



REPUBLIC OF NAURU

# TELECOMMUNICATIONS AND REGULATORY AFFAIRS ACT 2017

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No. 7 of 2017

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An Act to repeal the *Telecommunications Act 2002*, to establish the Office of the Regulator and to provide for its powers and functions, and for related purposes

Certified: 5<sup>th</sup> May 2017

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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 Telecommunications and Regulatory Affairs Act 2017.

### **2 Commencement**

This Act commences upon certification by the Speaker.

### ***Division 1 - Objects***

### **3 General objectives of the Act**

The general objectives of the Act are to provide for the establishment of the Department of Telecommunications and Regulatory Affairs, to monitor and regulate telecommunications services in, to and from the Republic and to:

- (a) appoint the Regulator to head the Department of Telecommunications and Regulatory Affairs;
- (b) establish the powers and functions of the Regulator;
- (c) facilitate the development of the Telecommunications sector in order to promote social and economic development;
- (d) promote voice and data accessibility to all Nauruans regardless of location;
- (e) promote efficient and reliable communications services at an affordable cost;
- (f) promote fair and sustainable competitive environment for all service providers;
- (g) protect the interests of consumers and address customer complaints with service providers;
- (h) encourage sustainable foreign and domestic investments in the Telecommunications sector;
- (i) establish a licensing regime which is fair and sustainable for all service providers; and
- (j) establish rates and charges for communications services.

## ***Division 2 - Interpretation***

### **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;

**'authorised provider'** means a person authorised under section 16 to provide an authorised service;

**'authorised service'** means a service authorised under section 16;

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

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

**'communications'** includes any communication:

- (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;

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

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

**'Department'** means the Department of Telecommunications and Regulatory Affairs;

**'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 registered in Nauru in accordance with the Shipping Registration Act 1968;

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

**'illegal connection'** means a connection made to:

- (a) the national telephone service otherwise than in accordance with section 14; or
- (b) an authorised service otherwise than in accordance with an agreement made with the service provider;

**'illegal equipment'** means illegal equipment under sections 39, 40, 41 and 42;

**'illegal service'** means an illegal service under section 13;

**'illegal system'** means a system other than:

- (a) a system authorised by the office of the Regulator to be connected to the national telephone service; or
- (b) a system licenced under section 16;

**'inspector'** means:

- (a) a police officer; or
- (b) any officer of the Department appointed under section 10;

**'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':**

- (a) means the linking of telecommunications networks in order to allow the users of one network provider to communicate with users of the same or another network provider; and

(b) includes making available telecommunications facilities or services of one network provider to another for the purpose of providing telecommunications services;

**'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;

**'licensee'** means a person who holds a licence under this Act;

**'licenced system'** means a system licenced under section 16;

**'line'** -

(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;

**'National Controller'** means the person for the time being holding that office under section 20 of the National Disaster Risk Management Act 2016;

**'national telephone service'** means the national telephone service provided by Digicel under section 14;

**'network licence'** means a licence to provide a telecommunications service through the use of equipment and radio communications transmitted to and received from satellites;

**'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 Regulator;

**'order'** means a written order by the 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;

**'radiocommunications'** 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 59;

**'Regulator'** means the individual, entity or organisation for the time being holding the position of Regulator under section 9;

**'rule'** means a rule made by the 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;

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

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

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

**'spectrum licence'** means a right to provide a telecommunications service which requires the use of spectrum, 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;

**'state of emergency'** means a state of emergency declared under Part IX of the Constitution;

**'subscriber'** means an end-user who is for the time being connected to the national telephone service;

**'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;

**'telecommunications'** means the carriage of communications by means of guided or unguided electromagnetic energy or both/any transmission, emission, or reception of information of any nature, including signs, signals, impulses, written matter, images, sounds, instructions, information, or intelligence of any kind by any equipment, apparatus, optical, or other electromagnetic system;

**'telecommunications facility'** means any apparatus or equipment that is used or is capable of being used for telecommunications or for any operation directly connected with telecommunications;

**'telecommunications network'** means any equipment made available to a service provider to enable communications;

**'telecommunications service'** means the provision of telecommunications;

**'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.

### ***Division 3 – Application of Act***

## **5**

### **Application**

- (1) This Act applies both inside and outside the Republic.

(2) Subject to the provision of any agreement, treaty or convention between the Republic and any other country that makes provision in relation to radio emission, this Act does not apply to:

(a) satellites; or

(b) equipment on board a foreign vessel or foreign aircraft that is travelling, or is in transit, whether in or outside the Republic on a voyage:

(i) from a point outside the Republic to the Republic;

(ii) from the Republic to a point outside the Republic; or

(iii) from a point outside the Republic to another point outside the Republic.

## **6 Effect on other laws**

The powers and duties imposed by this Act do not affect any powers and duties imposed by the Cybercrime Act 2015.

## **PART 2 – DEPARTMENT OF TELECOMMUNICATIONS AND OFFICE OF THE REGULATOR**

### **7 Establishment of the Department of Telecommunications and Regulatory Affairs**

(1) A Department to be referred to as the Department of Telecommunications and Regulatory Affairs is established.

(2) The Department is responsible to the Minister for Telecommunications.

### **8 Functions of the Department of Telecommunications and Regulatory Affairs**

The functions of the Department are to:

(a) authorise, monitor and control the provision by other persons of telecommunications systems and services for use in the Republic; and

(b) monitor the use of telecommunications services on any ship or aircraft;

(c) in consultation with service providers, establish and monitor rates and charges paid by subscribers;

- (d) act as the duly appointed representative of the Republic at all international bodies or authorities which have the purpose of designating international technical standards;
- (e) carry out and give effect to any policy directions of the Minister and the Cabinet regarding the establishment, maintenance and operation of telecommunications systems and services;
- (f) advise the Minister on matters connected with its functions, including the operation of this Act and of any other law relating to its functions;
- (g) administer and enforce this Act and any other law relating to telecommunications, to the extent required or permitted by that law, and in accordance with any policy approved by the Cabinet; and
- (h) carry out such other functions as are necessary to achieve its objects or as are given to it under this Act or any other law.

## **9 The Regulator**

- (1) The Minister shall in consultation with the Cabinet, appoint a person as Regulator to head the Department of Telecommunications and Regulatory Affairs.
- (2) The Regulator:
  - (a) is the head of staff of the Department and is responsible to the Minister for the efficient performance of the functions of this office; and
  - (b) has any other powers and functions given to him or her by this Act or any other law.
- (3) The Regulator shall not:
  - (a) engage in any remunerative employment;
  - (b) engage in business, whether as a principal or agent; or
  - (c) carry on the private practice of any profession, occupation or trade.
- (4) Subsection (3) does not prevent the Regulator from becoming a member or shareholder of an incorporated company or society of persons, but an officer shall not, during his or her hours of duty, take part in the conduct of the business of the company or society otherwise than in the exercise of his or her rights as a member or shareholder of the company or society.

## **10 Staff of the Department**

- (1) The Department shall consist of the Regulator and employees and such other persons as may be seconded or appointed in accordance with this section.
- (2) Except as provided in this Act, the Regulator and the Department shall function under the laws governing the public service and the finances of the Republic, and in particular:
  - (a) the staff and employees of the Department are appointed and employed under the Public Service Act 2016;
  - (b) the budget of the Department shall be approved pursuant to the national budgetary process for the Republic taking into account any fees collected pursuant to a regulation made under section 59.

## **11 Delegation of powers of the Regulator**

The Regulator may delegate with or without conditions, to any person or class of persons engaged in the administration of this Act, any or all of the Regulator's functions, duties or powers under this Act.

## **12 Powers of the Regulator**

- (1) The Regulator has, in addition to the powers conferred on him or her by this Act and any other law, full powers to do all things that are necessary or convenient to be done, whether in the Republic or elsewhere, for or in connection with the performance of his or her functions and:
  - (a) advise the Minister and Cabinet on policy for the telecommunications sector;
  - (b) implement this Act, regulations, and other elements of the legal and regulatory framework for the telecommunications sector;
  - (c) issue licences in accordance with this Act and the regulations;
  - (d) monitor and enforce compliance by licensees with the terms and conditions of their licences;
  - (e) amend or revoke licences in accordance with this Act and the regulations;
  - (f) prescribe procedures for the approval of any telecommunications apparatus or equipment for attachment to telecommunications networks in the Republic;

- (g) facilitate interconnection between telecommunications networks of different providers;
  - (h) establish and manage a numbering plan and assign numbers;
  - (i) publish procedures, guidelines, and interpretation to facilitate the implementation of this Act;
  - (j) make rules for any matters that are contemplated by or necessary for giving full effect to the provisions of this Act and the regulations made under this Act, and for their due administration by the Regulator;
  - (k) make orders relating to any matter or thing within the jurisdiction of the Regulator under this Act, a regulation, or a rule, including orders to compel a person to comply with or implement the purposes of this Act, a regulation, a rule or a licence;
  - (l) on own initiative or upon request by another person, investigating complaints against providers, and conducting any other investigations that the Regulator deems necessary to ensure compliance with this Act, a regulation, a rule, or an order;
  - (m) take action against any person operating telecommunications service in contravention of this Act; and
  - (n) take any other actions that are reasonably required to implement this Act, the regulations and the rules and performing or exercising any other functions, responsibilities, duties, and powers that may be conferred on the Regulator under any other law.
- (2) An order made by the Regulator has the same force as a rule made under this Act.

### **PART 3 – TELECOMMUNICATIONS SERVICES**

#### **13 Telecommunications services of the Republic**

- (1) The telecommunications services of the Republic consist of:
- (a) the national telephone service provided by Digicel or any other service provider;
  - (b) services, including broadcasting services provided by or using licensed systems;
  - (c) optical fibre cable; and

(d) any other authorised services.

(2) Any other telecommunications service used or provided for use in the Republic is an illegal service.

**14 The national telephone service**

The national telephone service consists of:

(a) the telecommunications system provided by Digicel, or any authorised service provider; and

(b) subscriber systems authorised by the Department to be connected to the national telephone service.

**15 Rates and charges**

(1) The Department in consultation with the Minister may from time to time set or vary rates and charges for connection, alteration, relocation or removal of the connection and for use of the national telephone service.

(2) The rates and charges referred to in subsection (1) shall be published in the Gazette.

**16 Licensed systems**

(1) A person must not without being authorised to do so by or under this Act:

(a) provide a telecommunications service;

(b) utilise spectrum; or

(c) own or operate a telecommunications network.

(2) A person who contravenes subsection (1) commits an offence.

(3) A person who commits an offence under this section is liable to the appropriate penalties provided in section 50.

**17 General provisions related to application for licences**

(1) The Regulator must not consider any application for any licence or other authority under this Act until the prescribed fee has been paid.

(2) An application must be made in the prescribed form and contain the information that the Regulator prescribes.

- (3) The Regulator may, in considering any application, require the applicant to supply any further information that the Regulator may reasonably require to make a decision on the application.
- (4) An application must state whether the applicant is seeking:
  - (a) a spectrum licence;
  - (b) a service provider licence; or
  - (c) a network provider licence.

## **18 Licence conditions**

- (1) The Regulator may impose a condition of a network provider licence or service provider licence that specifies the equipment the licensee may use whether or not the licensee is the owner or controller of that equipment.
- (2) The Regulator may issue licences subject to any restrictions and conditions that the Regulator thinks fit.
- (3) Licences other than deemed licences must be issued and signed by an officer of the Department.
- (4) Copies of all licences must be available for inspection at the Department by any person during normal working hours.
- (5) No licence issued under this Act has any effect until the first year's prescribed annual fee has been paid.

## **19 Criteria for issuing licences**

- (1) The Regulator is not obliged to issue a licence and, if the Regulator believes after considering the criteria in subsection (2) that no licence should be issued in a particular case, the Regulator may decide not to issue a licence and that decision is valid and binding.
- (2) In considering whether to issue a licence to an applicant, the Regulator must take into account:
  - (a) whether the applicant has any experience in providing the service to be provided which requires a licence;
  - (b) the financial viability of the applicant;
  - (c) the extent to which the applicant will further Government's objectives and policies for telecommunications;
  - (d) existing demand on any equipment or spectrum the applicant wishes to use;

- (e) the public interest in achieving maximum benefit from the spectrum; and
  - (f) any agreement between the Republic and any other country or countries that makes provision for or in relation to telecommunications.
- (3) The Regulator must give reasons for any decision not to issue a licence in a particular case.

## **20 Licensing of apparatuses**

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

## **21 Powers to obtain documents, equipment and apparatuses**

- (1) A person authorised may, for the purpose of ascertaining or establishing whether any person has committed or is committing an offence in relation to this Part or any regulations made for the purposes of this Part, 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 from any documents in the possession of, or under the control of any person; and
  - (b) inspect and remove any equipment or apparatus in the possession of, or under the control of any person.
- (2) Where a court on application made on oath is satisfied that there are 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 in relation to this Part or any regulations made for purposes of this Part, for the Regulator or a police officer to exercise the powers described in subsection (1), the court may, by warrant, authorise the Regulator or his or her nominated officer or a police officer as the case may be to exercise those powers in relation to any premises specified in the warrant.
- (3) Every warrant issued under subsection (2) authorises the person named in the warrant within the period specified in the warrant to enter upon and search premises specified in the warrant and to exercise all or any of the powers described in subsection (1).



- (4) Every person who executes a warrant under this section must prepare a schedule specifying:
  - (a) any documents that have been removed from the premises or of which any copies or extracts have been removed;
  - (b) any equipment or apparatus that has been removed from the premises;
  - (c) the place from which any documents or extracts or equipment or apparatuses have been removed; and
  - (d) the place where any documents or extracts or telecommunications equipment are held.
- (5) The occupier or person in charge of any premises that an authorised person enters under subsection (2) must provide the authorised person with all reasonable facilities and assistance for the effective exercise of the authorised person's powers.

## **22 Amendment and revocation of licences**

- (1) The Regulator may by order, amend or revoke a licence as the case requires if:
  - (a) the amendment or revocation has been requested or agreed to by the licensee;
  - (b) the licensee has been in breach of a material licence condition or this Act or regulation, rule or order made under this Act;
  - (c) changes to international treaties, commitments, recommendations, standards or the laws of the Republic require an amendment or a revocation;
  - (d) the licensee becomes bankrupt, insolvent, has a receiver appointed, is liquidated, or is wound up;
  - (e) the licensee has not for a continuous or cumulative period of one year provided the service for which it obtained a licence;
  - (f) the Regulator decides that the amendment or revocation is required to implement this Act in a manner consistent with the objectives in section 3;
  - (g) the Regulator makes a determination; or
  - (h) the licensee has failed to pay the annual fee within 30 days of the date on which it fell due for payment.

- (2) Before amending or revoking a licence under this section, the Regulator must notify the licensee in writing that the Regulator is considering the relevant action, and must consider any comments made by the licensee under subsection (3) before making a decision.
- (3) Notice under subsection (2) must:
  - (a) give the licensee 14 days from service of the notice to comment on the relevant actions;
  - (b) set out any procedures the Regulator will use in carrying out the relevant action; and
  - (c) advise the licensee whether the Regulator intends to invite comments from other interested parties or the public before taking the relevant action.
- (4) If the Regulator amends or revokes a licence under this section, the Regulator must provide the licensee with reasonable time to comply with the amendment or revocation.
- (5) If the Regulator revokes a licence, the Regulator must take into account continuity of service to customers and include in the revocation order any terms and conditions that the Regulator thinks appropriate.
- (6) Rules or orders made under this Act may set out further procedures relating to the amendment or revocation of a licence.

## **23**

### **Term and renewal**

- (1) The term of a licence must be stated in the licence and must not exceed 5 years unless a different term is provided by the Regulator.
- (2) The Regulator may renew a licence on new conditions or deny the renewal of a licence if:
  - (a) the licensee has been in breach of:
    - (i) 1 or more material licence conditions; and
    - (ii) this Act or any regulation, rule or order made under this Act;
  - (b) there are changes to any of the following whether taking effect before or after the commencement of the licence, require a renewal on new conditions or denial of a renewal as the case may require:
    - (i) any international treaty to which the Republic is a party;

- (ii) any commitment or standards applicable to the Republic; or
  - (iii) the Regulator decides that a renewal on new conditions or the denial of a renewal is required to implement this Act in a manner consistent with the objectives in section 3 and is in accordance with regulations and rules relating to licensing.
- (3) The Regulator must provide written reasons for the new conditions or denial of a licence if so requested by the licensee.

## **PART 4 – SPECTRUM MANAGEMENT**

### **24 Spectrum management functions**

- (1) The Regulator is responsible for the orderly and efficient management, allocation, and assignment of frequencies in the spectrum.
- (2) The Regulator must:
  - (a) advise the Minister on matters relating to the use or management of the radio spectrum;
  - (b) conduct public inquiries relating to the use and management of the radio spectrum, where the Regulator determines inquiries to be necessary or useful for the Regulator's management of the radio spectrum;
  - (c) prepare and publish a national spectrum plan;
  - (d) ensure that the use of the radio spectrum is consistent with any applicable international treaties, commitments, protocols and standards;
  - (e) intervene where interference occurs and resolve interference disputes, where disputes are not resolved by the disputing parties to the satisfaction of the Regulator;
  - (f) make advisory guidelines relating to the use of spectrum, where the Regulator determines guidelines to be necessary or useful for the Regulator's management of the spectrum;
  - (g) issue spectrum licences in accordance with Part 3;
  - (h) administer matters related to spectrum fees, including fees established by regulations under section 59;
  - (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 radio spectrum related functions that are conferred on the Regulator by a regulation or rule.

**25 Interfering equipment and coordination**

- (1) Every person who owns or uses any apparatus of any kind that emits electrical radio frequency waves that interfere with the transmission or receipt of telecommunications by the holder of a licence issued under this Act must, upon notice from the Regulator, and as directed by the Regulator, cease to operate the apparatus or modify the apparatus so as to prevent interference.
- (2) Any person who fails to comply with a notice given under subsection (1) within 24 hours of receipt of that notice commits an offence.
- (3) A person who commits an offence under this section is liable to the appropriate penalties provided in section 50.

**26 Spectrum coordination**

The Regulator may consult and coordinate use of the spectrum with other countries, international users, and international organisations such as the International Telecommunications Union, as required by any law or treaty in force or as otherwise determined by the Regulator.

**PART 5 – CONDUCT RELATING TO LICENCES**

**27 Remedies**

- (1) This section applies if, because of the operation of section 25, a licensee is deemed to have breached the terms of a licence.
- (2) If this section applies, the Regulator may make an order that does all or any of the following:
  - (a) requires the licensee named in the order to take either or both of the following actions:
    - (i) cease the actions or activities specified in the order immediately, or at the time that may be specified in the order, and subject to any conditions that may be specified in the order;
    - (ii) make specific changes in actions or activities specified in the order as a means of eliminating or reducing the abusive or anti-competitive impact;
  - (b) imposes a financial surcharge not exceeding \$10,000 every week on a licensee;

- (c) requires the licensee involved in the action or activity specified in the order and any persons affected by the action or activity to meet and attempt to determine remedies to prevent or eliminate continuation of the action or activity, and to resolve any remaining dispute;
  - (d) requires the licensee to provide periodic reports to the Regulator to assist him or her in determining whether the action or activity is continuing and to determine its impact on telecommunications markets, competitors and customers.
- (3) If a licensee fails to comply with an order made under subsection (2), the Regulator may revoke the licensee's licence.

## **PART 6 – INTERCONNECTION**

### **28 Interconnection by all service providers**

- (1) Upon receipt of a written request by another provider, a network provider must enter into good faith negotiations to enter into an interconnection agreement to enable that other provider to provide the telecommunications service that the other provider is able and wishes to provide under its licence including, as required:
- (a) connecting and keeping connected the other provider to the network provider's telecommunications network; and
  - (b) permitting reasonable access to all equipment where reasonably required to ensure the other provider's apparatus is, and remains, in good working order.
- (2) The following actions or practices are deemed to violate the duty in subsection (1) to negotiate in good faith:
- (a) obstructing or delaying negotiations, or failing to make reasonable efforts to resolve outstanding disputes;
  - (b) refusing to provide information about a provider's own telecommunications services or telecommunications network or equipment or apparatuses where such information is reasonably necessary for the interconnection arrangements or negotiations;
  - (c) misleading or coercing a party into reaching an agreement the party would not otherwise have made;
  - (d) interfering in any way with a provider's ability to communicate with the Regulator, including having a provider sign a non-disclosure agreement that precludes the provider from providing information requested by the Regulator.

- (3) A network provider is not required to enter into an interconnection agreement on terms that would, in the network 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 provider's telecommunication services; or
  - (c) not be reasonable, having regard to technical or economic constraints.

## **PART 7 – RELATIONS BETWEEN LICENSEES AND CUSTOMERS**

### **29 Confidentiality of customer information**

- (1) A provider must not disclose information concerning a customer without the customer's written consent or unless the disclosure is required by this Act or any other law.
- (2) A customer may require that any customer information about the customer contained in a provider's records that the customer can demonstrate is incorrect be corrected or removed by the provider.
- (3) All customer specific information must be retained by a service provider or network provider only for billing purposes or other lawful purposes and be retained for a period of not less than 5 years but not exceeding 7 years.

### **30 Confidentiality of customer communications**

- (1) A provider must take all reasonable steps to ensure the confidentiality of customer communications.
- (2) A provider must not intercept, monitor, alter or modify the content of a customer communication, except as is 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 the laws of the Republic, a customer may make a request to the Regulator for a service provider to monitor communications to him or her.
- (4) On the authorisation of the Regulator, the service provider shall comply with the request in subsection (3).

## **PART 8 – STANDARDS FOR EQUIPMENT AND SPECTRUM**

### **31 Equipment**

- (1) The Regulator may, by order do all or any of the following:
  - (a) require that any specified types of equipment proposed to be attached to a telecommunications network must be approved in accordance with any applicable order made under this section before being attached;
  - (b) publish criteria for certification and establish standards for approval of equipment and apparatuses;
  - (c) identify domestic or foreign organisations or testing facilities for approval of equipment and apparatuses for use in connection with telecommunications service or telecommunications networks; or
  - (d) maintain a list of certified or approved types of equipment and apparatuses.
- (2) The Regulator may enter into recognition agreements with authorities in other countries to provide for recognition, certification, and approval of equipment and apparatuses.

## **PART 9 – NUMBERS**

### **32 National numbering plan**

- (1) The Regulator must by order, prepare, publish, and manage a national numbering plan and assign numbers and number ranges to licensees and customers in accordance with the plan.
- (2) In preparing and managing the national numbering plan, the Regulator must have regard for the existing allocation and assignment of numbers.
- (3) The Regulator may modify the national numbering plan by notice to licensees published at least 30 days before the date when the modification is to come into force.
- (4) The national numbering plan must be consistent with the requirements of relevant international agreements, commitments, conventions, regulations, 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 must:

- (a) use numbers assigned to them by the Regulator 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 licensee or customer has any property rights in numbers assigned under this section.

## **PART 10 – ACCESS TO PROPERTY**

### **33 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 the purpose of 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 the purpose of inspecting, maintaining, or repairing the line, equipment, or apparatus.

### **34 Removal or trimming of trees in emergency**

- (1) This section applies where there is imminent danger to or serious interference with any line, equipment, or apparatus arising from any tree, shrub, or plant on any land or road.
- (2) The network provider may, on giving any verbal notice to the occupier of the land or in the case of a road, to the authority or person having control of the road, that may be possible in the circumstance, enter upon the land or road where the tree, shrub, or plant is rooted or overhangs and there do any work in respect of the tree, shrub, or plant such as removing or trimming it that is necessary and sufficient to remove the imminent danger or serious interference.
- (3) Every officer, employee, or agent of a network provider entering under subsection (1) must carry evidence of his or her authority or identity, or be working under the immediate control of a person holding evidence of that person's authority and identity, which must 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.

**35 Offence for failure to comply with this Part**

- (1) A network provider who fails to comply with this Part commits an offence and is liable on conviction to a fine not exceeding \$20,000.
- (2) In addition to any fine imposed under subsection (1), the court may make an order relating to compensation that it thinks fit.

**36 Compensation**

- (1) In the exercise of the powers conferred on it under this Act, a network provider must 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 full compensation.
- (2) The amount of the compensation is to be agreed upon between the network provider and the person concerned or, failing agreement, is to be referred to and determined by the court.

**37 Protection of existing works**

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

**38 Allocation of frequencies**

- (1) The Republic shall allocate frequencies or groups of frequencies to the Republic for use for broadcasting.
- (2) The Republic 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 Republic may allocate frequencies or groups of 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 Department shall have regard to any plan or scheme of allocation of frequencies established by any international agreement, including agreements with other countries.

**39 Approval of equipment**

- (1) This section does not apply to radio or television receivers used by an end user to receive a broadcasting service.
- (2) The Department may approve equipment for use, 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 conditions as to the modification of the equipment as the Department considers fit.
- (4) A person intending to use equipment which has not been approved by the Department in accordance with subsection (1) shall make written application to the Department describing the equipment, the use to which it shall be put, and any other information which the Department may reasonably require.
- (5) Upon receipt of an application under subsection (3), the Department may:
  - (a) approve;
  - (b) refuse to approve; or
  - (c) approve subject to such conditions as it thinks fit, including conditions as to modification of the equipment.
- (6) Equipment which has not been approved under this section is illegal equipment.

**40 Declaration of illegal equipment**

The Department may by notice in the Gazette declare a type, class or brand of equipment to be illegal equipment.

**41 Equipment causing interference**

Equipment which persistently causes interference and which is not capable of being modified so as to prevent the interference is illegal equipment.

**42 Determination of technical standards**

- (1) The Department may, by notice in the Gazette, determine technical standards relating to systems or to equipment that is connected or to be connected to a system.
- (2) The Department 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 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 equipment connected to a system complies with recognised international standards;
  - (d) maintain or improve the quality of services;
  - (e) reduce or limit interference to telecommunications or to any uses or functions of equipment;
  - (f) establish an adequate level of immunity from electromagnetic disturbance to systems.
- (3) Where a technical standard has been declared under subsection (1), equipment used or operated in breach of that standard is illegal equipment.

**PART 11 – ENFORCEMENT**

**43 Inspectors**

- (1) The Minister may, by notice in the Gazette, appoint an inspector for the purposes of this Act.
- (2) An inspector appointed under subsection (1) shall be issued with an identification card.
- (3) An inspector who has been reasonably required to produce his or her identification card, and has failed to do so, is not entitled to exercise any powers under this Act.

**44 Powers of inspectors**

- (1) For the purposes of enforcing this Act, an inspector has the following powers:
  - (a) at any time during the day or night, to enter any land, vehicle, vessel, aircraft, or premises other than residential premises;

- (b) with the consent of the occupier or with a warrant, to enter residential premises;
  - (c) to search for anything which may afford evidence of the commission of an offence against this Act;
  - (d) to inspect and take photographs, or make sketches of the land, vehicle, vessel, aircraft or premises or anything at or in them;
  - (e) to inspect, and to remove or make copies of, any book, record or document which may afford evidence of the commission of an offence against this Act, and to remove, or make copies; and
  - (f) such other powers as are given to him or her by or under this Act.
- (2) Where an inspector has reasonable grounds for believing that an offence against this Act has been, is being or is about to be committed, he or she may, without warrant, seize any equipment or other thing which he or she reasonably believes has been, is being or is about to be used in connection with the offence.
- (3) An inspector may at any time seize illegal equipment, notwithstanding that the person in possession of the equipment did not or could not know that it is illegal equipment.
- (4) In exercising powers under this Act, an inspector may use such force and assistance as is reasonably necessary.

## **45 Offences**

- (1) A person commits an offence if the person:
- (a) provides or uses an illegal system or service;
  - (b) provides, uses, sells or possesses equipment knowing or suspecting on reasonable grounds that it is for use with an illegal system or service;
  - (c) provides or uses an illegal connection;
  - (d) provides, uses, sells or possesses equipment knowing or suspecting on reasonable grounds that it is for use in making an illegal connection;
  - (e) intentionally operates equipment or a system at frequencies other than those allocated for use by that equipment or system;
  - (f) provides, uses, sells, or possesses illegal equipment knowing that it is illegal;

- (g) provides or uses equipment contrary to the conditions of its approval for use under section 28;
  - (h) breaches any condition as to the use or modification of equipment under section 18 or section 39; or
  - (i) modifies any equipment the modification of which is prohibited.
- (2) A subscriber to the national telephone service who breaches or fails to comply with a condition of the connection commits an offence.
  - (3) A person licenced to provide or use a system under section 18 who breaches a condition of his or her license commits an offence.
  - (4) An authorised provider who breaches a condition of his or her authorisation under section 18 commits an offence.
  - (5) A person, other than an officer of the Department acting in the proper course of his or her duties, who makes or uses a connection to the national telephone service otherwise than in accordance with this Act commits an offence.
  - (6) An officer of the Department, an authorised provider or his or her employee, agent or contractor who, otherwise than in the proper course of his or her duties, intentionally modifies or interferes with the contents of a communication sent by means of system commits an offence.

**46 Protection of communications and other information**

- (1) Officers of the Department, authorised providers and their employees, agents and contractors shall treat as confidential any document, which comes to their knowledge in the course of their duties or their connection with the Department.
- (2) A person who, otherwise than as an officer of the Department or an authorised provider or his employee, agent or contractor acting in the proper 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 in the course of his or her duties or his or her connection with the Department, commits an offence.

- (3) Nothing in this section applies to anything done:
- (a) in obedience to 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 law;
  - (c) to the extent that the person providing the information authorised its disclosure at the time of providing the information;
  - (d) to the extent necessary to enable the Minister or the Regulator to publish statistical information concerning the subject matter of the functions of the Department; or
  - (e) to the extent necessary to enable the Regulator to give advice to the Minister.
- (4) A person who is convicted of an offence under subsection (2) is liable for any profit made in consequence of any damage suffered by the Department or any other person as a result of the commission of the offence, in addition to the satisfaction of any criminal penalty that may be imposed.

#### **47      Illegal 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 equipment on board a foreign vessel or foreign aircraft:
- (a) for the purposes of broadcasting to the general public in the Republic radio programs or television programs;
  - (b) in a manner that the person knows is likely to interfere substantially with communications 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 aircraft; 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 subsections (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 subsections (2) or (3) the burden is on the defendant to prove that there was no breach.

**48 Protection of facilities**

A person commits an offence when he or she damages, removes or tampers with any facility or system of any part of a facility of system by intending to:

- (a) prevent or obstruct the transmission or delivery of a communication; or
- (b) commit mischief.

**49 Obstruction of inspectors**

A person commits an offence if he or she:

- (a) furnishes to an officer of the Department any particulars which, to his or her knowledge, are false or misleading in any material respect; or
- (b) refuses or fails to facilitate entry to or examination 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 inspector in the performance of his or her duties under this Act; or
- (d) wilfully misleads, or by threats, demands or promises, attempts to influence improperly, an inspector or an officer of the Department in the performance of his or her duty.

**50 General penalty**

A person who commits an offence under this Act for which no penalty is expressly provided is liable to a penalty not exceeding \$100,000 or to imprisonment for a term not exceeding 10 years.

**51 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 that 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.

**52 Remedies**

A person who has suffered loss or damage caused by interference may at any time apply to a 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.

**53 Disconnection of equipment**

(1) The Department may, at any time, disconnect any equipment from a system where:

- (a) the equipment is a threat to the safety or proper functioning of the system or the safety of any person;
- (b) the equipment causes or threatens to cause interference to the system and cannot be modified so as to prevent the interference;
- (c) the equipment or the connection is illegal; or
- (d) there has been persistent failure to make any payment required by this Act for the connection.

(2) Nothing in this section prevents any person from being prosecuted for an offence against this Act.

**54 Forfeiture of equipment**

(1) Where a person is convicted of an offence against this Act in connection with any equipment or facility, the equipment or facility is



forfeited to the Department and may be dealt with as the Department thinks fit.

- (2) Despite not convicting a person for an offence in relation to illegal equipment, any illegal equipment that has been seized by an inspector under this Act is forfeited to the Department and may be dealt with as the Department thinks fit.
- (3) Nothing in subsection (2) prevents any person from being prosecuted for an offence against this Act.

## **55 Presumptions as to equipment**

- (1) For the purposes of this Act, the occupier of any place, and the person in charge of any vehicle, vessel or aircraft, on or in which there is any equipment, shall be presumed to be in possession of and to be using the equipment until the contrary is proved.
- (2) For the purposes of this Act, any equipment shall be deemed to remain capable of operation despite the fact that it is temporarily incapable of doing so, unless the Department or a person authorised by the Department is satisfied that the equipment has been dismantled or rendered completely inoperative.

## **PART 12 – MISCELLANEOUS**

### **56 Emergencies**

- (1) Where on the occurrence of a public emergency, or in the interest of public security or national defence, it appears to the Cabinet to be necessary or desirable, the Cabinet may, by order in the Gazette or in writing, give directions to any appropriate person in relation to:
  - (a) the prohibition or regulation of the use of systems and services;
  - (b) the possession or taking control of or use for official purposes of systems and services;
  - (c) the stopping, delay or interception of communications; and
  - (d) the carrying out of any other purposes which the Cabinet may consider necessary.
- (2) The Republic may pay compensation or make grants to the owner or operator of any system or service for defraying or contributing towards any losses which may be sustained by reason of compliance with any directions of the Cabinet under subsection (1), and any sums required for this purpose shall be paid out of funds provided by Parliament for the purpose.

**57 Duties and liabilities of officers**

- (1) An officer of the Department shall at all times act honestly and exercise reasonable diligence in the discharge of his or her duties.
- (2) No officer shall be personally liable for any act or omission done or made in his or her capacity as officer in good faith and in the exercise of reasonable care and diligence in the course of the operations of the Department.
- (3) In respect of any liability incurred in connection with any act or omission referred to in subsection (1), the officer, as the case may be, shall be indemnified by the Republic.

**58 Liability of the Department**

The Department shall not be liable in any proceedings for the content or nature of any message or communication sent or transmitted by use of the national telephone system or any other system or service provided by the Department.

**59 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 13 – REPEAL, SAVINGS AND TRANSITIONAL**

**60 Repeal of Act**

The *Telecommunications Act 2002* is repealed by the provisions of this Act.

**61 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 (repealed) 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 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 Act 2002*, all appointments, licences, permits and decisions made under the Act remain in force.
- (2) Any proceedings instituted or action begun under the repealed Act before the commencement of this Act which has not been determined before the commencement of this Act continues until determined under the repealed Act.