



ANALYSIS

- Title
1. Short Title and commencement
 - PART I
PRELIMINARY
 2. Interpretation
 3. Act to bind the Crown
 - PART II
NETWORK
 4. Protection of network
 5. Telecommunication links
 6. Interference with network
 7. Offensive language and disturbing use of telephone
 8. Indecent or obscene telephone calls for pecuniary gain
 9. Evidence
 10. Monitoring of telecommunications
 - PART III
POWERS OF NETWORK OPERATOR
 11. Rights of entry in respect of lines
 12. Rights of entry in respect of existing works and lines
 13. Removal of trees
 14. Removal of trees in emergency
 15. Construction or repairing of lines on roads
 16. Notice to be given before alteration to lines or works on road
 17. Offence for failure to comply with section 15 or section 16
 18. Appeals in relation to conditions imposed
 19. Alteration to line on road
 20. Lines not to interfere with public traffic
 21. Telephone booths
 22. Compensation for injurious affection
 23. Protection of existing works
 - PART IV
ACCOUNTABILITY
 24. Principal objective to be successful business
 25. Non-commercial activities
 26. Statement of corporate intent
 27. Annual report, accounts, and dividend

PART V
LICENSING AND REGULATION
OF RADIO APPARATUS

28. Objects of this Part
29. Interpretation
30. Licensing of radio apparatus
31. Interfering equipment
32. Radio communication within territorial limits
33. Powers to obtain documents and radio apparatus
34. Penalties
35. Delegation of power by Minister
36. Proceedings privileged
37. Regulations

PART VI
OFFENCES, ENFORCEMENT,
REMEDIES

38. Jurisdiction of High Court
39. Injunctions may be granted by the Court
40. Actions for damages
41. Offences

PART VII
MISCELLANEOUS

42. Transfer of Crown assets and liabilities to network operator
43. Public servants employed by company
44. Indemnity
45. Emergency powers
46. Regulations
47. Consequential amendments and repeals

1989, No. 38

An Act to regulate the law relating to telecommunications and connected purposes

(22 December 1989)

1. Short Title and commencement - (1) This Act may be cited as the Telecommunications Act 1989.

(2) This Act shall come into force on a date to be appointed by the Minister and notified by publication in the Gazette.

PART I
PRELIMINARY

2. Interpretation - In this Act, unless the context otherwise requires, -

"Company" means Telecom Cook Islands Limited a company incorporated under the Companies Act 1970-71;

"Line" means a wire or wires or a conductor of any kind (including fibre optic cable) used or intended to be used for the transmission or reception of signs, signals, impulses, writing, images, sounds or intelligence of any nature by means of any electromagnetic system; and includes any pole, insulator, casing, fixing, tunnel or other equipment or material used or intended to be used for supporting, enclosing, surrounding or protecting any such wire or conductor; and also includes any part of a line;

"Minister" means the Minister charged with the responsibility for telecommunications.

"Network" means a system comprising of telecommunication links to permit telecommunications, other than any system used solely for broadcasting (as defined in the Broadcasting Act 1989).

"Network Operator" means the Company;

"PABX" means apparatus capable of making switching connections between telephone stations without such connections passing through a network of the Company.

"Radio Frequency" means electromagnetic waves of frequencies between 9 kilohertz and 3000 gigahertz propagated in space without artificial guide;

"Radio Frequency Management" is the management of all things pursuant to the Radio Frequency allocation and use including the issue of Radio licences;

"Telecommunications" means any transmission, emission or reception of information of any nature including signs, signals, impulse, written matter, images, sounds, instruction, information or intelligence of any kind by wire, radio, optical or other electromagnetic systems;

"Telecommunication Service" is the offering of a telecommunication facility.

"Telephone Station" means any terminal device capable of being used for transmitting or receiving any communications over a network designed for the transmission of voice communications; but does not include any apparatus capable of being used to switch any communication to any other apparatus.

3. Act to bind the Crown - This Act shall bind the Crown.

PART II NETWORK

4. Protection of network - (1) No person other than a network operator shall erect, construct, establish, operate, or maintain any network.

(2) Every person who contravenes this section commits an offence, and shall be liable on conviction to a fine not exceeding \$1,000 for each day during which the offence continues.

(3) The High Court may order that any revenue earned by a person in the course of committing an offence against this section be forfeited to the Crown. Every such order shall specify the amount to be forfeited.

(4) Nothing in this section shall prohibit the operation of any telecommunication links by a person other than the network operator who owns the links, where the operation is in accordance with an agreement with that network operator.

5. Telecommunication links - Section 4 shall not apply to -

(a) Any line that is situated entirely on land for the time being wholly owned or occupied by the same person or persons, so long as the line does not run along, across, or over any public thoroughfare and is not, or would not normally be, connected with the network of a network operator; or

(b) Any radio frequency produced by radio apparatus licensed pursuant to Part V of this Act.

6. Interference with network - (1) No person shall, without the agreement of the network operator, connect any additional line, apparatus, or equipment to any part of a network owned by that operator.

7. Offensive language and disturbing use of telephone - (1) Every person commits an offence against this Act who, in using a telephone station, uses profane, indecent, or obscene language, or makes a suggestion of a profane, indecent, or obscene nature, with the intention of offending the recipient.

(2) Every person commits an offence against this Act who -

(a) Uses, or causes or suffers to be used, any telephone station for the purpose of disturbing, annoying, or irritating any person, whether by calling up without speech or by wantonly or maliciously transmitting communications or sounds, with the intention of offending the recipient; or

(b) In using a telecommunications device, knowingly gives any fictitious order, instruction, or message.

(3) Every person who commits an offence against subsection (1) or subsection (2) shall be liable on conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding \$1000.

8. Indecent or obscene telephone calls for pecuniary gain - (1) Every person commits an offence against this Act who, in using a telephone station, uses or causes to be used indecent or obscene language or makes or causes to be made a suggestion of an indecent or obscene nature, for the purpose of obtaining any pecuniary gain or other commercial benefit.

(2) Every person who commits an offence against subsection (1) is liable, on conviction, -

(a) In the case of an individual, to a fine not exceeding \$2,000:

(b) In the case of a body corporate, to a fine not exceeding \$5,000.

9. Evidence - (1) A telegram purporting to have been stamped and initialled by an employee of a network operator shall be admissible in every Court and in every judicial examination or proceeding as prima facie evidence that the matter therein contained is the same as that stated in the telegram as received for transmission, and that the telegram was delivered for transmission by or on behalf of the person by whom the telegram purports to have been sent.

(2) A document certified by an employee of a network operator to be a computer record of a telex facsimile or toll call and to have been produced in the usual and ordinary course of producing such computer records, shall in all legal proceedings be received as prima facie evidence of the making of the call, the originating number, the number called, the date and time of the call, and the duration and cost of the call, to the extent that these items are recorded therein.

(3) For the purposes of this section the expression "computer record" includes a microfiche, a microfiche printout, a computer printout, or any other document produced by a device by means of which information is recorded or stored.

10. Monitoring of telecommunications - (1) Any employee of a network operator may, when acting in the course of, and for the purposes of, his or her duty, intercept any telecommunication by means of a listening device or any other device for the purpose of maintaining telecommunication services.

PART III

POWERS OF NETWORK OPERATOR

11. Rights of entry in respect of lines - (1) Where a network operator wishes to enter upon any land (including land owned by the Crown) for the purpose of constructing, erecting, laying, or maintaining any line, the network operator may, upon giving the owner and occupier of the land not less than 10 working days notice of its intention to do so, apply to a High Court for an order under this section.

(2) On being satisfied that the construction, erection, laying, or maintenance of any line is necessary for the purposes of telecommunications, and that the network operator has taken all reasonable steps to negotiate an agreement for entry, and that, in relation to the construction, erection, or laying of any line, no practical alternative route exists, the Court may make an order authorising the network operator to -

- (a) Enter and re-enter the land at reasonable times with or without such assistance, aircraft, boats, vehicles, appliances, machinery, and equipment as are reasonably necessary for the construction, erection, laying, or maintenance of any line;
- (b) Perform such work as may be reasonably necessary to construct, erect, lay, or maintain any line;
- (3) Every order under this section shall specify -
 - (a) How and when entry is to be made; and
 - (b) The specific powers intended to be exercised; and
 - (c) Such other conditions (including conditions relating to the payment of compensation) as the Court thinks fit to impose.

(4) Before exercising any powers authorised by an order made under this section, the network operator shall serve the order on an owner or occupier of the land to which the order relates.

(5) Every officer, employee, or agent of a network operator acting in pursuance of an order made under this section shall have with him and shall produce on initial entry and if required to do so, evidence of his authority and identity.

12. Rights of entry in respect of existing works and lines - (1) Subject to subsection (2) a network operator may enter upon land (including land owned by the Crown) for the purpose of gaining access to any existing works or existing lines owned by the operator and may perform any act or operation necessary for the purpose of inspecting, maintaining, or repairing any such works or lines.

(2) The power to enter upon land conferred by sub- section (1) shall be subject to the following conditions:

- (a) Entry to the land shall only be made by an officer, employee, or agent of the network operator authorised by it in writing:
- (b) Reasonable notice of the intention to enter shall be given:
- (c) Entry shall be made at reasonable times:
- (d) The person entering shall carry with him and shall produce on initial entry, and if required to do so, evidence of his authority and identity.

These conditions shall not apply where the entry is necessary in circumstances of probable danger to life or property.

13. Removal of trees. - (1) Where any tree, shrub, or plant on any land or road injures, prejudices, or obstructs any line, or interferes with, or is likely to interfere with any line, the network operator utilising the line shall request the owner or occupier of the land, or authority or person having control of the road, to remove or trim any such tree, shrub or plant.

(2) Where the owner, occupier, authority, or person fails to comply with any request made under subsection (1), the network operator utilising the line may, upon giving such owner, occupier, authority, or other body or person not less than 10 working days' notice of its intention to do so, apply to the High Court for an order authorising the network operator to remove or trim the tree.

(3) Where a network operator removes or trims a tree shrub, or plant on any land or road under the authority of an order made under subsection (2) of this section, the owner, occupier, authority, or other body or person to whom notice of the application under that subsection was given shall be liable for the reasonable cost of the work of the network operator.

14. Removal of trees in emergency - (1) Where there is imminent danger to or serious interference with any line arising from any tree, shrub, or plant on any land or road, the network operator may, on giving such oral notice to the occupier of the land or authority or person having control of the road as may be possible in the circumstances, enter upon the land or road where the tree, shrub, or plant is rooted or overhangs and there do such work in respect of the tree, shrub, or plant as is necessary and sufficient to remove the imminent danger or serious interference.

(2) Every officer, employee, or agent of a network operator entering under subsection (1) shall carry evidence of his or her authority and identity, or be working under the immediate control of a person holding evidence of that person's authority and identity, which shall be produced if requested.

(3) Where a network operator removes or trims a tree, shrub, or plant on any land or road, under the authority of subsection (1) the occupier of the land or authority or person having control of the road, as the case may be, shall be liable for the reasonable cost of the work of the network operator.

15. Construction or repairing of lines on roads - (1) Except as provided in subsection (2) a network operator may from time to time construct, place, and maintain lines in, on, along, over, across or under any road; and for any of these purposes may open or break up any road, and alter the position thereunder of any pipe or conduct for the supply of water gas or electricity and may alter, repair, or remove any such lines or any part thereof.

(2) No network operator shall exercise the powers contained in subsection (1) otherwise than in accordance with such reasonable conditions as the authority or other body or person having jurisdiction over that road may prescribe.

16. Notice to be given before alteration to lines or works on road - (1) Except as provided in subsection (5) before a network operator proceeds to open or break up any road, the network operator shall give to the authority or person having jurisdiction over the road, written notice of the intention to undertake the work.

(2) Every such notice shall specify the location of the proposed work, the nature of the work to be undertaken, and the reasons for it.

(3) Within 21 days after the receipt of the written notice of the intention to undertake work, the authority or person having jurisdiction over the road shall notify the network operator in writing of any conditions imposed pursuant to section 15(2).

(4) Where an authority or person having jurisdiction over the road fails to notify the network operator of the conditions imposed pursuant to section 15(2) within the 21 day period referred to in subsection (3) no such conditions may be imposed, and the network operator may commence work.

(5) Where any such work is rendered urgent and necessary by any defective equipment, or other emergency, the network operator shall be excused from complying with the requirements of subsection (1) before commencing the work, but shall give the information required by subsection (2) as soon as practicable thereafter.

17. Offence for failure to comply with section 15 or section 16 - (1) a network operator who fails to comply with section 15 or section 16 commits an offence against this Act and shall be liable, on conviction, to a fine not exceeding \$10,000.00.

(2) In addition to any fine imposed pursuant to subsection (1) the High Court may make such order relating to compensation as it thinks fit.

18. Appeals in relation to conditions imposed - (1) A network operator shall have a right of appeal to a High Court against all or any of the conditions imposed pursuant to section 15(2) by the authority or person having jurisdiction over the road.

(2) Every such appeal shall be made by giving notice of appeal within 21 days after the date of notification of the conditions imposed or within such further time as the High Court may allow.

(3) In its determination of any appeal the High Court may confirm, modify or cancel any or all of the conditions imposed.

19. Alteration to line on road - Where an alteration to a line or work on a road, so as to afford access to land or the reasonable use of land, is desired by the owner of the land or some other person, the network operator may require the person making the request to pay the cost of the alteration.

20. Lines not to interfere with public traffic - (1) Where a network operator places any line across or along any road, it shall not place the wires of the line so low as to interfere with the lawful traffic along the road:

Provided that no interference shall be deemed to be caused if the wires are placed at a height of not less than 5.5 metres above the surface of the road where the wires cross a public road, or at a height of not less than 4.25 metres elsewhere.

(2) Where a network operator places any line over or under any navigable waters, it shall not so place it as to interfere with the navigation of the waters.

(3) A network operator, in maintaining, repairing, altering, or removing any line of a kind referred to in subsection (1) or subsection (2) shall cause no unnecessary or avoidable interference to the traffic along, or to the lawful use of, any road or navigable waters.

21. Telephone booths - A network operator may from time to time construct, place, and maintain public telephone booths, distribution booths, and any appliances of a like nature on any road:

Provided that no such booth or appliance shall be so placed as to interfere with the ordinary traffic, and that not less than 1 week's notice of the intention to place the booth or appliance shall be given to the authority having control of the road.

22. Compensation for injurious affection - In the exercise of the powers conferred on it under this Act, a network operator 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 thereby, or suffering any damage from the exercise of any of the said powers, shall be entitled to full compensation, the amount of the compensation to be agreed upon between the network operator and the person concerned or failing agreement, to be determined by the High Court.

23. Protection of existing works - Any existing works, or existing lines fixed to or installed over or under any land that is not owned by the network operator which owns the works or lines, shall be deemed to be lawfully fixed or installed and shall continue to be fixed or installed until the network operator otherwise decides and no person other than the network operator shall have any interest in any such work or lines by reason only of having an interest in the land.

PART IV

ACCOUNTABILITY

24. Principal objective to be successful business - (1) The principal objective of the network operator shall be to operate as a successful business and, to this end, to be:-

- (a) As profitable and efficient as comparable businesses; and

- (b) An organisation that exhibits a sense of social responsibility by having regard to the interests of the community in which it operates and by endeavouring to accommodate or encourage these when able to do so.

25. Non-commercial activities - (1) Where the Crown wishes a network operator to provide goods or services to any person, the Crown and the network operator shall enter into an agreement under which the network operator will provide the goods or services in return for the payment by the Crown of the whole or part of the price thereof.

(2) Where the Crown and a network operator are unable to agree on the provision of goods or services or the price to be paid by either party for the provision thereof, the Crown may proceed to cause to be provided such goods and services independently of the network operator.

26. Statement of corporate intent - (1) A network operator shall deliver to the Minister a statement of corporate intent not later than 1 month before the commencement of operations and not later than 1 month after the commencement of each financial year.

(2) Each statement of corporate intent shall in respect of the financial year in which it is delivered and each of the immediately following 2 financial years, provide the following information:

- (a) The objectives of the network operator;
- (b) The nature and scope of the activities to be undertaken;
- (c) The ratio of consolidated shareholders' funds to total assets, and definitions of those terms;
- (d) The accounting policies;
- (e) The performance targets and other measures by which the performance of the group may be judged in relation to its objectives;
- (f) An estimate of the amount or proportion of accumulated profits and capital reserves that intended to be distributed to shareholders;
- (g) Any activities for which the network operator seeks compensation from the Crown (whether or not the Crown has agreed to provide such compensation);
- (h) The network operation estimate of the commercial value of the network operator and the manner in which, and the times at which, that value is to be reassessed;

- (i) Such other matters as are agreed between the network operator and the Minister.

(3) A statement of corporate intent may be modified at any time by written notice from the network operator to the Minister, so long as the network operator has first given written notice to the Minister of the proposed modification and considered any comments made thereon by the Minister within 1 month of the date on which that notice was given.

(4) It shall be the duty of a network operator to have regard to the principal objectives referred to in section 26 to implement those matters set out in each statement of corporate intent.

27. Annual report, accounts, and dividend - (1) Within 3 months after the end of each financial year the network operator, shall deliver to the Minister;-

- (a) A report of the operations of the network operator and those of its subsidiaries during that financial year; and
- (b) Audited consolidated financial statements for that financial year consisting of statements of financial position, profit and loss, changes in financial position, and such other statements as may be necessary to show the financial position of the network operator and its subsidiaries and the financial results of their operations during that financial year; and
- (c) The auditor's report on those financial statements.

(2) Every report under subsection (1)(a) shall -

- (a) Contain such information as is necessary to enable an informed assessment of the operation of the network operator and its subsidiaries, including a comparison of the performance of the network operator and subsidiaries with the relevant statement of corporate intent; and
- (b) State the dividend payable to shareholders for the financial year to which the report relates.

(3) Notwithstanding the provisions of the Public Money and Stores Act 1987, all money and stores received held or expended by the company shall not be public money or stores as defined by that Act.

PART V
LICENCING AND REGULATION OF RADIO APPARATUS

28. Objects of this Part - The purpose of this Part of this Act is to provide for the regulation of radio apparatus to ensure efficient and effective management of the radio frequency spectrum.

29. Interpretation - In this Part, unless the context otherwise requires, -

"Interfering equipment" means any apparatus or equipment of any kind (whether radio apparatus or equipment or not) that may generate electric waves (being radio frequency energy) likely to interfere with radiocommunications; and includes an electric power line;

"Radiocommunication" 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 3000 gigahertz, propagated in space without artificial guide;

"Radio apparatus" means any apparatus intended for the purpose of effecting radiocommunication, whether by transmission or reception, or both;

"Registrar" means the Registrar of the High Court; and includes any Deputy Registrar.

30. Licensing of radio apparatus - (1) For the purposes of this section, the term "Cook Islands ship" includes -

(a) Any Cook Islands ship within the meaning of the Crimes Act 1969; and

(b) Any vessel for the time being registered in the Cook Islands as a ship under the Shipping Registry Act 1985.

(2) The Minister may in accordance with regulations under this Part grant licences for the installation, operation, or use of radio apparatus within the territorial limits of the Cook Islands or on any Cook Islands ship, or on any aircraft which operates predominately in the Cook Islands.

(3) Subject to any such regulations, every such licence shall be in such form and for such period, and shall contain such terms, conditions, and restrictions as the Minister thinks fit.

(4) Where, pursuant to regulations made under this Part the installation, operation, or use of radio apparatus of any class or classes is prohibited, except pursuant to a licence or licences granted under this Part any person who erects, constructs, establishes, maintains, uses, or is in possession of any radio apparatus of that class or those classes capable of transmitting radio communications otherwise than pursuant to, or in conformity with the terms and conditions of a licence issued under this section, commits an offence against this Part.

(5) Where, pursuant to regulations made under this Part the installation, operation or use of radio apparatus of any class or class is prohibited, except pursuant to a licence or licences granted under this Part any person who is in possession of any radio apparatus of that class or those classes capable of receiving radiocommunications otherwise than pursuant to, and in conformity, with the terms and conditions for a licence issued under this section, commits an offence under this Part.

(6) The occupier of any premises on which is situated any radio apparatus capable of transmitting radio-communications shall be presumed to have erected, constructed, established, maintained, used, and to be in possession of the radio apparatus unless and until the contrary is proved.

(7) The occupier of any premises on which is situated any radio apparatus capable of receiving radio-communications shall be presumed to be in possession of the apparatus unless and until the contrary is proved.

(8) Any radio apparatus shall for the purposes of this section be deemed to be, and to remain, capable of transmitting or, as the case may be, receiving radio-communications, notwithstanding that, without having been completely dismantled, or rendered inoperative to the satisfaction of the Minister, it may be temporarily incapable of doing so.

31. Interfering Equipment - (1) Every person whether the owner or occupier of the land upon which apparatus or equipment of any kind (whether radio apparatus or equipment or not) that emits electric radio frequency waves that interfere with the transmission or receipt of telecommunications shall upon notice from a network operator cease to operate that apparatus or equipment or modify such apparatus or equipment so as to prevent interference;

(2) Every person who fails to comply with a notice given pursuant to subsection (1) within 24 hours of receipt of that notice commits an offence and upon conviction shall be liable to a fine not exceeding \$1,000.

32. Radio communication within territorial limits - (1) The Queen's Representative may from time to time, by Order in Executive Council, make regulations governing or prohibiting the use of radio apparatus on ships, or on aircraft, of whatever nationality or registration, or on foreign ships of war or foreign military aircraft, while within the territorial limits of the Cook Islands.

(2) Any such regulations may prescribe fines not exceeding \$20,000 in any case, for any breach of the regulations and provide for the detention of any ship or civil aircraft on which a breach of the regulations has been made pending the institution and determination of proceedings in respect of the breach and pending the recovery of any fine imposed in respect thereof.

33. Powers to obtain documents and radio apparatus - (1) Subject to this section, any officer or employee of the Public Service authorised in writing by the Minister for the purpose, or a constable, may, for the purpose of ascertaining or establishing whether any person has committed or is committing an offence against this Part or against any regulations made thereunder, at any time in the day or night, enter upon and search any premises and -

- (a) Inspect, remove, and take copies of any documents or extracts therefrom, in the possession of, or under the control of, any person; and
- (b) Inspect and remove any radio apparatus in the possession of, or under the control of, any person.

(2) No person shall exercise the powers conferred by subsection (1) unless the person obtains a warrant authorising that person to exercise those powers in accordance with subsection (3).

(3) Where a High Court Judge, or Justice of the Peace is satisfied, on application in writing made on oath, that there is reasonable grounds for believing that it is necessary for the purpose of ascertaining or establishing whether any person has committed or is committing an offence against this Part, for an officer or employee of the Public Service authorised for the purpose or a constable, to exercise the powers conferred by subsection (1) that High Court, Judge or Justice of the Peace may, by warrant, authorise that officer or employee or constable, as the case may be, to exercise those powers in relation to any premises specified in the warrant.

(4) Every warrant issued under subsection (3) shall authorise the person named in the warrant, within such period as shall be specified in the warrant, to enter upon and search the premises specified in the warrant and -

- (a) Inspect, remove and take copies of any documents or extracts therefrom in the possession of, or under the control of, any person;
- (b) Inspect and remove any radio apparatus in the possession of, or under the control of, any person

(5) The power to enter and search any premises pursuant to a warrant issued under this section may be exercised on one occasion only.

(6) Every person authorised to enter upon and search any premises pursuant to subsection (3) shall, on first entering those premises, and, if requested, at any subsequent time, produce -

- (a) Evidence of that person's authority to enter the premises; and
- (b) Evidence of that person's identity.

(7) Every 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 taken;
- (b) Any radio apparatus that has been removed from the premises;
- (c) The place from which any such documents or extracts or radio apparatus have been removed;
- (d) The place where any such documents or extracts or radio apparatus are held.

(8) A copy of every schedule prepared under subsection (7) shall be given to the occupier or person in charge of the premises as soon as practicable.

(9) The occupier or person in charge of any premises that an authorised person enters pursuant to subsection (3) shall provide the authorised person with all reasonable facilities and assistance for the effective exercise of the authorised person's powers.

(10) The Minister, or any person authorised by the Minister for the purpose, or any constable, may -

- (a) Inspect and take copies of any documents or extracts therefrom obtained under this section; or
- (b) Inspect any radio apparatus obtained under this section.

(11) Every person commits an offence against this Part who obstructs any authorised person acting pursuant to a warrant issued under subsection (3).

34. Penalties - (1) Every person who commits an offence against this Part is liable on conviction -

- (a) In the case of a person other than a body corporate, to a fine not exceeding \$20,000; and
- (b) In the case of a body corporate, to a fine not exceeding \$10,000.

(2) Where, in any proceedings under this section, the High Court finds that a person has committed an offence against this Part the Court may order any radio apparatus (being the property of a person convicted under subsection (1) in relation to which the offence has been committed, to be forfeited.

(3) Subject to subsection (4) and to any directions of the Court that orders the forfeiture, any such radio apparatus that is forfeited under subsection (2) may be sold, destroyed, or otherwise disposed of as the Minister may direct.

(4) Where any radio apparatus that is forfeited under subsection (2) is sold, the proceeds of the sale shall be applied as if the proceeds were a fine incurred under subsection (1).

35. Delegation of power by Minister - (1) The Minister may from time to time, by writing under his hand, either generally or particularly, delegate to such person or persons as the Minister thinks fit all or any of the powers exercisable by the Minister under this Part of this Act or any regulations made thereunder, but not including this power of delegation.

(2) Subject to general or special directions given or conditions attached by the Minister, the person or persons to whom any powers are delegated under this section may exercise those powers in the same manner and with the same effect as if they had been conferred on the person or persons directly by this section and not by delegation.

(3) Every person purporting to act pursuant to any delegation under this section shall be presumed to be acting in accordance with the terms of the delegation in the absence of proof to the contrary.

(4) Any delegation under this section may be made to a specified person or to a person or persons of a specified class, or may be made to the holder or holders for the time being of a specified office or class of offices.

(5) Every delegation under this section shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Minister.

(6) Any such delegation shall, until revoked, continue in force according to its tenor, notwithstanding the fact that the Minister by whom it was made may have ceased to hold office, and shall continue to have effect as if made by the successor in office of that Minister.

36. Proceedings privileged - (1) This section applies to

- (a) The Minister;
- (b) Every person authorised to enter and search any premises pursuant to a warrant issued under section 33;
- (c) Any person to whom powers under this Part have been delegated pursuant to section 35.

(2) No proceedings, civil or criminal, shall lie against any person to whom this section applies for anything that person may do or fail to do in the course of the exercise or intended exercise of the person's functions under this Part unless it is shown that the person acted in bad faith.

37. Regulations - (1) The Queen's Representative may from time to time, by Order in Executive Council, make regulations in regard to any matter or for any purpose for which regulations are prescribed or contemplated by this Part and may make all such other regulations as may be necessary or expedient for giving full effect to the provisions of this Part, and for the due administration thereof. (2) Without limiting the general power to make regulations conferred by this section, regulations may be made under this section -

- (a) Prohibiting -
 - (i) The installation, operation, or use of radio apparatus of any class or classes; or

- (ii) The supply of radio apparatus of any class or classes -

except pursuant to a licence or licences granted under this Part;

- (b) Providing for the granting of licences for the installation, operation, use, and supply of radio apparatus to which regulations made under paragraph (a) apply and for the terms and conditions subject to which any such licences may be granted, refused, transferred, suspended, or revoked;
- (c) Restricting or prohibiting, for the purpose of protecting the privacy of radio communications, the use, publication, or repetition of information received as the result of the use of radio apparatus;
- (d) Prescribing examinations to determine the competence of persons wishing to operate radio apparatus and providing for the issue revocation, or suspension of certificates of competency in respect of any such operations and prescribing fees in respect of any such examinations;
- (e) Providing for the prohibition or control of the installation, use, sale, or manufacture of apparatus or equipment of any kind (whether radio apparatus or equipment or not) that may generate electric waves likely to interfere with radio-communications;
- (f) Prescribing fees payable in respect of any application made or licence or certificate issued under the regulations, or in respect of any other matter relating to the supply or use of radio apparatus.

PART VI
OFFENCES, ENFORCEMENT, REMEDIES

38. Jurisdiction of High Court - In accordance with this Part the High Court shall have jurisdiction to hear and determine the following matters:

- (a) Applications for injunctions under section 39;
- (b) Actions for damages under section 40.

39. Injunctions may be granted by the Court - (1) The High Court may, on the application of the network operator, grant an injunction restraining a person from engaging in conduct that constitutes or would constitute any of the following:

- (a) A contravention of section 6, and of section 31;
- (b) Any attempt to contravene those provisions;
- (c) Aiding, abetting, counselling, or procuring any other person to contravene those provisions;
- (d) Inducing, or attempting to induce, any other person, whether by threats, promises, or otherwise, to contravene those provisions;
- (e) Being in any way directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of those provisions;
- (f) Conspiring with any other person to contravene those provisions.

(2) The High Court may at any time rescind or vary an injunction granted under this section.

(3) Where an application is made to the High Court under this section for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the Court may,

- (a) If it is satisfied that the person has engaged in conduct of that kind, grant an injunction restraining the person from engaging in conduct of that kind; or
- (b) If in the opinion of the Court it is desirable to do so, grant an interim injunction restraining the person from engaging in conduct of that kind, -

whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind.

(4) Where an application is made to the High Court under this section for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the Court may -

- (a) If it appears to the Court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind, grant an injunction restraining the person from engaging in conduct of that kind; or
- (b) If in the opinion of the Court it is desirable to do so, grant an interim injunction restraining the person from engaging in conduct of that kind,

whether or not the person has previously engaged in conduct of that kind and whether or not there is imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

40. Actions for damages - (1) Every person who engages in conduct that constitutes any of the following matters:

- (a) A contravention of section 6, and of section 31;
- (b) Aiding, abetting, counselling, or procuring the contravention of those sections;
- (c) Inducing by threats, promises, or otherwise, the contravention of those sections;
- (d) Being in any way directly or indirectly, knowingly concerned in, or party to, the contravention of those sections;
- (e) Conspiring with any other person in the contravention of those sections.

is liable, at the suit of any person suffering any losses or damage as a result of that conduct, to damages as if that conduct constituted a tort.

(2) An action under subsection (1) may be commenced at any time within 2 years from the time when the cause of action arose.

41. Offences - (1) Any person who:

- (a) With intent to defraud mishandles a telecommunications message;
- (b) Steals, secretes or conceals or, except in the performance of duties as a telecommunications officer, destroys;
- (c) Forges a telecommunications message or causes information to be transmitted where he knows the telecommunications message to be forged;

- (d) Sends a telecommunications message without a persons authority, or that was not so signed to be sent;
- (e) Wilfully and without authority of the person sending a telecommunications message alters that telecommunications message;
- (f) Divulges the content or substance of a telecommunications message without authority of the person who sent the message except in the course of his normal duties as an officer or as summoned to give evidence;
- (g) Intercepts or does an act which will enable him or another person to intercept information passing over a telecommunications system except in the course of his normal duties as an officer or as summoned to give evidence;
- (h) By false pretence or representation defrauds a network operator or any person of any rental fee or charge properly payable by such persons for the use of a telecommunication service provided;
- (i) Manipulates, tampers or interferes with any telecommunications installation belonging to a network operator in such a manner as to hinder normal operation of a telecommunication service provided by such operator;
- (j) Wilfully assaults or obstructs an officer in the execution of his duty;
- (k) Wilfully damages, defaces interferes with, removes or destroys a telecommunications installation or any part thereof belonging to a network operator;
- (l) Transmits or receives radio telecommunications without a licence except in cases of a state of emergency declared by Government or for the purposes of preserving the safety of life or property,

commits an offence against this Act and upon conviction shall be liable to a fine not exceeding \$3000 or to imprisonment for a term not exceeding 3 months or to both.

(2) For the purposes of paragraph (g) of subsection (1) interception of information consists of listening to or recording by any means information in its passage over the telecommunication system without the knowledge of the person for whom that information is being transmitted;

PART VII
MISCELLANEOUS

42. Transfer of Crown assets and liabilities to network operator - (1) Notwithstanding any Act, rule of law, or agreement, the Minister with the approval of Cabinet may, on behalf of the Crown, do any one or more of the following:

- (a) Transfer to the network operator assets and liabilities of the Crown (being assets and liabilities relating to the activities to be carried on by the network operator;
- (b) Authorise the network operator to act on behalf of the Crown in providing goods or services, or in managing assets or liabilities of the Crown;
- (c) Grant to the network operator leases, licences, easements, permits, or rights of any kind in respect of any assets or liabilities of the Crown -

for such consideration, and on such terms and conditions, as the Minister may agree with the network operator with the concurrence of Cabinet.

(2) Assets that are fixed to, or are under or over, any land may be transferred to a network operator pursuant to this Act whether or not any interest in the land is also transferred. Where any such asset is so transferred, the asset and the land shall be regarded as separate assets each capable of separate ownership.

(3) Any asset or liability of the Crown may be transferred to a network operator pursuant to this Act whether or not any Act or agreement relating to the asset or liability permits such transfer or requires any consent to such a transfer.

(4) Where a transfer of the kind described in subsection (3) takes place -

- (a) The transfer shall not entitle any person to terminate, alter, or in any way affect the rights or liabilities of the Crown, or the network operator under any Act or agreement;

- (b) Where the transfer is registrable, the person responsible for keeping the register shall register the transfer forthwith after written notice of the transfer is received by him or her from any person authorised for this purpose by the Minister;
- (c) Any satisfaction or performance by the network operator in respect of the asset or liability shall be deemed to be also satisfaction or performance by the Crown;
- (d) Any satisfaction or performance in respect of the asset or liability by any third party to the benefit of the network operator shall be deemed to be also to the benefit of the Crown.

(5) No provision in any agreement limiting the Crown's right to sell any assets to third parties, or for determining the consideration for the sale of any assets to third parties, or obliging the Crown to account to any person for the whole or part of the proceeds of sale by the Crown of any assets to third parties, or obliging the Crown to pay a greater price than otherwise by reason of or as a consequence of the sale of any assets to third parties, shall have any application or effect in respect of any agreement or transfer entered into or effected pursuant to or under this Act or pursuant to such an agreement or transfer.

(6) Where -

- (a) Rights or obligations to provide goods or services to third parties are transferred to a network operator; and
- (b) Those goods or services have previously been provided by the Crown on terms and conditions wholly or partly prescribed by any Act; and
- (c) The Queen's Representative has by Order in Council declared that this subsection shall apply in respect of those goods or services,

the goods or services shall, to the extent that those terms and conditions are not already contained in contracts between the Crown and third parties, from the date of transfer be deemed to be provided pursuant to contracts between the network operator and the third parties (whether or not the Act is repealed). Each such contract shall be deemed to include such of the terms and conditions contained in that Act (with all necessary modifications), and such of the following provisions as are specified in the Order in Council;

- (d) A condition permitting termination at any time by the third party on giving 14 days' notice to the network operator; and
 - (e) A condition permitting variation or termination at any time by the network operator on giving to the third party 1 month's notice in such manner (including newspaper advertising) as the network operator thinks fit.
- (7) Where -
- (a) Land, interests in land, licences, permits, or rights created on terms and conditions wholly or partly set out in any Act are transferred to a network operator pursuant to this Act; and
 - (b) The Queen's Representative has by Order in Council declared that this subsection shall apply in respect of that land or those interests, licences, permits, or rights -

then, whether or not the Act is repealed, such of the terms and conditions set out in the Act as are specified in the Order in Executive Council (with all necessary modifications) shall continue to apply in respect of that land or those interests, licences, permits, or rights after the transfer network operator enterprise and the holders of that land or those interests, licences, permits, or rights otherwise agree.

43. Public servants employed by company - Where, immediately prior to the employment of a person by the company that person was a public servant, then the employment of that person by the company shall not -

- (a) Prevent that person from continuing to be a member of a superannuation scheme that he was a member of when he was employed as a public servant;
- (b) Affect that person's liability to continue contributions as may be required under that scheme;
- (c) In any way affect that person's entitlement to any benefit pursuant to that scheme;
- (d) Interrupt that person's period of employment as a public servant if immediately after ceasing to be employed by the company, he continues his employment as a public servant whether on the permanent or temporary staff.

44. Indemnity - No action or proceedings for compensation may lie against a network operator the company or an officer or employee thereof by reason of any delay, default, error omission or loss, whether negligent or otherwise, in the transmission, reception or delivery of a telecommunication service or message.

45. Emergency powers - On the occasion of any public emergency or in the interest of public safety, the Minister acting in accordance with the advice of Cabinet or an officer specifically authorised in that behalf by Cabinet may order that:-

- (a) Any message or messages be sent or received by a network operator;
- (b) The use of telecommunications services be prioritised as may be necessary in the circumstances.

46. Regulations - The Queen's Representative may by Order in Executive Council make regulations for all or any of the following:

- (a) Prohibiting the installation, operation or use of any radio apparatus;
- (b) Providing for the granting of licences for the installation, operation, use of radio apparatus and terms and conditions subject to which any such licences may be granted refused, transferred, suspended or revoked;
- (c) The working and use of telecommunications;
- (d) The examination of and issue of certificates of proficiency to operators of telegraphs or radio;
- (e) The fees in respect of licences granted and examination of and issue of certificates granted under section 30;
- (f) The secrecy of telecommunications;
- (g) Electrical interference with the working or using of any radio communications apparatus and the requirement to be complied with to prevent or reduce such interference;
- (h) The use and connection of telephones and other value added equipment;
- (i) The use and installation of any radio telecommunications station aboard any vessel while in the territorial waters of the Cook Islands;

(j) The use and installation of any radio telecommunications station including radio navigation aids on any aircraft while in or over the Cook Islands or the territorial waters thereof;

(h) The fee to be paid in respect of the grant of any licence pursuant to this Act and fees to be paid upon the making of any application for the issue of such licence.

(2) Regulations may provide for penalties not exceeding a fine of \$2000 or imprisonment for a term not exceeding 1 month (or both such fine and imprisonment) for any contravention or failure to comply with any provision of this Act or such regulations.

47. Consequential amendments and repeals - The Queen's Representative may by Order in Executive Council repeal amend or modify those provisions of any other enactment which are inconsistent with any of the provisions of this Act.

This Act is administered by the Cook Islands Post Office.