transmit, emit, switch and receive;

'communications' means the carriage of communications by means of guided or unguided electromagnetic energy or both:

- (a) whether between persons and persons, things and things or persons and things;
- (b) whether in the form of sounds, signs, signals, data, text, visual images (animated or otherwise) or any other form, or any combination of them; and
- (c) whether or not the communication has been subjected to rearrangement, computation or other process by any means in the course of its transmission, emission or reception;

'communications network' means any equipment used to provide telecommunications services;

'communication services' means the provision of communications;

'connection' includes a link, and connection otherwise than by means of physical contact;

'content' means text, sound, still picture, moving picture or other audiovisual representation, tactile representation or any combination of the preceding which is capable of being created, manipulated, stored, retrieved or communicated electronically, however, organised, formatted or programmed for delivery to end users;

'content applications service' means:

- (a) a broadcasting service (including a service that delivers content that enhances or provides information about content delivered by a broadcasting service);
- (b) a service for delivering subscription content;
- (c) an on-line information service (for example, a dial-up information service or audio-text service);
- (d) an on-line entertainment service (for example, a video-on-demand service or an interactive computer game service);
- (e) any other on-line service (for example, an education service provided by the government); or

(f) a service or a class of service of a kind specified in a declaration made by the Cabinet as falling within this definition, but which shall not include an internet service.

'content standards' mean content standards made by the Minister in accordance with section 93;

'court' means the District or Supreme Court as the circumstances may deem fit;

'Department' means the Department of Information, Communications, Technology and Media;

'document' includes information which is wholly or partially electronically stored, transmitted and reproduced;

'equipment' includes any equipment capable of effecting telecommunications, whether by transmission or reception or both and, also includes lines, guide wires, stays, towers, poles, cables, switches, and any other thing used for the provision of a telecommunications service, but does not include any apparatus;

'facility' means any line, equipment, tower, mast, dish, antenna, tunnel, duct, hole, pit, pole or other structure or thing used, or intended for use, in connection with a telecommunications system, or any part of the infrastructure of a telecommunications system;

'foreign aircraft' means an aircraft other than an aircraft which is registered in Nauru in accordance with the Civil Aviation Act 2011;

'foreign vessel' means a vessel other than a vessel which is registered in Nauru in accordance with the Shipping Registration Act 1968;

'Government' means the Government of the Republic of Nauru;

'intercept' in relation to a communication passing over a system, means listening to or recording the communication, by any means, in its passage over the system without the knowledge of the person making the communication, but does not include the reception of a broadcasting transmission;

'interconnection' means the linking of telecommunications networks in order to allow the subscribers of one of those network providers to communicate with subscribers of the other network provider;

'interference' in relation to telecommunications, means interference to, or with, telecommunications that is attributable, whether wholly or partly and whether directly or indirectly, to an emission of electromagnetic energy by any equipment;

'licence' means a licence issued under this Act;

'service providers' means a person who holds a licence under this Act;

'licenced system' means a system licenced under section 34;

'line' means:

- (a) a wire, cable, optical fibre, tube, conduit, waveguide or other physical medium used, or intended for use, as a continuous artificial guide for or in connection with carrying communications by means of guided electromagnetic energy;
- (b) includes any pole, insulator, casing, fixing, tunnel or other material used or intended to be used for supporting, enclosing, surrounding, or protecting any such wire or conductor;
- (c) also includes any part of any line; and
- (d) does not include apparatus;

'Minister' means the Minister for Telecommunications;

'premises' includes residential premises;

'network' means any wire, radio, optical or other electromagnetic system for routing, switching or transmitting communication services;

'network provider' means the holder of network licence;

'numbers' means any identifying numbers that need to be allocated to enable telecommunications intended for a person to be received by that person, and includes, but is not limited to, telephone numbers and IP addresses;

'officer' in relation to the Department, includes the Chief Regulator;

'order' means a written order by the Chief Regulator under this Act;

'provide' in relation to a system or service, includes construct, operate and maintain;

'provider' means any network provider, service provider or holder of a spectrum licence;

'radio broadcasting' means the transmission of sound intended for direct reception by the general public;

'radio communications' means any transmission, emission, or reception of signs, signals, wiring, images, sounds, or intelligence of any nature by electromagnetic waves of frequencies between 9 kilohertz and 300 gigahertz, propagated in space without artificial guide;

'regulations' means regulations made under section 114;

'rule' means a rule made by the Chief Regulator under this Act;

'satellite' means any object placed in geostationary orbit relative to the Earth for the reception and re-transmission of electro-magnetic energy, either with or without artificial guide, consisting of sounds and visual images;

'Secretary' means the Head of Department responsible for Communication services;

'service' means a communications service provided or to be provided, for use by the public;

'service provider' means a provider of a communications service to the public and holds a service provider licence;

'service provider licence' means a right to provide a communication service which does not require a spectrum licence;

'spectrum licence' means a right to use radiotelecommunications frequencies and includes a deemed spectrum licence;

'state of disaster' means a state of disaster declared under section 26 of the National Disaster Risk Management Act 2016;

'subscriber' means an end-user who is for the time being connected to a communications service provided by a service provider;

'subscriber equipment' means equipment or a system of equipment which is used or intended for private use in telecommunications;

'system' means all or any part of the infrastructure or facilities of a service;

'telephone' includes landline, mobile, voice over internet protocol;

'television broadcasting' means the transmission of sound and visual images intended for direct reception by the general public;

'the public' means the people, or a part of the people of Nauru;

'use' in relation to equipment and systems, includes provide or connect;

- (2) A reference to a system or service includes a reference to a part of that system or service.
- (3) A reference to use of equipment includes a reference to the connection of the equipment to the system.
- (4) Equipment may be connected to a system whether or not the equipment is comprised in or is in physical contact with any part of the system.
- (5) Except where the context otherwise requires, references in this Act to the Republic, a foreign country, a place or any waters include references to the space including the atmosphere and outer space.
- (6) Any determination as to the nature or classification, for the purposes of this Act, of any service, system, equipment or other thing connected with telecommunications shall be made by the Regulator.

PART 2 –COMMUNICATIONS AUTHORITY OF NAURU

5 Establishment of the Nauru Communications Authority

- (1) The Nauru Communications Authority is established.

- (2) The Authority is responsible to the Minister for Telecommunications.
- (3) The Authority is a body corporate with perpetual succession and shall have a common seal.
- (4) The Authority may:
 - (a) sue and be sued;
 - (b) enter into contracts and other legal obligations;
 - (c) may acquire, hold, manage and dispose of real or personal properties; and
 - (d) perform all powers, functions, duties and responsibilities of a corporation.
- (5) The Authority shall be independent and impartial in the exercise of its powers and functions.
- (6) The Authority shall perform its functions and exercise its powers under this Act in a manner that does not discriminate amongst service providers and, between subscribers and service providers.

6 Members of the Authority

- (1) The Authority shall consist of three members who are appointed by the Minister.
- (2) The members appointed under subsection (1) shall consist of the following:
 - (a) the Chief Regulator, who is a Nauruan citizen, to be appointed by the Cabinet on the recommendation of the Minister;
 - (b) a member to be appointed on the recommendation of the service providers; and
 - (c) a member to be appointed on the recommendation of the Secretary.

7 Registrar of the Courts to recommend member for service providers

- (1) In case of two or more service providers, who are unable to nominate a common person under section 6(2)(b), the Registrar of the Courts of the Republic shall nominate and recommend to the Minister a person from a list of persons nominated by each of the service providers severally or jointly.
- (2) The Registrar in making the nomination shall do so in accordance with the criteria provided for under section 8.

8 Criteria for appointment of members of the Authority

- (1) The Chief Regulator shall be a person who:
 - (a) is independent and is of good character;

- (b) has knowledge of the communications industry; and
 - (c) has qualifications or experience in the communications industry and business.
- (2) A person shall not be appointed under section 6(2)(b) and (c) unless the he or she meets the following criteria:
- (a) is independent and of good character;
 - (b) is a graduate of a tertiary institute;
 - (c) has knowledge and experience in the communications industry, economics, accounting or law; or
 - (d) possesses technical knowledge of the communications industry; and
 - (e) is not disqualified under subsection (3).
- (3) No person under subsections (1) and (2) shall be eligible to be appointed or remain as a member of the Authority if he or she:
- (a) is an undischarged bankrupt or is insolvent in the Republic or elsewhere;
 - (b) holds an elected office in the Republic;
 - (c) has been convicted of an offence punishable by imprisonment for a term of one year or more;
 - (d) is unable to perform the functions, powers or duties as a consequence of any physical or mental incapacity; and
 - (e) has any conflict of interest in the business of the communications industry.
- (4) For the purposes of subsection (3), a conflict of interest is deemed to have occurred if the Chief Regulator or a member takes:
- (a) a direct or indirect equity or other financial interest in a service provider; or
 - (b) remuneration, a gift or other forms of financial or non-financial benefit from a service provider.
- (5) For the purposes of subsections (3) and (4), remuneration or other benefits provided to a member by the Government for the provision of services under this Act shall not constitute a conflict of interest provided the remuneration or other benefits are paid out of budgeted public funds and are accounted for.

9 Removal of a member

A member appointed under section 6 shall be removed as a member of the Authority where he or she:

- (a) becomes disqualified under section 8(3);
- (b) contracts any services for personal gain at a special or discounted cost from service providers;
- (c) commits a serious breach of the terms and conditions of appointment;
- (d) fails to perform or discharge the functions, powers or duties under this Act; or
- (e) takes direct or indirect interest or receives any form of remuneration from a service provider.

10 Remuneration of the members

The Minister in consultation with the Cabinet shall:

- (a) fix the remuneration of the Chief Regulator; and
- (b) fix the sitting allowance and other benefits for the other members of the Authority.

11 Functions of the Nauru Communications Authority

The functions of the Authority shall be to:

- (a) implement and enforce the provisions of this Act and any other regulatory framework for the communications sector;
- (b) grant, renew, suspend and revoke licences;
- (c) monitor the use of communication services on any ship or aircraft within the exclusive economic zone;
- (d) act as the duly appointed representative of the Republic at the meetings of international bodies or authorities which have the purpose of designating international standards in the communications industry;
- (e) in consultation with service providers, subscribers, members of the public and other stakeholders to monitor retail rates and charges for the provision of communication services;
- (f) regulate interconnection between communications networks of different service providers;
- (g) establish and manage a numbering plan and assign numbers to service providers;
- (h) assist in the timely resolution of disputes between service providers;
- (i) ensure the timely resolution of disputes between service providers and subscribers;

- (j) determine competition matters in the communication industry in accordance with this Act;
- (k) consult with relevant service providers, subscribers or stakeholders on any matters in which they have a legitimate interest or whose rights are affected;
- (l) maintain all records of the Authority including the licences;
- (m) recommend to the Minister to make such regulations or orders for the due administration of the work of the Authority;
- (n) publish procedures and guidelines to assist in the implementation of this Act;
- (o) implement any policy directions which are consistent with the intent and purpose of this Act and any other relevant laws; and
- (p) advise the Secretary or Minister on matters connected with its functions, including the operation of this Act and of any other law relating to its functions.

12 Powers of the Authority

The Authority shall have the power to do all things that are necessary or convenient to be done, for or in connection with the performance of its functions, which shall include the power to:

- (a) enforce this Act, regulations and policies for the communications sector;
- (b) grant licences in accordance with this Act and the regulations;
- (c) monitor and enforce compliance by service providers with the terms and conditions of their licences;
- (d) vary, suspend or revoke licences in accordance with this Act and the regulations;
- (e) prescribe procedures for the approval of any communications apparatus or equipment for attachment to communications networks;
- (f) determine interconnection disputes between communications networks of different service providers in a fair and just manner;
- (g) monitor and enforce a numbering plan and assign numbers;
- (h) make orders for any matters that are contemplated by or necessary for giving full effect to the provisions of this Act and the regulations;
- (i) institute proceedings in the District or Supreme Court to compel a person to comply with any Order or decision of the Authority;
- (j) on its own initiative or upon receipt of a complaint by a person, investigate complaints against service providers and conduct any other investigations that it deems necessary to ensure compliance with this Act, regulations or an Order or decision of the Authority;

- (k) investigate and where necessary, recommend prosecution by the Director of Public Prosecutions against any person operating communication services or otherwise acting in contravention of this Act; and
- (l) take any other actions that are reasonably required to implement this Act, the regulations and performing or exercising any other functions, responsibilities, duties and powers that may be conferred on the Authority under any other law.

13 Delegation of the powers and functions of the Authority

- (1) The Minister may on the recommendation of the Authority in writing delegate with or without any conditions to the Chief Regulator any or all of the Authority's administrative or operational functions, duties or powers under this Act.
- (2) The power to make any decisions or orders vested in the Authority under this Act shall not be delegated.

14 The Head of the Authority

The Chief Regulator shall be:

- (a) the head of the Authority; and
- (b) responsible for the administration and management of the Authority.

15 Staff of the Authority

- (1) The Authority shall consist of the Chief Regulator and such other employees as may be necessary.
- (2) The staff of the Authority shall be appointed by the Chief Regulator in consultation with the Secretary.

16 Code of conduct of the Authority

The members and the staff of the Authority shall be bound by the prescribed Code of Conduct of the Authority.

17 Finance of the Authority

The funds of the Authority shall consist of monies appropriated by the Parliament and such funds shall be expended for the purposes of the performance of the functions and the exercise of powers under this Act.

18 Charges and fees

- (1) The Authority may determine and impose such charges and fees as may be prescribed by regulations.
- (2) Any charges and fees determined and levied under this section shall:
 - (a) be assigned on a non-discriminatory and proportionate basis; and

- (b) be notified in the Gazette.
- (3) The charges and fees imposed and collected by the Authority shall be paid into the Treasury fund.
- (4) Any such charges and fees under this Act if remain unpaid constitute a debt to the Republic which may be recovered by the Authority by way of a civil proceeding.

19 Meetings of the Authority

- (1) The Authority may provide its own procedures for its meetings.
- (2) The meetings shall be held as and when necessary upon notice by the Chief Regulator.
- (3) Where a member is unable to attend a meeting in person in the Republic, he or she may participate by video or audio link.
- (4) The participation of the member under subsection (3) constitutes a meeting in accordance with this Act.
- (5) The Authority may develop practice and procedures for:
 - (a) receiving complaints or information;
 - (b) hearing disputes; and
 - (c) undertake any other functions or powers consistent with this Act.
- (6) For the purposes of a hearing and determination of a dispute, the Authority is not bound by the rules of evidence ordinarily applied by the courts.

20 Annual report and accounts

- (1) The Authority shall prepare and publish an annual report of its activities during the preceding financial year containing:
 - (a) the financial and administrative performance of its functions and exercise of its powers including an assessment of its progress in achieving the objectives under section 3;
 - (b) a review of licences granted, varied, suspended or revoked;
 - (c) a review of spectrum frequency usage, including spectrum licences issued;
 - (d) a review of numbers allocated and assigned;
 - (e) a review of its activities and progress in respect of services;
 - (f) a review of determinations or decisions made under this Act;

- (g) a review of complaints, investigations and enforcement of decisions or Orders carried out; and
 - (h) such other relevant matters.
- (2) The annual report of the Authority shall incorporate its audited accounts.
 - (3) The Authority shall forward a copy of its annual report to the Minister who shall table it in Parliament as soon as practicable after receiving the report.
 - (4) After the annual report is tabled in Parliament under subsection (3), the Authority shall publish the annual report on its website or by any other electronic form accessible to the public.

PART 3 – DECISION MAKING PROCESS OF THE AUTHORITY

21 Consultation

- (1) Prior to making any decisions under this Act, the Authority shall consult with such service providers, subscribers or other stakeholders as prescribed by regulations.
- (2) The Authority shall comply with the rules of natural justice and make decisions based on the evidence and submissions made to it.

22 Decisions

- (1) The Authority shall:
 - (a) publish its decisions in writing; and
 - (b) provide the reasons for the decision in law or fact or both.
- (2) Before publishing the decision the Authority shall:
 - (a) provide a draft of the proposed decision to the relevant parties for a response; and
 - (b) direct the relevant parties to provide any response within a specified time, which time may be extended at the discretion of the Authority.
- (3) Upon expiry of the time under subsection (2) (b), the Authority may proceed to finalising and publishing the decision which may include any response received under subsection (2).

23 Restrictions on draft proposed decisions

- (1) A draft proposed decision shall not be construed as a decision in law or in fact.
- (2) A person has no right to seek a review or appeal a draft decision of the Authority including any right to institute any interlocutory proceeding restraining or forbidding the Authority from delivering or publishing its final decision.

- (3) The Court shall have no statutory or inherent jurisdiction to entertain any interlocutory application, review or appeal against a draft decision of the Authority.

24 Enforcement of the decision of the Authority

An Order or decision made by the Authority shall be enforced by the District Court upon an application by the Authority or any other party.

PART 4 – TARIFFS

25 Tariffs

For the purposes of this Part:

- (a) *‘retail communication services’* means communication services provided to retail subscribers but does not include wholesale access service or interconnection services provided to other service providers;
- (b) *‘tariff’* means in relation to any retail communication services, the amount payable by a subscriber for that service including any discounts, promotions, rights, privileges or other benefits conferred on or made available to the subscribers as part of the subscription.

26 Compulsory notification of tariffs by service providers to the Authority

A service provider shall within 30 days of the coming into effect of this Act provide to the Authority in writing its current tariffs in respect of any matters prescribed by the regulations.

27 Tariffs to be provided every 6 months

A service provider shall notify the Authority in writing of its current tariffs at an interval of every 6 months.

28 Change of tariffs within 6 months

A service provider shall notify the Authority of any change of tariffs implemented or imposed within less than the 6 months of the preceding reporting period.

29 Chief Regulator may issue notice to provide tariffs

- (1) Where a service provider fails to submit to the Authority the tariffs stipulated under this Part, the Chief Regulator shall by notice require the service provider to provide such tariffs within 7 days of the service of the notice.
- (2) Where a service provider fails to comply with subsection (1), the service provider or the person who has the management and control of the service provider in case of an incorporated body shall appear before the Authority and show cause as to why the service provider should not be imposed a fixed penalty of \$10,000.

30 Publication of tariffs

- (1) Service providers shall publish the tariffs of their communication services on their website or in any other written or electronic form accessible to the public.
- (2) The Authority shall maintain a manual and electronic register of tariffs of each of the service providers provided under this Part.

31 Complaints in relation to tariffs

- (1) A person may file a written complaint to the Authority in relation to the tariffs implemented or imposed by a service provider.
- (2) Where a complaint is filed under subsection (1), the Chief Regulator shall:
 - (a) provide a copy of the complaint to the respective service provider with directions to respond; and
 - (b) consider the complaint and any response received from the service provider in accordance with this Act.
- (3) Where the Chief Regulator considers that the complaint has merit, he or she shall refer the complaint to the Authority for its consideration.

32 Authority may fix tariffs

- (1) The Authority if it deems it necessary to do so may in consultation with the Cabinet, establish maximum tariffs for the provision and use of communication services 2 years after the coming into effect of this Act.
- (2) The procedure for establishing maximum tariffs under subsection (1) shall be by regulations made by the Cabinet on the recommendation of the Authority.

33 Service providers to comply with tariffs

- (1) A service provider shall not promote, offer or provide communication services in excess of the tariffs notified or fixed under this Part.
- (2) A service provider who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding \$20,000.

PART 5 – COMMUNICATIONS LICENCE

34 Licensed systems

- (1) A person shall not except in accordance with an individual licence or class licence granted under this Act:
 - (a) provide communication services to the public for direct or indirect financial or personal gain;
 - (b) utilise spectrum; or

(c) own or operate a communications network to provide communication services to the public for any direct or indirect financial or personal gain.

(2) A person who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or to both.

35 Application for individual or class licences

(1) An application for a licence shall be made to the Authority by any person:

- (a) in the prescribed form;
- (b) upon payment of the prescribed fees; and
- (c) specify whether the application is for an individual or class licence.

(2) In the case of an individual licence, the applicant shall specify whether the application is for a:

- (a) spectrum licence;
- (b) service provider licence; or
- (c) network provider licence.

(3) In considering an application:

- (a) the Authority may require the applicant to provide further information for the determination of the application; and
- (b) unless such information is provided within the prescribed time, the Authority may proceed to deliberate on the application without taking into account such information.

(4) Any licence granted by the Authority shall be signed by the Chief Regulator under the seal of the Authority.

(5) The Authority shall make available copies of all licences for inspection by any person during business hours upon payment of the prescribed fee.

36 Licence conditions

(1) A licence granted under this Act:

- (a) shall be subject to standard licence conditions; and
- (b) may be subject to any special conditions.

(2) No licence granted under this Act shall have any effect unless the prescribed annual licence fee has been paid.

37 Special licence conditions for network providers

- (1) The Authority may determine and impose special licence conditions where the Authority is satisfied that the standard licence conditions cannot adequately provide regulatory controls that the Authority considers necessary to achieve:
 - (a) the objectives of this Act;
 - (b) a policy of the Government; or
 - (c) a direction given by the Cabinet or Minister.
- (2) The terms and conditions of licences granted under this Act to service providers that provide the same communication services or operate the same communications network shall not unfairly discriminate between those service providers.

38 Criteria for issuing licences

In considering whether to grant an application for a licence, the Authority shall take into account the following:

- (a) the experience of the applicant in the provision of the communication services and the nature of the licence applied for;
- (b) the financial viability and technical abilities of the applicant;
- (c) the extent to which granting the licence will impact upon existing infrastructure investment and incentives for future investments;
- (d) the extent to which the applicant will further the objectives and policies for communication services;
- (e) existing demand on any equipment or spectrum the applicant wishes to use;
- (f) the public interest in achieving maximum benefit from the spectrum; and
- (g) any agreement between the Republic and any other country or countries that makes provision for or in relation to communication services.

39 Variation, suspension and revocation of licences

- (1) The Authority may by an Order vary, suspend or revoke a licence if:
 - (a) the variation, suspension or revocation has been requested or agreed to by the service provider;
 - (b) a service provider is in breach of a material condition of the licence, the Act or regulations or a decision or Order made by the Authority under this Act;

- (c) changes to international treaties, commitments, recommendations, standards or the laws of the Republic require a variation or revocation to give effect to such changes;
 - (d) a service provider becomes bankrupt, insolvent, has a receiver appointed or is liquidated;
 - (e) a service provider has not for a continuous period of one year provided the service for which it obtained a licence; or
 - (f) a service provider has failed to pay any license fee within 60 days of the date on which it fell due for payment and the service provider has been given 30 days' notice of such non-payment.
- (2) Before varying, suspending or revoking a licence under this section, the Chief Regulator shall inform the service provider by a notice in writing that the Authority is considering the relevant action and may consider any representations made by the service provider under subsection (3) before making a decision.
- (3) The notice under subsection (2) shall:
- (a) give the service provider 28 days from the service of the notice to make representations on the relevant actions;
 - (b) advise the service provider whether the Chief Regulator intends to invite submissions from other interested parties or the public before taking the relevant action;
 - (c) give an opportunity to the service provider to respond to any submissions made under subparagraph (b) within 14 days prior to the making of any draft decision; and
 - (d) by Order or direction provide the procedures which the Authority may use in deliberating on any variation, suspension or revocation of a licence.
- (4) The Authority shall provide a draft written decision to the service provider giving reasons of its decision or order to vary, suspend or revoke the licence, with the direction to make any response on the draft decision within a prescribed timeframe.
- (5) After receiving the response under subsection (4) the Authority shall make its decision in writing and provide reasons for such decision.
- (6) Where the Authority varies, suspends or revokes a licence under this section, the Authority shall provide the service provider with reasonable time to comply with the variation, suspension or revocation.
- (7) Where the Authority suspends a licence, the Authority shall take into account the continuity of service to the subscribers including any terms and conditions which the Authority deems fit.
- (8) The Authority may in its decision or Order, provide such directions as necessary to comply with the decision or Order.

40 Period of licence

- (1) The period of an individual licence, extension or renewal shall be for 15 years unless a person applies for a licence for a shorter duration.
- (2) An applicant shall at the time of the application specifically state the duration of the licence applied for.
- (3) A service provider shall pay licence fees as prescribed by the Authority.

41 Renewal of an existing licence

- (1) A service provider who intends to renew or extend an existing licence shall notify and apply to the Authority at least 60 days prior to the expiry of the licence for extension or renewal of the licence.
- (2) The Authority shall renew the licence unless the following circumstances precludes the Authority from granting a renewal:
 - (a) breach of a material condition of the licence;
 - (b) persistent contravention of the Act or regulations;
 - (c) persistent failure to comply with Orders or decisions of the Authority; or
 - (d) persistent failure to comply with any directions given by the Chief Regulator or authorised officers.
- (3) The Authority in granting the renewal of licence shall grant the licence in the terms and conditions as close as possible to the existing licence taking into consideration:
 - (a) changes to any international treaty or obligations to which the Republic is a party;
 - (b) any international commitment or standards of communication services applicable to the Republic;
 - (c) changes made to the laws of the Republic from the time of the granting of the existing licence; and
 - (d) the legislative requirement for conformity with national laws.
- (4) In granting a renewal of the licence the Authority shall provide a decision in writing and the reasons where the terms and conditions of an existing licence are varied.
- (5) Where the Authority may consider declining an application to renew an existing licence for any further duration, the Chief Regulator shall:
 - (a) inform the service provider by a notice in writing of the Authority's intention to decline an application for renewal; and

- (b) require the service provider to make representation within a specified period on any one or more issues on which the Authority may be considering declining an application for renewal.
- (6) Where the Authority declines an application for a renewal of a licence or renews a licence varying the terms and conditions, the Authority shall take into account continuity of the service to the subscribers.

PART 6 – SPECTRUM MANAGEMENT

42 Spectrum management functions

- (1) The Authority is responsible for the orderly and efficient management, allocation and assignment of frequencies in the spectrum.
- (2) The Authority shall:
 - (a) prepare and publish a national spectrum plan;
 - (b) grant spectrum licences in accordance with Part 5;
 - (c) advise the Minister on matters relating to the use or management of the spectrum;
 - (d) where necessary conduct public inquiries for the management of the spectrum;
 - (e) ensure that the use of the spectrum is consistent with any applicable international treaties, conventions, protocols, commitments and standards;
 - (f) intervene and decide where interference occurs and resolve interference disputes, where disputes are not resolved by the parties in conflict;
 - (g) make advisory guidelines or rules relating to the use of spectrum;
 - (h) make provision for spectrum fees, including fees prescribed by regulations under section 114;
 - (i) determine, allocate and assign frequencies, frequency bands, or any other matters relating to the transmission of radio communications whether by satellite, terrestrial, or other transmissions; and
 - (j) perform any other spectrum related functions that are conferred on the Authority under any other written law.

43 Interference by service providers

- (1) In resolving radio spectrum disputes between service providers the Authority may:
 - (a) appoint at the request of the service providers an arbitrator of their choice to arbitrate the dispute at their own cost; or

- (b) assign staff or technical experts to mediate the dispute and where the mediation does not resolve the dispute, the Authority may consider and determine the dispute itself.
- (2) Subject to subsection (1) the Authority may direct:
- (a) the service providers involved in the interference to meet to:
 - (i) prevent or eliminate the continuance of the interference; or
 - (ii) resolve the dispute; and
 - (b) the service providers to provide periodic reports to the Chief Regulator to assist him or her in determining whether the interference is continuing and its impact on other service providers and subscribers.
- (3) A decision made under subsection (1) by arbitration or mediation shall become a decision of the Authority binding upon the respective service providers.
- (4) The Authority may suspend or revoke a licence if a service provider fails to comply with the decisions or Orders of the Authority.

44 Spectrum coordination

The Chief Regulator shall consult and coordinate the use of the spectrum with other countries, international users and international organisations as required by any law or treaty in force or as otherwise determined by the Authority.

45 Interfering equipment and apparatus of an unlicensed person

- (1) A person who owns or uses any apparatus of any kind that emits a frequency which interferes with the lawful transmission or receipt of communications by the holder of a licence issued under this Act, shall upon notice from the Chief Regulator as directed by the Authority, cease to operate the apparatus or modify the apparatus so as to prevent that interference within the time specified in the notice.
- (2) Any person who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or to both.

PART 7 – INTERCONNECTION

46 Interconnection by all service providers

- (1) A service provider may require by notice in writing any other service provider to negotiate in good faith an agreement for the provision of interconnection.
- (2) A service provider shall in good faith consider any request made under subsection (1).
- (3) The duty to act in good faith is deemed to have been breached where a service provider:

- (a) unreasonably obstructs or delays negotiations or fails to make reasonable efforts to resolve disputes;
 - (b) refuses to provide information about a service provider's own communication services, network, equipment or apparatuses where such information is reasonably necessary for the interconnection arrangements or negotiations;
 - (c) misleads or coerces a party into reaching an agreement the party would not otherwise have made; and
 - (d) interferes in any way with a service provider's ability to communicate with the Authority, including having a service provider sign a non-disclosure agreement that precludes a service provider from providing information requested by the Authority.
- (4) A service provider is not required to enter into an interconnection agreement on terms that would in the service provider's reasonable opinion:
- (a) cause or likely to cause material danger, damage or injury to any person or to any property;
 - (b) cause material damage or otherwise interfere with the operation of the network provider's equipment or apparatuses or the provision of the network provider's communication services; or
 - (c) will have technical or economic constraints

47 Interconnection disputes

- (1) If 2 service providers fail to agree on any terms and conditions for interconnection within a period of 60 days from the date of receipt of a written notice provided under section 46, either of the service providers on notice to the other may refer the dispute to the Authority for determination.
- (2) Following the receipt of a written request under subsection (1), the Authority may:
- (a) determine the terms and conditions of the interconnection agreement; or
 - (b) under its supervision or control, direct the service providers to take action to resolve the dispute.
- (3) An interconnection agreement determined under this section shall:
- (a) be consistent with internationally accepted principles, practices and methodologies for determining the interconnection terms and prices, including international benchmarking methodologies designed to reflect actual costs; or
 - (b) not provide for interconnection where interconnection is not technically, economically or legally feasible or would adversely affect the security of the first service provider's network.

(4) Where the Authority considers a dispute under subsection (2)(a), the Authority shall:

- (a) consult with the service providers; and
- (b) provide to the service providers a draft interconnection agreement or a draft direction, -

before determining the terms and conditions of the interconnection agreement or making a decision.

PART 8 – RELATIONS BETWEEN SERVICE PROVIDERS AND SUBSCRIBERS

48 Confidentiality of subscribers' information

- (1) A service provider shall not disclose information concerning a subscriber without the subscriber's written consent or unless the disclosure is required by the Act or any other written law.
- (2) A subscriber may require a service provider to correct or remove any information relating to him or her.
- (3) Where the service provider fails or declines to consider a request the subscriber may lodge a complaint to the Authority.
- (4) All information of a subscriber shall be retained by a service provider or network provider for billing purposes only and be retained for a period of 7 years.

49 Confidentiality of subscriber communications

- (1) A service provider shall take all reasonable steps to maintain the confidentiality of subscriber communications.
- (2) A service provider shall not intercept, monitor, alter or modify the content of a subscriber's communications except as permitted or required by law.
- (3) For the purposes of tracing and locating a source of harassing, offensive or illegal calls or as otherwise provided under other written laws, a subscriber may make a written request to the Chief Regulator for a service provider to monitor communications to the subscriber's connections to the extent the service provider is able to do so within its current technology.
- (4) The Chief Regulator may direct the service provider to comply with the request under subsection (3).

PART 9 – STANDARDS FOR EQUIPMENT AND APPARATUS

50 Equipment

The Authority may:

- (a) publish the criteria for certification and establish standards for approval of equipment and apparatuses;
- (b) require that any specified types of equipment proposed to be attached to a communications network be approved;
- (c) identify and publish domestic or foreign organisations or testing facilities for approval of equipment and apparatuses for use in connection with communication services or networks;
- (d) maintain a list of certified or approved types of equipment and apparatuses; or
- (e) publish a list of equipment which are deemed to be approved on the basis of:
 - (i) manufacturer;
 - (ii) place of manufacture;
 - (iii) standards of manufacture;
 - (iv) brand names;
 - (v) any approval granted by a recognised approving authority in any other country; or
 - (vi) International Organisation of Standardisation.

51 Mutual recognition agreements

The Authority may enter into recognition agreements with authorities in other countries to provide for the recognition, certification and approval of equipment and apparatuses.

52 Approval of equipment

- (1) Any equipment that is approved by a recognised international testing authority and is used or supplied by a service provider in accordance with the terms of its licence is deemed to be approved equipment unless the Authority expressly determines otherwise in accordance with section 53.
- (2) The Authority may approve equipment for use by either reference to a class, type or brand of equipment or by individual approval in accordance with subsection (5) as:
 - (a) subscriber equipment;
 - (b) equipment for use with a licensed system; or
 - (c) equipment for use with an authorised service.
- (3) An approval under subsection (1) may include such reasonable conditions for the modification of the equipment.

- (4) A person intending to use equipment which has not been approved by the Authority in accordance with subsection (1) shall apply in writing to the Authority for the approval of the equipment and provide such information necessary for the Authority to make its decision.
- (5) Upon receipt of an application under subsection (3) the Authority may:
- (a) approve;
 - (b) reject; or
 - (c) approve subject to such conditions as it thinks fit including conditions as to modification of the equipment.
- (6) Where an application for equipment is rejected the person seeking approval shall not use the equipment for the purposes of providing communication services.
- (7) Where a person uses an equipment rejected under subsection (5):
- (a) the Chief Regulator may direct the person to remove the equipment; and
 - (b) if the person wilfully fails or neglects to remove the equipment after direction given by the Chief Regulator, -
- the Authority may seize and destroy the equipment.

53 Declaration of infringing equipment

Where the Authority determines that a type, class or brand of equipment fails to meet the requirements of the Act or is likely to cause a threat or a danger to a person or any property or otherwise interferes with the lawful operation of any communication services, the Authority may by notice in the Gazette declare that type, class or brand of equipment to be infringing equipment.

54 Equipment causing interference

Any equipment which persistently causes interference to service providers and which is not capable of being modified so as to prevent the interference is an infringing equipment.

55 Determination of technical standards

- (1) The Authority may, following a consultation by notice in the Gazette, determine reasonable non-discriminatory technical standards relating to systems or to equipment that is connected or to be connected to a system.
- (2) The Authority may only determine a standard under subsection (1) where it believes it is necessary or desirable to do so in order to:
- (a) protect the integrity of a system or the safety of a person working on or using services supplied by means of a system;

- (b) ensure the compatibility of equipment with a system to which it is connected;
- (c) ensure that the equipment connected to a system complies with a recognised international standard;
- (d) maintain or improve the quality of services;
- (e) reduce or limit interference to communications or to any uses or functions of an equipment; and
- (f) establish an adequate level of immunity from electromagnetic disturbance to the systems.

56 Non-application of standards for radio and television

This Part does not apply to radio or television receivers used by a residual user to receive a broadcasting service.

57 Licensing of apparatuses

The Authority may grant licences for the installation, operation or use of any apparatus by the Ports Authority, Civil Aviation Authority or meteorological service and on any ship or on any aircraft that operates predominantly within the exclusive economic zone of the Republic.

58 Register of approved types of equipment

The Authority shall establish and maintain a register of all approved types of apparatus and equipment which shall be accessible to the service providers or members of the public on the payment of prescribed fees.

PART 10 – NUMBERS

59 National numbering plan

- (1) The Authority shall by Order prepare, publish, and manage a national numbering plan and assign numbers and number ranges to service providers and subscribers in accordance with the plan.
- (2) In preparing, managing or modifying the national numbering plan the Authority shall consult with the service providers having regard to the existing allocation and assignment of numbers.
- (3) The Authority may modify the national numbering plan by notice to service providers published at least 30 days before the date when the modification is to come into effect.
- (4) The national numbering plan shall be consistent with the requirements of relevant international treaties, conventions, agreements, commitments and recommendations that are binding on or have effect in the Republic whether or not they have entered into force.
- (5) All service providers and network providers shall:

- (a) use numbers assigned to them by the Authority in accordance with the national numbering plan;
 - (b) ensure that the numbers are used efficiently and in accordance with the plan; and
 - (c) use the numbers only for the purpose for which the numbers were assigned.
- (6) No service provider or subscriber has any property rights in numbers assigned under this section.

PART 11 – ACCESS TO PROPERTY

60 Rights of entry in respect of existing works and lines

- (1) This section applies where a network provider wishes to enter upon any land including land owned by the Republic for gaining access to any existing line, equipment or apparatus owned or controlled by the network provider or for which the network provider is a bailee.
- (2) The network provider may perform any act or operation necessary for inspecting, maintaining or repairing the line, equipment or apparatus.

61 Removal or trimming of trees

- (1) This section applies where there is danger to or interference with any line, equipment or apparatus arising from any tree, shrub or plant on any land or road.
- (2) The network provider may give any written or oral notice to the occupier of the land or in the case of a road to the Secretary for Infrastructure to enter upon the land or road where the tree, shrub or plant is rooted or overhangs and remove or trim as is necessary and sufficient to remove any danger or interference.
- (3) An officer, employee or agent of a network provider entering onto the land or road under subsection (1) shall have possession of his or her authority or identification or be working under the immediate control of a person holding evidence of that person's authority and identification, which shall be produced if required.
- (4) Where the network provider carries out any work on a tree, shrub or plant on any land or road under the authority of subsection (2) the occupier of the land or authority or person having control of the road as the case may be, is liable for the reasonable cost of the work of the network provider.

62 Offence for failure to comply with this Part

- (1) A network provider who fails to comply with this Part commits an offence and upon conviction is liable to a fine not exceeding \$20,000.

- (2) In addition to any fine imposed under subsection (1), the Supreme Court may make an Order for compensation.

63 Compensation

- (1) In the exercise of the powers conferred on it under this Act, a service provider shall do as little damage as reasonably possible and every person having any estate or interest in land entered upon for the purposes of this Part or injuriously affected by or suffering any damage from the exercise of any of those powers, is entitled to compensation.
- (2) Where the amount of the compensation is not agreed to between the service provider and the person having estate or interest in the land the matter shall be determined by the Supreme Court.

64 Protection of equipment and apparatus

Any existing equipment or apparatus fixed to or installed over or under any land that a network provider owns, has possession of or controls at the commencement of the Act, is deemed to be lawfully fixed or installed and continued to be fixed or installed.

65 Allocation of frequencies to the Republic

- (1) The Authority shall allocate frequencies to the Republic for use for communication services or broadcasting at the request of the Secretary.
- (2) The Authority may regulate the use of frequencies allocated under subsection (1) including the use of those frequencies for purposes of broadcasting by persons other than the Republic.
- (3) The Authority may allocate frequencies for use in or by licensed systems, and for such other purpose as it thinks fit.
- (4) In the allocation of frequencies under this section, the Authority shall have regard to any plan or scheme of allocation of frequencies established by any international agreement, including agreements with other countries.
- (5) The Secretary shall keep the Authority informed of the Republic's need for frequencies.

PART 12 – ENFORCEMENT

66 Authorised officers

- (1) The Minister may on the recommendation of the Authority by notice in the Gazette appoint authorised officers for the purposes of this Act.
- (2) An authorised officer appointed under subsection (1) shall be issued with an identification card duly signed by the Chief Regulator under the seal of the Authority.
- (3) An authorised officer who has been required to produce his or her identification card and has failed to do so shall not exercise any powers under this Act.

Powers of authorised officers

- (1) If an authorised officer has a reason to suspect that any part of the Act has been, is being or is about to be contravened, the authorised officer may:
 - (a) with the consent of the occupier or under a warrant issued by a Magistrate:
 - (i) at any time enter upon and search any land, vehicle, vessel, aircraft or premises;
 - (ii) inspect, remove or make copies of any book, record, document or digital copies of any electronic material; or
 - (b) seize any infringing equipment which has never been approved by the Authority and has caused damage or interference to an existing service provider; or
 - (c) either with or without warrant issued by a Magistrate, inspect and take photographs or make sketches of any licensed systems or equipment located in any public place;
 - (d) otherwise shall act in accordance with any such powers as are given to him or her by or under this Act or any other written law.
- (2) If the Magistrate on an application made on oath is satisfied that there are reasonable grounds for believing that it is necessary for the purposes of ascertaining or establishing whether any person has committed or is committing an offence under this Act for an authorised officer to exercise the powers under subsection (1), the court may issue a warrant for the authorised officer to exercise those powers in relation to any land, vehicle, vessel, aircraft or premises specified in the warrant.
- (3) A warrant issued under subsection (2) authorises the person named in the warrant within the period specified in the warrant to enter upon and search land, vehicle, vessel, aircraft or premises specified in the warrant and to exercise all or any of the powers described in subsection (1).
- (4) A person who executes a warrant under this section shall prepare a schedule specifying:
 - (a) any documents that have been removed from the premises or of which any copies or extracts have been made;
 - (b) any equipment or apparatus that has been removed from the premises;
 - (c) the place from which any documents or equipment or apparatuses have been removed; and
 - (d) the place where any documents or communications equipment are held.

- (5) The occupier or person in charge of any premises that an authorised person enters under subsection (2) shall not obstruct the authorised person from the effective exercise of the powers of the authorised person.
- (6) In the exercise of powers under this Act an authorised officer may seek from any police officer such assistance as is reasonably necessary to give effect to those powers.

68 Obstruction of authorised officers

- (1) A person commits an offence if he or she:
 - (a) furnishes to an authorised officer any particulars which to his or her knowledge are false or misleading in any material respect;
 - (b) refuses or obstructs entry to or search of any land, premises, vehicle, vessel, aircraft, equipment or other thing as required or permitted by this Act;
 - (c) assaults, threatens, obstructs, hinders, resists, delays, intimidates or fails to take all reasonable measures to ensure the safety of an authorised officer in the performance of his or her functions or exercise of powers;
 - (d) wilfully misleads or by threats, demands or promises, attempts to influence improperly an authorised officer in the performance of his or her functions or exercise of powers; or
 - (e) refuses, obstructs, fails or neglects to provide any particulars, equipment, information, record or other material.
- (2) A person who commits an offence under this section is liable upon conviction to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or to both.

69 Offences

- (1) A person commits an offence if he or she:
 - (a) knowingly provides or uses an infringing system or service;
 - (b) provides, uses, sells or possesses equipment knowing or suspecting on reasonable grounds that it is for use with an infringing system or service;
 - (c) provides or uses an unlicensed or unauthorised connection;
 - (d) provides, uses, sells or possesses equipment knowing or suspecting on reasonable grounds that it is for use in making an unlicensed or unauthorised communications connection;
 - (e) intentionally operates equipment or a system at frequencies other than those allocated for use under a spectrum licence;
 - (f) knowingly provides, uses, sells or possesses infringing equipment;

- (g) knowingly provides or uses equipment contrary to the conditions of its approval for use under Part 9;
 - (h) breaches any condition as to the use or modification of equipment under Part 9; or
 - (i) unlawfully modifies any equipment.
- (2) A person who contravenes subsection (1) shall be liable upon conviction to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or to both.

70 Protection of communications and other information

- (1) All communications and other information which is received from a subscriber shall be kept confidential at all times by the:
- (a) staff of the Authority;
 - (b) service providers; and
 - (c) agent or employee of the service providers.
- (2) A person who other than the staff of the Authority or a service provider or his or her employee, agent or contractor acting lawfully during and in the course of his or her duties:
- (a) intentionally intercepts;
 - (b) makes use of; or
 - (c) intentionally discloses to any person, -
- a communication or the contents or substance of a communication or any information or the contents of any document that comes to his or her knowledge or to which he or she has access to in the course of his or her duties or his or her connection with the Authority, commits an offence and upon conviction is liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or to both.
- (3) Nothing in this section applies to anything done:
- (a) in compliance with a warrant or to any disclosure in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings;
 - (b) to the extent that the interception, use or disclosure is authorised or required under the Act or any other written law;
 - (c) to the extent that the person providing the information authorised its disclosure at the time of providing the information; or

- (d) to the extent necessary to enable the Minister or the Authority to publish statistical information concerning the subject matter of the functions of the Authority.

71 Prohibition on interfering or modification of communication

A staff of the Authority, a service provider or his or her employee, agent or contractor who otherwise than in the proper course of his or her duties, intentionally and without lawful excuse modifies or interferes with the contents of a communication sent by means of a communications network commits an offence and upon conviction is liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or to both.

72 Unlicensed transmissions

- (1) This section does not apply to the use of equipment used in accordance with an agreement, treaty or convention entered into between the Republic and any other country or countries or any international, regional or sub-regional body.
- (2) Subject to subsection (4), a person outside the Republic commits an offence when he or she without a valid licence uses an equipment on board a foreign vessel or foreign aircraft:
 - (a) for the purposes of broadcasting to the general public, radio or television programs in the Republic;
 - (b) in a manner that the person knows is likely to interfere substantially with communication services within the Republic or between the Republic and a place outside the Republic.
- (3) Subject to subsection (4) a person commits an offence when he or she knowingly operates equipment:
 - (a) so as to cause interference with the operation of any other equipment or system;
 - (b) so as to interfere with the safe operation of vessels or aircrafts; or
 - (c) in a manner likely to endanger the safety of another person or to cause another person to suffer or incur substantial loss or damage.
- (4) It is a defence to a charge of contravening subsection (2) or (3) that this use or operation of the equipment was believed to be reasonably necessary for the purpose of:
 - (a) securing the safety of a vessel or aircraft that was in danger;
 - (b) dealing with an emergency involving a serious threat to the environment;
 - (c) dealing with an emergency involving risk of death of or injury to persons;or

(d) dealing with an emergency involving risk of substantial loss of or substantial damage to property.

(5) In any proceeding under subsection (2) or (3) the burden is on the accused to prove that there was no contravention.

73 Protection of facilities

A person who damages, removes or tampers with any facility or system or any part of a facility or system with the intention of interfering with, preventing or obstructing the transmission or delivery of a communication commits an offence and upon conviction is liable to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 12 months or to both.

74 Prosecution under other laws

Nothing in this Act prevents any person from being prosecuted under any other written law for any act or omission which constitutes an offence against this Act or from being liable under any other written law to any punishment or penalty higher or other than that prescribed by this Act but no person shall be punished more than once for the same offence.

75 Remedies

A person who has suffered loss or damage caused by interference may at any time apply to the Court for:

- (a) an order that appropriate measures be taken in order to prevent or mitigate any further interference; and
- (b) damages for any loss suffered as a result of the interference including loss of any benefit that the person might reasonably have been expected to obtain but for the interference.

76 Presumptions as to equipment

- (1) Any equipment or apparatus found in the possession or control of an occupier of any land, premises, vehicle, vessel or aircraft shall be presumed to be in use by the occupier or the occupier's servants or agents.
- (2) Any equipment or apparatus shall be deemed capable of operation unless the Authority is satisfied that the equipment has been dismantled or rendered completely inoperative.

PART 13 – APPEALS AGAINST DECISION OR ORDER OF THE AUTHORITY

77 Appeals

- (1) Any person aggrieved by a decision or Order of the Authority shall file and serve an appeal to the Supreme Court within 21 days of the decision or Order of the Authority of which appeal is sought being notified to that person.
- (2) The appeal shall be filed by way of a notice of appeal.

- (3) No appeal shall be filed against a decision or Order of the Authority after a lapse of 6 months from the time the decision or Order was made.
- (4) A decision of the Authority shall be stayed:
 - (a) until the period of 21 days from the date of any decision or Order made by the Authority for filing an appeal has lapsed; and
 - (b) in case of an appeal, until the final determination of the appeal.
- (5) Save for the procedure prescribed by any regulations made under this Act, the Civil Practice and Procedure Rules of the Court shall apply.

78 Respondent's notice

- (1) A respondent who not having appealed against the decision or Order of the Authority desires to contend on the appeal that the decision or Order of the Authority be varied shall give notice to that effect by way of a Respondent's Notice.
- (2) A respondent who desires to contend on the appeal that the decision or Order of the Authority be affirmed on the grounds other than those relied upon by the Authority, shall give notice to that effect.
- (3) A Respondent's Notice shall be filed by the respondent within 14 days of the service of the notice of appeal.

79 Powers of the Supreme Court

The powers of the Supreme Court for the purposes of the appeal shall be to:

- (a) give leave to appeal out of time;
- (b) extend time within which a notice of appeal may be filed or within which any other matter or thing may be done;
- (c) grant any amendment to the notice of appeal or respondent's notice;
- (d) order payment of security for costs;
- (e) order costs of the appeal or any interlocutory applications;
- (f) dismiss the appeal;
- (g) reverse or vary the decision or Order of the Authority; or
- (h) allow the appeal and refer the matter for the Authority to reconsider.

80 Appeals to be heard by single judge or Full Court

- (1) An appeal under this Act or any interlocutory proceeding may be heard by a single judge or by the Full Supreme Court.

- (2) Where a party seeks to have the appeal heard by the Full Court, the party shall apply to the court and the court shall, unless any good reason to the contrary is shown, grant the application.
- (3) Where the Chief Justice or a single judge deems it fit that the appeal from the Authority raises a matter of significant importance, he or she shall make an order that the appeal be heard by the Full Court.

PART 14 – FAIR COMPETITION IN COMMUNICATIONS INDUSTRY

81 Application of this Part

This Part applies to:

- (a) a service provider; and
- (b) a person or a class of persons engaged in conduct that requires a communications licence under the Act.

82 Communication services markets

For the purposes of this Part, the definition of a communication services market for a particular communications service or the product or service used in connection with a relevant product or service shall include:

- (a) the applicable service; and
- (b) all other products or services that are reasonably substitutable for the applicable service having regard to:
 - (i) the nature and function of the applicable service;
 - (ii) the geographic areas in which the applicable service is supplied or acquired; and
 - (iii) the relevant persons that acquire or supply the applicable service.

83 Substantial market power

- (1) For the purposes of this Part, in determining whether a service provider has substantial market power in a communication services market, regard shall be had to:
 - (a) the terms and conditions of any licence under this Act or the repealed Act;
 - (b) the extent to which the conduct of the service provider is constrained by:
 - (i) any competitors or potential competitors of the service provider; or
 - (ii) any person that the service provider supplies to or acquires goods or services from;
 - (c) the service provider's market share in that or any other communication

services market;

- (d) the power derived from any agreement, arrangement or understanding the service provider has entered into with the Authority, the Government of the Republic, another service provider or person; and
 - (e) whether the service provider has access to any technology or infrastructure that is not readily available to any other person.
- (2) The list of matters that shall be taken into account in sub-section (1) does not preclude the consideration of any other relevant matter in determining whether a service provider has substantial market power in a communication services market under this Part.
- (3) In the absence of sufficient evidence to the contrary, a service provider shall be presumed to have substantial market power in a communication services market if the gross revenue derived by the service provider from the products or services supplied by the service provider in that communication services market is greater than or equal to 60 percent of the total revenue derived by all market participants in the relevant communication services market.
- (4) Nothing in this section precludes a finding that two or more service providers possess substantial market power within the same communication services market.
- (5) For the purposes of this section:
- (a) '**gross revenue**' of a service provider shall be calculated as the sum of the market value of all products or services supplied in the relevant communication services market by the service provider; and
 - (b) '**total revenue**' derived by all market participants in the relevant communication services market shall be calculated as the sum of the market value of all products or services supplied in the relevant communication services market.

84 Competition guidelines

The Authority may make such guidelines as it considers necessary or convenient for or in connection with the performance of its functions under this Part.

85 General prohibition on anti-competitive conduct

A service provider shall not engage in any conduct which has the purpose or is likely to have the effect of substantially lessening competition in a communication services market.

86 Anti-competitive agreements

- (1) A service provider contravenes this Part if it enters into or gives effect to any agreement, arrangement or understanding with any one or more other service providers which has the purpose or has or is likely to have the effect of:
- (a) fixing, controlling or maintaining the prices for or any discount, allowance,

- credit or rebate for any relevant product or service;
- (b) allocating as between the service providers or any of them:
 - (i) the customers or potential customers;
 - (ii) the suppliers or potential suppliers;
 - (iii) the geographic areas of a communication services market; or
- (c) preventing, restricting or limiting:
 - (i) the supply or acquisition of a relevant product or service; or
 - (ii) access to a relevant product or service by any person or class of persons;
- (d) ensuring that in relation to a request for a bid or tender from a person for the supply or acquisition of any relevant product or service one or more of the service providers that is a party to the agreement, arrangement or understanding:
 - (i) does not submit a bid or does not submit a bid that is likely to be successful; or
 - (ii) submits a bid that is more likely to be successful than any other service provider that is a party to the agreement, arrangement or understanding.
- (2) Subsection (1) does not apply to a service provider that enters into or gives effect to a provision that is:
 - (a) in a joint venture agreement between one or more other service providers that governs a joint venture for the supply or acquisition of a relevant product or service; and
 - (b) necessary for the purposes of the joint venture mentioned in subparagraph (a).

87 Prohibition on anti-competitive practices

- (1) A service provider shall not supply a relevant product or service on the condition that the person acquiring the relevant product or service shall agree to or shall:
 - (a) acquire any other product or service from another person; or
 - (b) not acquire any product or service from any other person.
- (2) A service provider shall not supply a relevant product or service to a relevant person on the condition that the relevant person shall not:
 - (a) supply any relevant product or service to a person or class of persons; or

- (b) acquire any relevant product or service from a person or class of persons.
- (3) A service provider shall not refuse to supply a relevant product or service to a relevant person for the reason that the relevant person:
 - (a) has supplied or acquired; or
 - (b) has not agreed not to supply or acquire, -
any goods or services from another service provider.
- (4) A service provider shall not supply a relevant product or service, to a person with a requirement that the person shall not re-supply that relevant product or service at a price:
 - (a) other than; or
 - (b) lower than, -
a price specified by the service provider.
- (5) A service provider shall have imposed a requirement on a person in contravention of subsection (4) if it:
 - (a) induces or attempts to induce a person by way of a commercial or other incentive;
 - (b) makes it known that the service provider shall withhold the supply of any good or service if a person does not agree; or
 - (c) makes it known that a person shall suffer a commercial detriment if the person does not agree not to re-supply a relevant product or service at a price that is:
 - (i) other than; or
 - (ii) lower than, -
a price specified by the service provider.
- (6) A service provider does not contravene subsection (1), (2), (3) or (4) in respect of any conduct if the service provider is able to establish that the relevant conduct did not have the purpose or have the effect or likely effect of substantially lessening competition in any communication services market.

88 Prohibition on misuse of substantial market power

- (1) A service provider with substantial market power in a communication services market shall not use that substantial market power for the purpose of:
 - (a) eliminating or substantially damaging another service provider in that market or in any other communication services market;

- (b) preventing the entry of any other person into that market or any other communication services market; or
 - (c) deterring any other service provider from engaging in competitive conduct in that or in any other communication services market.
- (2) In determining whether a service provider has contravened subsection (1), regard may be had to any conduct involving the service provider:
- (a) supplying a relevant product or service at a price that is equal to or less than the cost to the service provider of supplying that relevant product or service over a sustained period;
 - (b) refusing to supply a person with a relevant product or service that is essential to the supply of another relevant product or service in the same or any other communication services market;
 - (c) supplying a person with a relevant product or service referred to in subparagraph (b) on terms that would prevent the person from supplying another product or service in the same or any other communication services market at a competitive price; or
 - (d) refusing to supply on a timely basis such technical information that is necessary for a person to supply a relevant product or service.
- (3) The Authority may by an Order published in the Gazette define '*a sustained period*' for the purposes of subsection (2).

89 Prohibition on discrimination

- (1) Subject to subsection (3) a service provider with substantial market power in a communication services market shall not in the supply of any relevant product or service make the relevant supply to a person on terms that are less favourable than the terms on which the same relevant supply is made to another person.
- (2) For the purposes of determining whether a service provider has contravened subsection (1) regard may be had to the following terms on which the relevant supply is made by a service provider to a person:
- (a) any fee or charge for the relevant supply;
 - (b) the performance characteristics of the relevant supply;
 - (c) the timeliness with which the relevant supply is made; and
 - (d) any conditions or restrictions on which the relevant supply is provided to the person by the service provider.
- (3) Nothing in this section prevents a service provider with substantial market power from making a relevant supply to a particular person on terms different to that on which a relevant supply is made to another person in circumstances where the difference results from the service provider making reasonable allowance for:

- (a) a difference in the quantity in which the relevant supply is made;
- (b) a difference in transmission capacities needed for the relevant supply;
- (c) the length of time over which the relevant supply is made; or
- (d) any differences in the performance characteristics of the relevant supply.

90 Merger or acquisition of interest

- (1) A service provider shall not directly or indirectly acquire any interest in:
 - (a) any other service provider; or
 - (b) the assets of any other service provider, -without the prior written consent of the Authority.
- (2) A service provider or a person acting on behalf of a service provider may make a written application to the Authority to provide its written consent for a service provider to obtain a prohibited interest.
- (3) The Authority may make rules regarding what information shall be included in an application in order for it to be a valid application for written consent in accordance with subsection (3).
- (4) Upon receipt of a valid application, the Authority shall provide its written consent for a service provider to acquire a prohibited interest unless the Authority is satisfied that the acquisition by a service provider of the prohibited interest:
 - (a) shall have the effect; or
 - (b) is materially likely to have the effect, -of substantially lessening competition in a communication services market.
- (5) Before making rules under subsection (4) the Authority shall carry out a consultation with the service providers, subscribers or any other stakeholders in accordance with the regulations.

91 Authorisation

- (1) Subject to this Part, the Authority may upon application by a service provider, grant an authorisation to the service provider in respect of any conduct that would or may contravene this Part.
- (2) A service provider shall not contravene this Part in respect of any conduct which is the subject of an authorisation that has been granted to the service provider in accordance with this section.
- (3) An application for authorisation in accordance with this section shall be accompanied by:

- (a) such documents and supporting information; and
 - (b) the prescribed fee.
- (4) The Cabinet on the recommendation of the Authority shall make regulations specifying the procedure to be followed for the determination of an application for authorisation under this section.
- (5) The Authority before recommending to the Cabinet to make regulations under subsection (4) shall carry out consultation with the service providers, subscribers and other stakeholders under the regulations.
- (6) The Authority shall keep a register of:
- (a) applications for authorisations received;
 - (b) authorisations granted; and
 - (c) authorisations revoked.
- (7) The Authority shall not grant an application for authorisation submitted by a service provider in accordance with this section unless the Authority is satisfied that in all the circumstances, the public benefits to be derived from the conduct that is the subject of the authorisation application are likely to outweigh the public detriments that are likely to result from that conduct.
- (8) An authorisation granted by the Authority in accordance with this section shall commence on the date specified in the authorisation and remain in force for a period of:
- (a) 2 years; or
 - (b) such other period that is less than 2 years as the Authority may decide in its discretion.
- (9) During the period in which an authorisation is in force, the Authority may vary an authorisation:
- (a) upon application by the service provider that holds the authorisation; and
 - (b) if the Authority is satisfied that it is appropriate to do so, having regard to the matters in subsection (7) and any other relevant considerations.
- (10) During the period in which an authorisation is in force, the Authority may revoke an authorisation if the Authority is satisfied that:
- (a) the authorisation was granted on the basis of evidence or information which was false or misleading in a material way;
 - (b) a condition on which the authorisation was expressed to be granted has not been or is no longer complied with; or
 - (c) there has been a material change in the circumstances that led to the

Authority granting the authorisation.

(11) Nothing in this section precludes a service provider from applying for an authorisation for the conduct that has been the subject of an authorisation that:

- (a) has expired; or
- (b) was revoked in accordance with subsection (10).

92 Offence and penalty under this Part

A person who contravenes one or more provisions of this Part commits an offence and upon conviction is liable to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 2 years or to both.

PART 15 – SOCIAL CONTENT REGULATION

93 Broadcasting and content standards

The Cabinet may by regulations make standards for content applications services supplied in the Republic which shall apply to all service providers that supply a content applications service.

94 Matters for broadcasting and content standards

The Cabinet may make regulations under this Part which may include:

- (a) the restrictions or prohibitions relating to the supply of unsuitable content or particular types of content;
- (b) the methods of classifying content;
- (c) the restrictions or prohibitions relating to advertising content;
- (d) the representation of the Republic's culture and national identity; and
- (e) restrictions on the hours during which broadcasting services or services for delivering subscription content may be supplied.

95 Cabinet directions to be complied with

A service provider shall comply with any directions of the Cabinet given under this Part.

96 Enforcement

The Authority shall enforce or require any service provider to comply with the regulations made under this Part of this Act.

97 Censorship

A service provider shall not knowingly and with unlawful intent supply any content which:

- (a) is indecent or obscene;
- (b) displays excessive violence;
- (c) is blasphemous;
- (d) is treasonous or seditious; or
- (e) will contravene the laws of the Republic.

98 Religion

The Cabinet may require a service provider to supply without any charge divine worship content or other content of a religious nature during such periods as the Cabinet may determine.

99 National Interest

The Cabinet may require a service provider to supply without charge such content relating to national interest matters as the Cabinet may determine.

100 Education

The Cabinet may require a service provider to supply with reasonable fee or without charge such educational content as the Cabinet may determine.

101 Offence

A service provider who supplies content applications services contrary to the provisions of this Act, commits an offence and upon conviction is liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or to both.

PART 16 – INTERNET SERVICE PROVIDERS AND HOST SERVICE PROVIDERS

102 Take-down notices

(1) For the purpose of this section:

- (a) **'computer data storage medium'** means any article or material such as a hard drive, disk, flash drive from which information is capable of being reproduced with or without the aid of any other article or device;
- (b) **'prohibited content'** means content that contravenes the standards of section 98 under this Act;
- (c) **'take-down notice'** means a notice issued by the Authority directing the hosting service provider to take such steps to ensure the hosting service provider ceases to host the content or part of such content.

(2) The Authority may either in response to a complaint or on its own initiative, investigate whether a hosting service provider is hosting prohibited content.

- (3) Where after an investigation under subsection (1) the Authority is satisfied that the content hosted by a hosting service provider is prohibited content, the Authority may give the hosting service provider a written notice directing the hosting service provider to take such steps as are necessary to ensure that the hosting service provider ceases to host the content.
- (4) A hosting service provider shall comply with a take-down notice issued to it under subsection (2) as soon as practicable but in any event within 7 working days after the notice was received by the hosting service provider.
- (5) Each hosting service provider shall have in place a procedure for receiving and responding to take-down notices.
- (6) As soon as practicable after a hosting service provider receives a take-down notice under subsection (2) it shall where practicable notify the person who made the offending content accessible to the public that the offending content is subject to a take-down notice.

103 **Opt-out filtering**

- (1) For the purposes of this section:
 - (a) **'filtering'** means a product or service designed to restrict or deny access to a web page or other content available on the internet;
 - (b) **'family friendly filtering'** means filtering that is designed to deny or restrict access to content on the internet where it is unlawful to possess, access, distribute or publish that content under the laws of the Republic.
- (2) Where an internet service provider supplies an internet service to a subscriber in the Republic, the Authority may direct the internet service provider to make family friendly filtering available to subscribers.
- (3) An internet service provider shall not charge a subscriber for family friendly filtering any amount greater than the total cost incurred by the internet service provider in obtaining, supplying and maintaining the family friendly filtering.
- (4) A subscriber may request that an internet service provider that supplies an internet service to that subscriber disable family friendly filtering applying to that internet service.
- (5) An internet service provider shall take all reasonable steps to ensure that the family friendly filtering only denies or restricts access to content on the internet that is unlawful to possess, access, distribute or publish under the laws of the Republic and in doing so internet service providers shall take reasonable steps to ensure unrestricted access to bona fide scientific, medical and health information.

104 **Mandatory filtering**

- (1) The Cabinet may direct the Authority to implement a procedure and devise a scheme in consultation with service providers to prevent access to child pornography material otherwise accessible on the internet.

- (2) An internet service provider shall comply with subsection (1).
- (3) In devising a scheme, the Authority in consultation with the service providers shall have regard to:
- (a) the benefits of free communication and access to information on the internet;
 - (b) community expectations and the Republic's cultural and national values;
 - (c) the technical feasibility of the scheme;
 - (d) the costs and other impacts on internet service providers and residual users of implementing the scheme; and
 - (e) the need to ensure the scheme is as transparent as possible and that there are appropriate avenues to ensure that access to domains that do not contain child pornography remains unrestricted.
- (4) For the purposes of this section, '*child pornography material*' has the meaning provided under section 3 of the Cybercrime Act 2015.

105 Internet service providers shall report child pornography material

If an internet service provider or hosting service provider:

- (a) becomes aware that a communications service provided by the internet service provider or hosting service provider can be used to access material on a particular webpage, website or internet protocol address that the internet service provider or hosting service provider has reasonable grounds to believe is child pornography material; or
- (b) is advised of a webpage, website or internet protocol address where child pornography material may be stored or made available to the public, -

the internet service provider or hosting service provider shall, within a reasonable time of becoming aware or being informed of those details, report those details to the Nauru Police Force.

PART 17 – NATIONAL SECURITY AND PUBLIC EMERGENCIES

106 National Security

- (1) A service provider shall comply with any written request, directions or other requirements by the President regarding access to any part of the service provider's communications network or services or related information in connection with national security requirements or prevention or prosecution of contravention of any laws of the Republic.
- (2) A service provider shall facilitate any request, direction or other requirements under subsection (1) on the basis that it neither profits from nor bears the costs of facilitating any such request, direction or other requirement.

- (3) For the purposes of subsection (1), the President after consulting the Director of Public Prosecutions on matters relating to prosecution may determine that any event or matter concerning national security or the prevention, detection or prosecution of any contravention of the laws of the Republic.

107 National emergency and state of disaster

- (1) In case of a national emergency or a state of disaster, service providers shall comply with any directions issued by the Cabinet, Secretary of the Department of National Emergency Services or the Commissioner of Police to respond or alleviate problems faced by the public or the Government pertaining to the emergency or disaster.
- (2) The service providers may apply to the Government for compensation for the period of suspension of services for the purposes of subsection (1).
- (3) The compensation under subsection (2) shall be on the basis that the service provider neither profits from nor bears the costs of giving such service.

108 National emergency numbers

- (1) The Authority is responsible for the oversight of all national emergency numbers and emergency communication services.
- (2) A provider of communication services shall provide access to emergency numbers to the subscribers free of charge.
- (3) The Authority shall ensure that the services are maintained by the service providers to the highest practicable standard and that all service providers allocate priority and sufficient quality of capacity on their networks to ensure the expedient transmission of emergency calls to appropriate services.

PART 18 – MISCELLANEOUS

109 Duties and liabilities of staff

- (1) Any staff of the Authority shall not be personally liable for any act or omission done or made in his or her capacity as staff of the Authority in good faith and in the exercise of reasonable care and diligence in the course of the operations of the Authority.
- (2) In respect of any liability incurred in connection with any act or omission under subsection (1), the staff member shall be indemnified by the Authority.

110 Liability of the Authority

- (1) No action, suit or proceedings for any act or omission or the exercise of any function, power or duty under this Act, shall be brought or maintained against:
 - (a) any person who has been or is a member of the Authority where such person has been or is acting in good faith; and
 - (b) any person who has been or is acting under the directions of the Authority under the Act where such person has acted in good faith.

- (2) Subject to subsection (1), any claims made by or against the Authority are to be made under the Republic Proceedings Act 1972.

111 Offence by corporation

If a corporation commits an offence under this Act, a person who at the time of the commission of the offence was a director, chief executive officer, manager, secretary, or other similar officer of the corporation or was purporting to act in any such capacity or was in any manner or to any extent responsible for the management of any of the affairs of the corporation or was assisting in such management:

- (a) may be charged jointly or severally in the same proceedings with the corporation; and
- (b) if the corporation is found guilty of the offence, shall be deemed to be guilty of that offence unless, having regard to the nature of the person's function in that capacity and to all circumstances, the person proves:
 - (i) that the offence was committed without the person's knowledge, consent or connivance; and
 - (ii) that the person had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.

112 Liability for acts of employees and agents

If any person would be liable under this Act to any punishment or penalty for an act, omission, neglect or default, that person shall be liable to the same punishment or penalty for every such act, omission, neglect or default of any employee or agent of the person's, or of the employee of the agent, if the act, omission, neglect or default was committed:

- (a) by that person's employee in the course of the employee's employment;
- (b) by the agent when acting on behalf of that person; or
- (c) by the employee of the agent in the course of the employee's employment by the agent or otherwise on behalf of the agent acting on behalf of that person,

unless, having regard to the nature of the person's function in that capacity and to all circumstances, the person proves:

- (i) that the offence was committed without the person's knowledge, consent or connivance; and
- (ii) that he had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.

113 Damage to communication facilities

- (1) A person, other than a service provider in respect of its own communications equipment, facility or property, by misconduct or negligence causes any damage or destroys any communications equipment or facility or property relating to communication services shall upon conviction be liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or to both.
- (2) If damage is caused to any communications facility, equipment or property by any motor vehicle or motor bike or by anything loaded onto any motor vehicle, the driver or person in charge of any such motor vehicle shall be:
 - (a) prima facie deemed to be guilty of an offence under this section without the proof of negligence or misconduct but such person is entitled to rebut such presumption; and
 - (b) liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or to both.
- (3) A person causing damage to any communications facility, equipment or property shall be liable to make good the damage in the amount to be determined by a court of competent jurisdiction even though the person may have been imprisoned or fined or both.

114 Regulations

The Cabinet may make regulations prescribing all matters necessary or convenient to be prescribed for carrying out or giving effect to this Act.

PART 19 – REPEAL, SAVINGS AND TRANSITIONAL

115 Repeal of Act

The *Telecommunications and Regulatory Affairs Act 2017* is repealed by the provisions of this Act.

116 Saving of Wireless Telegraphy Regulations 1976 and existing licences

- (1) Until regulations are made under this Act to provide for matters relating to telecommunications, the Wireless Telegraphy Regulations 1976 made under the Wireless Telegraphy Act 1974 and in force before the commencement of this Act shall apply, as nearly as may be, as if made under this Act.
- (2) A reference in the Wireless Telegraphy Regulations 1976 to 'wireless communication' or '*wireless telegraphy*' shall be read as a reference to telecommunications under this Act.
- (3) All licences granted under the Telecommunications Act 2002 or the Wireless Telegraphy Regulations 1976 which were valid and in force immediately before the commencement of this Act shall continue, on that coming into operation, to have full force and effect until the expiry of the current period for which they were granted or made or until they sooner expire or are revoked according to law.

Savings and transitional provisions

- (1) Despite the repeal of the *Telecommunications and Regulatory Affairs Act 2017* and the *Telecommunications Act 2002*, all appointments, licences, permits and decisions made under those Acts *mutatis mutandis* remain in force.
- (2) Any proceedings instituted or action begun under the repealed Acts before the commencement of this Act which has not been determined before the commencement of this Act continues until determined under the repealed Acts.