

**REPUBLIC OF NAURU**  
**COMMUNICATIONS AND BROADCASTING BILL 2018**  
**EXPLANATORY MEMORANDUM**

The *Communications and Broadcasting Bill 2018* is a Bill for the *Communications and Broadcasting Act 2018* which repeals the *Telecommunications and Regulatory Affairs Act 2017*.

This memorandum provides an explanation of the Bill and is only intended to indicate the general effect.

**EXPLANATION OF CLAUSES**

**PART 1 - PRELIMINARY**

**Clause 1** provides that once enacted the short title of the Bill will be the *Communications and Broadcasting Act 2018*.

**Clause 2** sets out when the Bill's provisions will commence.

**Clause 3** provides the general objectives of the Act which are to:

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

**Clause 4** is the definition clause and provides for definitions of specific words used in the Act.

## **PART 2 – COMMUNICATIONS AUTHORITY OF NAURU**

**Clause 5** establishes the Nauru Communications Authority. The Authority is responsible to the Minister for Telecommunications.

The Authority is a body corporate with perpetual succession and shall have a common seal. The Authority may:

- sue and be sued;
- enter into contracts and other legal obligations;
- may acquire, hold, manage and dispose of real or personal properties; and,
- perform all powers, functions, duties and responsibilities of a corporation.

The Authority shall be independent and impartial in the exercise of its powers and functions. It shall perform its functions and exercise its powers under this Act in a manner that does not discriminate amongst service providers and, between subscribers and service providers.

**Clause 6** outlines the members of the Authority. The Authority shall consist of 3 members who are appointed by the Minister. The members shall consist of the following persons:

- the Chief Regulator, who is a Nauruan citizen, is to be appointed by the Cabinet on the recommendation of the Minister;
- a member is to be appointed on the recommendation of the service providers;
- member is to be appointed on the recommendation of the Secretary.

**Clause 7** provides for the Registrar of Courts to recommend a member for service providers.

In the case of 2 or more service providers, who are unable to nominate a common person under Clause 6(2)(b), the Registrar of the Courts of the Republic shall nominate and recommend a person from a list of persons nominated by each of the service providers severally or jointly.

The Registrar in making the nomination shall do so in accordance with the criteria provided under Clause 8.

**Clause 8** provides for the criteria for appointment of members of the Authority. The Chief Regulator shall be a person who:

- is independent and of good character;
- has knowledge of the communications industry; and
- has qualifications or experience in the communications industry and business.

A person shall not be appointed as a member unless he or she meets the following criteria:

- independent and of good character;
- graduate of a tertiary institute;
- have knowledge and experience in the communications industry, economics, accounting or law;
- possess technical knowledge of the communications industry; and
- not disqualified under this Clause.

No person is eligible to be appointed or to remain as a member of the Authority if he or she:

- is an undischarged bankrupt or is insolvent in the Republic or elsewhere;
- holds an elected office in the Republic;
- has been convicted of an offence punishable by imprisonment for a term of 1 year or more;
- unable to perform the functions, powers or duties as a consequence of any physical or mental incapacity; and
- has any conflict of interest in the business of the communications industry.

A conflict of interest is deemed to have occurred if the Chief Regulator or a member takes:

- a direct or indirect equity or other financial interest in a service provider;
- receives remuneration, a gift or other forms of financial or non-financial benefit from a service provider.

Remuneration or other benefits that are given by a member of the Government for the provision of services under the Act does not constitute a conflict of interest provided the remuneration or other benefits are out of budgeted public funds and accounted for.

**Clause 9** provides that a member appointed under Clause 6 shall be disqualified or removed as a member if he or she:

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

**Clause 10** provides that the Minister in consultation with Cabinet shall fix the remuneration of the Chief Regulator and fix the sitting allowance and other benefits for the other members of the Authority.

**Clause 11** outlines the functions of the Nauru Communications Authority which includes to:

- implement and enforce the provisions of this Act and any other regulatory framework for the communications sector;
- grant, vary, renew, suspend and revoke licences;
- monitor the use of communication services on any ship or aircraft within the exclusive economic zone;
- act as the duly appointed representative of the Republic at the meetings of international bodies or authorities which have the purpose of designating international standards in the communications industry;
- in consultation with service providers, subscribers, members of the public and other stakeholders to monitor retail rates and charges for the provision of communication services;
- regulate interconnection between communications networks of different service providers;
- establish and manage a numbering plan and assign numbers to service providers;
- assist in the timely resolution of disputes between service providers;
- ensure the timely resolution of disputes between service providers and subscribers;
- determine competition matters in the communication industry in accordance with the Act;
- consult with relevant service providers, subscribers or stakeholders on any matters in which they have a legitimate interest or whose rights are affected;
- maintain all records of the Authority including the licences;
- recommend to the Minister to make such regulations or orders for the due administration of the work of the Authority;
- publish procedures and guidelines to assist in the implementation of this Act;
- implement any policy directions which are consistent with the intent and purpose of the Act and any other relevant laws;
- advise the Secretary or Minister on matters connected with its functions, including the operation of the Act and of any other law relating to its functions.

**Clause 12** outlines in detail the powers of the Authority which are to:

- enforce this Act, regulations, and policies for the communications sector;
- grant licences in accordance with this Act and the regulations;
- monitor and enforce compliance by licensees with the terms and conditions of their licences;
- vary, suspend or revoke licences in accordance with this Act and the regulations;
- prescribe procedures for the approval of any communications apparatus or equipment for attaching to the communications networks;
- determine interconnection disputes between communications networks of different service providers in a fair and just manner;
- monitor and enforce a numbering plan and assign numbers;
- make Orders for any matter that are contemplated by or necessary for giving full effect to the provisions of this Act and the regulations;
- institute proceedings in the Supreme Court to compel a person to comply with any order or decision of the Authority;
- on its own initiative or upon receipt of a complaint by a person, investigate complaints against service providers, and conducting any other investigations that it deems necessary to ensure compliance with this Act, a regulation or an order;
- investigate and if necessary, recommend prosecution against any person operating telecommunications services or otherwise acting in contravention of this Act; and
- take any other actions that are reasonably required to implement this Act, the regulations and performing or exercising any other functions, responsibilities, duties, and powers that may be conferred on the Regulator under any other law.

**Clause 13** provides that the Minister may upon the recommendation of the Authority in writing delegate with or without any conditions, to the Chief Regulator any or all of the Authority's administrative or operational functions, duties or powers. The Clause ensures that the power to make any decisions or orders vested in the Authority shall not be delegated.

**Clause 14** provides that the Chief Regulator shall be the head of the Authority and shall be responsible for the administration and management of the Authority.

**Clause 15** provides that the Authority shall consist of the Chief Regulator and such other employees as may be necessary. This clause also allows the Chief Regulator to appoint staff of the Authority in consultation with the Secretary.

**Clause 16** ensures that members and staff of the Authority are bound by the prescribed Code of Conduct of the Authority. A Code of Conduct developed for the Authority will ensure integrity in the administration and management of the Authority.

**Clause 17** provides that the Funds of the Authority shall consist of monies appropriated by the Parliament and such funds shall be expended for the purposes of the performance of the functions and the exercise of the powers of the Authority.

**Clause 18** allows the Authority to determine and impose charges and fees as may be prescribed by regulations. Any charges and fees determined and levied under this Clause shall:

- be assigned on a nondiscriminatory and proportionate basis; and
- be notified in the Gazette.

The charges and fees imposed and collected by the Authority shall be paid into the Treasury fund. This clause also allows the Authority to recover by way of a civil proceeding any such fees and charges which remain unpaid.

**Clause 19** allows the Authority to provide its own practice and procedure rules for its meetings which shall be held as and when necessary upon notice given by the Chief Regulator.

Such practice and procedure rules may be made for receiving complaints or information, hearing disputes and undertaking any other functions or powers consistent with the Act which will ensure a fair and consistent application of due process by the Authority. For the purpose of a hearing and determination of a dispute, the Authority is not bound by the rules of evidence ordinarily applied by the courts.

**Clause 20** provides that the Authority shall prepare and publish an annual report of its activities during the preceding financial year containing:

- the financial and administrative performance of its functions and exercise of its powers including an assessment of its progress in achieving the objectives under Clause 3;
- a review of licences granted, varied, suspended or revoked;
- a review of spectrum frequency usage, including spectrum licences issued;
- a review of the numbers allocated and assigned;
- a review of its activities and progress in respect of services;
- a review of determinations or decisions made under this Act;
- a review of complaints, investigations and enforcement of decisions or Orders carried out; and
- such other relevant matters.

The Authority shall publish its annual report on its website or by any other electronic form accessible to the public after the report has been tabled in Parliament.

This clause will ensure that the Authority meets its regulatory requirements. It will also keep the Government apprised of the Authority's performance including financial performance and achievement of its goals.

### **PART 3 – DECISION MAKING PROCESS OF THE AUTHORITY**

**Clause 21** requires the Authority prior to making any decisions under the Act, to consult with such service providers, subscribers or other stakeholders as prescribed by regulations.

This clause also requires the Authority to comply with the rules of natural justice and make decisions based on the evidence and submissions made to it.

**Clause 22** requires the Authority to:

- publish its decisions in writing; and
- provide the reasons for the decision in law or in fact or both.

This clause also requires the Authority to:

- provide a draft of the proposed decision to the relevant parties for a response;
- direct the relevant parties to provide any response within a specified time and such specified time may be extended at the discretion of the Authority.

The Authority may proceed to finalising and publishing the decision which may include any responses received from the relevant parties.

**Clause 23** provides that a draft proposed decision by the Authority shall not be construed as a decision in law or in fact. A person has no right to seek a review of or appeal a draft decision of the Authority. Due to the nature of the draft proposed decision, the Court shall not have jurisdiction whether statutory or inherent to entertain any interlocutory application, review or appeal against a draft decision of the Authority.

**Clause 24** allows the Authority or any other party to apply to the District Court for the enforcement of an Order or decision of the Authority.

### **PART4 – TARIFFS**

**Clause 25** defines for the purpose of this Part the terms "*retail communication services*" and "*tariff*".

(a) *retail communication services* means communication services provided to retail subscribers but does not include wholesale access service or interconnection services provided to other service providers;

(b) *'tariff'* means in relation to any retail communication services, the amount payable by a subscriber for that service including any discounts, promotions, rights, privileges or other benefits conferred on or made available to the subscribers as part of the subscription.

**Clause 26** requires a service provider to within 30 days of the coming into effect of this Act, provide to the Authority in writing its current tariffs in respect of any matters prescribed by the regulations.

**Clause 27** requires a service provider to notify the Authority in writing of its current tariffs at an interval of every 6 months.

**Clause 28** provides that a service provider shall notify the change of tariffs implemented or imposed within less than 6 months reporting period.

**Clause 29** provides that if a service provider fails to submit to the Authority the tariffs stipulated under this Part, the Chief Regulator shall by notice require the service provider to provide such tariff within 7 days of the service of the notice.

If the service provider fails to comply with the above, the service provider or a person who has management and control of the service provider in case of an incorporated body shall appear before the Authority and show cause as to why the service provider should not be impose a fixed penalty of \$10,000.

**Clause 30** makes it the obligation of the service providers to publish the tariffs of their communication services on their websites or in any other electronic form accessible to the public.

The Authority shall maintain a manual and electronic register of tariffs of each of the service providers provided under this Part.

**Clause 31** provides that a person may file a written complaint to the Authority regarding the tariffs applied or imposed by a service provider. If the complaint is filed the Chief Regulator shall:

- provide a copy of the complaint to the respective service provider with directions to respond; and
- consider the complaint and any response received from the service provider in accordance with the Act.



This clause allows the Chief Regulator to refer the complaint to the Authority for its consideration if he or she considers the complaint has merit.

**Clause 32** provides that the Authority in consultation with the Cabinet may establish maximum tariffs for the provision and use of communication services 2 years after the coming into effect of this Act.

The procedure for establishing maximum tariffs under this Clause shall be by regulations made by the Cabinet on the recommendation of the Authority.

**Clause 33** requires service providers to comply with tariffs. A service provider shall not promote, offer or provide communication services in excess of the tariffs notified or fixed under this Part.

A service provider who contravenes this section commits an offence and upon conviction shall be liable to fine not exceeding \$20,000.

## **PART 5 – COMMUNICATIONS LICENCE**

**Clause 34** provides that a person shall not except with an individual or a class licence granted under the Act:

- provide communication services to the public for direct or indirect financial or personal gain;
- utilise spectrum; or
- own or operate a communication network to provide communication services to the public for any direct or indirect financial or personal gain.

Any person who contravenes this Clause commits an offence and upon conviction is liable to a fine not more than \$10,000 or a term of imprisonment not more than 2 years or both.

**Clause 35** provides that an application for a licence shall be made to the Authority by any person:

- in the prescribed form;
- on payment of the prescribed fee; and
- shall specify whether the application is for an individual or class licence.

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

- spectrum licence;
- service provider licence; or
- network provider licence.

In considering an application:

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

Any licence granted by the Authority shall be signed by the Chief Regulator under the seal of the Authority. The Authority shall make available copies of all licenses for inspection by any person during business hours upon payment of the prescribed fee.

**Clause 36** provides that a licence granted under the Act shall be subject to standard licence conditions and may be subject to any special conditions. No licence granted under the Act shall have any effect unless the prescribed annual licence fee has been paid.

**Clause 37** provides that the Authority may determine and impose special licence conditions if the Authority is satisfied that the standard licence condition cannot adequately provide regulatory controls that the Authority considers necessary to achieve:

- objectives of this Act;
- policy of the Government;
- direction given by the Cabinet or Minister.

The terms and conditions of licences granted under this Act to service providers that provide the same communication services or operate on the same communications network shall not be unfairly discriminated amongst those service providers.

**Clause 38** provides for the criteria for issuing licences. When considering the granting of an application for a licence, the Authority shall take into account the following:

- experience of the applicant in the provision of the communication services and the nature of the licence applied for;
- financial viability and technical abilities of the applicant;
- extent to which granting the licence will impact upon existing infrastructure investment and incentives for future investments;

- the extent to which the applicant will further the objectives and policies for communication services;
- existing demand on any equipment or spectrum the applicant wishes to use;
- public interest in achieving maximum benefit from the spectrum; and
- any agreement between the Republic and any other country or countries that makes provision for or in relation to communication services.

**Clause 39** provides that the Authority may by an Order vary, suspend or revoke a licence if:

- the variation, suspension or revocation has been requested or agreed to by the service provider;
- a service provider is in breach of a material condition of the licence, the Act or regulations or a decision or Order made by the Authority under this Act;
- changes to international treaties, commitments, recommendations, standards or the laws of the Republic require a variation or revocation to give effect to such changes;
- a service provider becomes bankrupt, insolvent, has a receiver appointed or is liquidated;
- a service provider has not for a continuous period of one year provided the service for which it obtained a licence;
- the Authority makes a decision or Order; or
- a service provider has failed to pay the license fee within 60 days of the date on which it fell due for payment and the service provider has been given 30 days' notice of such non-payment.

This clause requires the Chief Regulator to inform the service provider by a notice in writing that the Authority is considering the relevant action and may consider any representations made by the service provider before making a decision.

Such a notice shall:

- give the service provider 28 days from the service of the notice to make representations on the relevant actions;
- advise the service provider whether the Chief Regulator intends to invite submissions from other interested parties or the public before taking the relevant action;
- give an opportunity for the service provider to respond to any submissions made under subparagraph (b) within 14 days prior to the making of any draft decision; and
- by Order or direction provide the procedures which the Authority may use in deliberating on any variation, suspension or revocation of a licence.

The Authority shall provide a draft of its decision in writing to the service provider and provide reasons for such decision in accordance with the procedure prescribed in Part 3. The Authority in providing a draft of its decision shall invite submissions from the service provider.

The Authority shall provide the service provider with reasonable time to comply with its decision if the Authority decides to vary, suspend or revoke a licence.

The Authority shall take into account the continuity of service to the subscribers where the Authority suspends a licence. The Authority may in its decision or Order, provide such directions as necessary to comply with the decision or the Order.

**Clause 40** provides that the period of an individual licence, extension or any renewal shall be for 15 years unless a person applies for a licence for a shorter duration. An applicant shall at the time of the application specifically state the duration of the licence applied for. The service provider shall pay the licence fees as prescribed by the Authority.

**Clause 41** provides that the service provider who intends to renew or extend an existing licence shall apply to the Authority 60 days prior to the expiry of the licence for extension or renewal of the licence.

The Authority shall renew the licence unless the following situations precludes the Authority from granting a renewal:

- breach of a material condition of the licence;
- persistent contravention of the Act or regulations; or
- persistent failure to comply with the Orders or the decisions of the Authority; or
- persistent failure to comply with any directions given by the Chief Regulator or authorised officers.

The Authority in granting the renewal of the licence shall grant the licence in the terms as close as possible to the existing licence taking into consideration:

- changes to any international treaty or obligations to which the Republic is a party;
- any international commitment or standards of communication services applicable to the Republic;
- changes made to the laws of the Republic from the times of the granting of the existing licence; and
- the legislative requirement of conformity with national laws.

The Authority is required to provide a decision in writing and the reasons where the terms and conditions of an existing licence are varied.

If the Authority considers declining an application to renew an existing licence for any further duration, the Chief Regulator shall:

- inform the service provider by a notice in writing of the Authority's intention to decline an application for renewal; and
- require the service provider to make representation within a specified period on any one or more issues on which the Authority may be considering declining an application for renewal.

If the Authority decides to decline an application for renewal of a licence or, renews a licence varying the terms and conditions of the licence, continuity of service to the subscribers shall be taken into account by the Authority.

## **PART 6 – SPECTRUM MANAGEMENT**

**Clause 42** provides that the Authority is responsible for the orderly and efficient management, allocation and assignment of frequencies in the Spectrum.

The Authority shall:

- prepare and public a national spectrum plan;
- grant spectrum licenses in accordance with Part 5;
- advise the Minister on matters relating to the use or management of the spectrum;
- where necessary, conduct public inquiries for the management of the spectrum;
- ensure that the use of the spectrum is consistent with any applicable international treaties, commitments, protocols and standards;
- intervene and decide where interference occurs and resolve interference disputes, where disputes are not resolved by the parties in conflict;
- make advisory guidelines relating to the use of spectrum;
- make provision for spectrum fees, including fees prescribed by regulations under Clause 114;
- 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
- perform any other spectrum related functions that are conferred on the Authority under any other written law.

**Clause 43** provides that the Authority may, in resolving radio spectrum disputes between service providers:

- appoint at the request of the service providers an arbitrator of their choice to arbitrate the dispute at their own cost; or
- assign staff or technical experts to mediate the dispute and where the mediation does not resolve the dispute, the Authority may consider and determine the dispute itself.

The Authority may direct:

- the service providers involved in the interference to meet to:
  - prevent or eliminate the continuance of the interference; or
  - resolve the dispute; and
- the service providers to provide periodic reports to the Chief Regulator to assist him or her in determining whether the interference is continuing and its impact on other service providers and subscribers.

A decision made by arbitration or mediation under this clause shall become a decision of the Authority which is binding upon the respective service providers.

This clause allows the Authority to revoke a licence if the service provider fails to comply with the decisions or Orders of the Authority.

**Clause 44** requires the Chief Regulator to consult and coordinate the use of the spectrum with other countries, international users and international organisations as required by any law or treaty in force or as otherwise determined by the Authority.

**Clause 45** prevents a person who owns or uses any apparatus of any kind that emits a frequency which interferes with the lawful transmission or receipt of communications by the holder of a licence issued under this Act. Such person shall upon notice from the Chief Regulator as directed by the Authority, cease to operate the apparatus or modify the apparatus so as to prevent that interference within the time specified in the notice.

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

## **PART 7 – INTERCONNECTION**

**Clause 46** allows a service provider to require by notice in writing any other service provider to negotiate in good faith an agreement for the provision of interconnection. A service provider shall in good faith consider any request made by another service provider.

The duty to act in good faith is deemed to have been breached where a service provider:

- unreasonably obstructs or delay negotiations or fails to make reasonable efforts to resolve disputes;
- refuses to provide information about a service provider's own communication services, network, equipment or apparatuses where such information is reasonably necessary for the interconnection arrangements or negotiations;
- misleads or coerces a party into reaching an agreement the party would not otherwise have made; and
- interferes in any way with a service provider's ability to communicate with the Authority, including having a service provider sign a non-disclosure agreement that precludes a service provider from providing information requested by the Authority.

A service provider may refuse to enter into an interconnection agreement if such agreement would, in the reasonable opinion of the service provider:

- cause or likely to cause material danger, damage or injury to any person or to any property;
- cause material damage or otherwise interfere with the operation of the network provider's equipment or apparatuses or the provision of the network provider's communication services; or
- will have technical or economic constraints.

**Clause 47** allows a service provider to refer the dispute to the Authority for determination where 2 service providers fail to agree on any terms and conditions for interconnection within a period of 60 days from the date of receipt of a written notice under Clause 46.

This clause allows the Authority on the receipt of a request from a service provider to:

- determine the terms and conditions of the interconnection agreement; or
- under its supervision or control, direct the service providers to take action to resolve the dispute.

An interconnection agreement determined under this clause shall:

- be consistent with internationally accepted principles, practices and methodologies for determining the interconnection terms and prices, including international benchmarking methodologies designed to reflect the actual costs; or

- not to provide for interconnection where interconnection is not technically, economically or legally feasible or would adversely affect the security of the first service provider's network.

This clause further requires the Authority in considering a dispute to:

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

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

## **PART 8 – RELATIONS BETWEEN SERVICE PROVIDERS AND SUBSCRIBERS**

**Clause 48** ensures that service providers keep subscribers' information confidential. A subscriber's information may only be disclosed by the service provider if a written consent of the subscriber has been given or it is required by the Act or any other written law.

A subscriber may require a service provider to correct or remove any information relating to the subscriber.

Service providers are required under this clause to keep the information of the subscriber for a period of 7 years. The protection and confidentiality of subscribers' information are one of the fundamental responsibilities of service providers.

**Clause 49** requires service providers to take all reasonable steps to maintain the confidentiality of subscriber communications. This is the second general obligation for service providers to subscribers. A service provider shall not intercept, monitor, alter or modify the content of a subscriber's communications except as permitted or required by law.

A subscriber who is subject to harassing, offensive or illegal calls may request the Chief Regulator for a service provider to monitor communications to the subscriber's connections. This is to the extent the service provider is able to do so within its current technology. The Chief Regulator may direct that service provider to comply with the subscriber's request.

## **PART 9 – STANDARDS FOR EQUIPMENT AND APPARATUS**

**Clause 50** allows the Authority to:

- publish the criteria for certification and establish standards for approval of equipment and apparatuses;



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

**Clause 51** allows the Authority to enter into recognition agreements with authorities in other countries to provide for the recognition, certification and approval of equipment and apparatuses.

**Clause 52** provides that any equipment approved by a recognised international testing authority and is used or supplied by a service provider in accordance with the terms of its licence, is deemed to be approved equipment unless the Authority expressly determines otherwise.

The Authority may approve equipment for use by either reference to a class, type or brand of equipment or by individual approval as:

- subscriber equipment;
- equipment for use with a licensed system; or
- equipment for use with an authorised service.

An approval by the Authority may include such reasonable conditions for the modification of the equipment.

Upon receipt of an application the Authority may:

- approve;
- reject; or
- approve subject to such conditions as it thinks fit including conditions as to modification of the equipment.

This clause also prevents the use of equipment for the purposes of providing communication services if an application for such equipment is rejected.

Any person who uses equipment rejected under this clause will be directed by the Chief Regulator to remove the equipment and if the person wilfully fails or neglects to remove the equipment after the direction by the Chief Regulator, the Authority may seize and destroy the equipment.

**Clause 53** allows the Authority to declare by notice in the Gazette that a type, class or brand of equipment is infringing equipment, if it determines that a type, class or brand of equipment fails to meet the requirements of the Act or is likely to cause a threat or a danger to a person or any property or otherwise interferes with the lawful operation of any communication services.

**Clause 54** provides that equipment which persistently causes interference to service providers and which is not capable of being modified so as to prevent the interference is infringing equipment.

**Clause 55** allows the Authority following a consultation by notice in the Gazette, determine reasonable non-discriminatory technical standards relating to systems or to equipment that is connected or to be connected to a system.

Such technical standards may be determined by the Authority where the Authority believes it necessary or desirable to do so in order to:

- protect the integrity of a system or the safety of a person working on or using services supplied by means of a system;
- ensure the compatibility of equipment with a system to which it is connected;
- ensure that the equipment connected to a system complies with a recognised international standard;
- maintain or improve the quality of services;
- reduce or limit interference to communications or to any uses or functions of an equipment; and
- establish an adequate level of immunity from electromagnetic disturbance to the systems.

**Clause 56** provides that this Part does not apply to radio or television receivers used by a residual user to receive a broadcasting service.

**Clause 57** allows the Authority to grant licences for the installation, operation or use of any apparatus by the Ports Authority, Civil Aviation Authority or meteorological service and on any ship or on any aircraft that operates predominantly within the exclusive economic zone of the Republic.

**Clause 58** requires the Authority to establish and maintain a register of all approved types of apparatus and equipment which shall be accessible to the service providers or members of the public on the payment of prescribed fees.

## **PART 10 – NUMBERS**

**Clause 59** relates to the national numbering plan. The Authority shall by Order prepare, publish and manage a national numbering plan and assign numbers and number ranges to service providers and subscribers in accordance with the plan. The Authority shall, in preparing, managing or modifying the national numbering plan, consult the service providers having regard to existing allocation and assignment of numbers.

The Authority may modify the national numbering plan by notice to service providers published at least 30 days before the date the modification comes into effect.

The national numbering plan shall 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.

All service providers and network providers shall:

- use the numbers assigned to them by the Authority in accordance with the national numbering plan;
- ensure that the numbering plan are used efficiently and in accordance with the plan; and
- use the numbers only for the purpose for which the numbers were assigned.

No service providers or subscriber has any property rights in numbers assigned under this clause.

This clause will meet the challenges faced with the changes in the communications industry, while promoting the efficient use of the limited national resources and protecting future developments and needs. This clause also supports effective competition by fair access to numbering sources by service providers.

## **PART 11 – ACCESS TO PROPERTY**

**Clause 60** allows network providers access to the existing line, equipment or apparatus owned or controlled by the network provider or for which the network provider is a bailee. The network provider may perform any act or operation necessary for the purpose of inspecting, maintaining, or repairing the line, equipment or apparatus.

**Clause 61** applies if there is danger to or interference with any line, equipment or apparatus arising from any tree, shrub or plant on any land or road.

The network provider may give written or verbal notice to the occupier of land or in the case of a road, to the Secretary for Infrastructure of the intention to remove or trim trees or shrubs that are interfering with any line, equipment or apparatus.

This clause requires an officer, employee or agent of a network provider to have possession of his or her identification or be working under the immediate control of a person holding evidence of that person's authority and identification, which shall be produced if required.

The occupier of such land or authority or person having control of the road as the case may be will be liable for the reasonable cost of the work of the network provider.

**Clause 62** provides that a network provider who fails to comply with this Part commits an offence and upon conviction is liable to a fine not exceeding \$20,000. In addition to any fine imposed under this Clause, the Supreme Court may make an order relating to compensation as it thinks fit.

**Clause 63** ensures that network providers do as little damage as reasonably possible in any land entered upon. The injured party for any act of the network provider under this Act is entitled to full compensation.

The compensation amount can be determined by the Supreme Court if the parties (that is, the service provider and the person having an interest in the land or having estate in the land) do not agree to an amount.

**Clause 64** ensures the protection of existing equipment or apparatus fixed to or installed over or under any land that a network provider owns, has possession of or controls at the commencement of the Act.

**Clause 65** allows the Authority to allocate and regulate frequencies allocated to the Republic for communication services or broadcasting. The Authority may regulate the use of frequencies allocated under this Clause, including the use of the frequencies for the purposes of broadcasting by persons apart from the Republic.

The Authority may allocate frequencies for use in or by licensed systems and for such other purpose as it thinks fit. In the allocation under this Clause, the Authority shall have regard to any plan or scheme of allocation of frequencies established by any international agreement including agreements with other countries.

The Secretary shall keep the Authority informed of the Republic's need for frequencies.

## PART 12 – ENFORCEMENT

**Clause 66** provides for the appointment of authorised officers by the Minister on the recommendation of the Authority. Identification cards duly signed by the Chief Regulator will be issued to an authorised officer appointed under this Clause. No powers may be exercised by an authorised officer who fails to produce his or her identification card.

**Clause 67** outlines the powers of authorised officers for the purposes of compliance and enforcement of the Act and includes:

- with the consent of the occupier or under a warrant issued by a Magistrate:
  - at any time enter upon and search any land, vehicle, vessel, aircraft or premises;
  - inspect, remove or make copies of any book, record, document or digital copies of any electronic material; or
- seize any infringing equipment which has never been approved by the Authority and has caused damage or interference to an existing service provider;
- either with or without warrant issued by a Magistrate, inspect and take photographs or make sketches of any licensed systems or equipment located in any public place;
- otherwise shall act in accordance with any such powers as are given to him or her by or under this Act or any other written law.

An authorised officer may apply to a Magistrate for a warrant to exercise those powers in relation to any land, vehicle, vessel, aircraft or premises specified in the warrant. The Magistrate may issue a warrant if satisfied that there are reasonable grounds for believing it is necessary for the purposes of determining or establishing whether a person has committed or is committing an offence. A warrant authorises the person named in the warrant within the period specified in the warrant to enter upon and search land, vehicle, vessel, aircraft or premises specified in the warrant and to exercise all or any of the powers described.

A person who executes a warrant under this section shall prepare a schedule specifying:

- any documents that have been removed from the premises or of which any copies or extracts have been made;
- any equipment or apparatus that has been removed from the premises;
- the place from which any documents or equipment or apparatuses have been removed; and
- the place where any documents or communications equipment are held.

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

**Clause 68** makes it an offence for a person to:

- furnish to an authorised officer any particulars which to his or her knowledge are false or misleading in any material respect;
- refuse or obstruct entry to or search of any land, premises, vehicle, vessel, aircraft, equipment or other thing as required or permitted by this Act;
- assault, threaten, obstruct, hinder, resist, delay, intimidate or fail to take all reasonable measures to ensure the safety of an authorised officer in the performance of his or her functions or exercise of powers;
- wilfully mislead or by threats, demands or promises, attempts to influence improperly an authorised officer in the performance of his or her functions or exercise of powers; or
- refuse, obstruct, fail or neglect to provide any particulars, equipment, information, record or other material.

The penalty for an offence upon conviction is a fine not exceeding \$10,000 or a term of imprisonment not exceeding 2 years or to both.

**Clause 69** is the offences provision. It is an offence for a person to:

- knowingly provide or use an infringing system or service;
- provide, use, sell or possess equipment knowing or suspecting on reasonable grounds that it is for use with an infringing system or service;
- provide or use an unlicensed or unauthorised connection;
- provide, use, sell or possess equipment knowing or suspecting on reasonable grounds that it is for use in making an unlicensed or unauthorised communications connection;
- intentionally operate equipment or a system at frequencies other than those allocated for use under a spectrum licence;
- knowingly provide, use, sell or possess infringing equipment;
- knowingly provide or use equipment contrary to the conditions of its approval for use under Part 9;
- breach any condition as to the use or modification of equipment under Part 9; or
- unlawfully modify any equipment.

The penalty for an offence upon conviction is a fine not exceeding \$10,000 or a term of imprisonment not exceeding 2 years or to both.

**Clause 70** provides that an officer of the Authority, service providers and employees, agents and contractors shall treat as confidential all communications and other information received from a subscriber, which comes to their knowledge in the course of their duties or their connection with the Authority.

A person who otherwise than as an officer of the Authority or a service provider or employee, agent or contractor acting lawfully during and in the course of his or her duties:

- intentionally intercepts;
- makes use of; or
- 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 to which he or she has access in the course of his or her duties or in connection with the Authority commits an offence.

The penalty for an offence upon conviction is a fine not exceeding \$10,000 or a term of imprisonment not exceeding 2 years or to both.

Nothing in this section applies to anything done:

- in compliance with a warrant or to any disclosure in connection with the investigation of any criminal offence or for the purpose of any criminal proceedings;
- to the extent that the interception, use or disclosure is authorised or required under the Act or any other written law;
- to the extent that the person providing the information is authorised its disclosure at the time of providing the information; or
- extent necessary to enable the Minister or the Authority to publish statistical information concerning the subject matter of the functions of the Authority.

**Clause 71** prohibits a staff of the Authority, a service provider or his or her employee, agent or contractor who otherwise in the proper course of his or her duties intentionally and without lawful excuse modifies or interferes with the contents of a communication sent by means of a communications network.

Penalty – fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or both.

**Clause 72** aims to prevent unlicensed transmissions by unlicensed operators on board foreign vessels or aircrafts. There are unlicensed operators who may try to interfere with the transmission of other licensed operators, in effect trespassing on somebody else's allocated airwaves.

In any proceeding under this clause, the burden is on the accused to prove that there was no contravention of this clause.

**Clause 73** provides that any person who damages, removes or tampers with any facility or system of any part of a facility of system with the intention to interfere, prevent or obstruct the transmission or delivery of a communication commits an offence.

The penalty for an offence upon conviction is a fine not exceeding \$50,000 or a term of imprisonment not exceeding 12 months or to both.

**Clause 74** provides that nothing in the Act prevents a person from being prosecuted under any other written law for any act or omission which constitutes an offence against the 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.

**Clause 75** is the remedy provision which is available to a person who has suffered loss or damage caused by interference from another. A person who has suffered loss or damage caused by interference may at any time apply to the Court for:

- an order that appropriate measures be taken in order to prevent or mitigate any further interference; and
- 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.

**Clause 76** provides that the use of equipment shall be presumed to be in use by the occupier or the occupier's servants or agents.

Any equipment or apparatus shall be deemed capable of operation, unless the Authority is satisfied that the equipment has been dismantled or rendered completely inoperative.

### **PART 13 – APPEALS AGAINST DECISION OR ORDER OF THE AUTHORITY**

**Clause 77** allows a person aggrieved by a decision or Order of the Authority to appeal such decision or Order to the Supreme Court. The appeal shall be filed by way of notice of appeal. The appeal shall be filed by the aggrieved person against the Authority within 6 months from the time the decision or Order was made.



Except for the procedure prescribed by any regulations made under the Act, the rules of the court apply.

**Clause 78** outlines the process for a Respondent to the Order or decision made by the Authority.

If a respondent who has not appealed the decision or the Order of the Authority, desires to contend the appeal that the decision or Order of the Authority shall be varied, the Respondent is to give notice by way of a Respondent's Notice.

If a respondent desires to contend on the appeal that the decision or Order of the Authority be affirmed on the grounds other than those relied upon by the Authority shall give notice to the effect. A Respondent's Notice shall be filed by the respondent within 14 days of the service of the notice of appeal.

**Clause 79** outlines the powers of the Supreme Court for the purposes of the appeal. The powers of the Supreme Court shall be to:

- give leave to appeal out of time;
- extend time within which a notice of appeal may be filed or within which any other matter or thing may be done;
- grant any amendment to the notice of appeal or respondents notice;
- order payment of security for costs;
- order costs of the appeal on any interlocutory applications;
- dismiss the appeal;
- revers or vary the decision or order of the Authority; or
- allow the appeal and refer the matter for the Authority to reconsider.

**Clause 80** allows appeals under this Act or any interlocutory proceedings to be heard by a single judge of the Supreme Court or by the Full Supreme Court. This clause also allows the Chief Justice or a single judge to make an order that the appeal be heard by the Full Court.

#### **PART 14 – FAIR COMPETITION IN COMMUNICATIONS INDUSTRY**

**Clause 81** provides that this Part applies to service providers and a person or class of persons engaged in conduct that requires a communications licence under the Act.

**Clause 82** defines communication services market which shall include:

- the applicable service; and
- all other products or services that are reasonably substitutable for the applicable service having regard to:

- the nature and function of the applicable service;
- the geographic areas in which the applicable service is supplied or acquired; and
- the relevant persons that acquire or supply the applicable service;

**Clause 83** outlines considerations in determining whether a service provider has substantial market power in a communications services market. Regard shall be had to:

- the terms and conditions of any licence under this Act or the repealed Act;
- the extent to which the conduct of the service provider is constrained by:
  - any competitors or potential competitors of the service provider; or
  - any person that the service provider supplies to or acquires goods or services from;
- the service provider's market share in that or any other communication services market;
- the power derived from any agreement, arrangement or understanding the service provider has entered into with the Authority, the Government of the Republic, another service provider or person; and
- whether the service provider has access to any technology or infrastructure that is not readily available to any other person.

This clause provides meaning for the purposes of the clause to:

*“gross revenue”* - of a service provider shall be calculated as the sum of the market value of all products or services supplied in the relevant communication services market by the service provider;

*“total revenue”* - derived by all market participants in the relevant communication services market shall be calculated as the sum of the market value of all products or services supplied in the relevant communication services market.

**Clause 84** allows the Authority to make such competition guidelines as it considers necessary or convenient for or in connection with the performance of its functions under this Part.

**Clause 85** is the general prohibition provision on anti-competitive conduct. This provision aims to prevent practices that reduce competition in the communication services market in Nauru.

**Clause 86** prevents a service provider from entering into or giving effect to any agreement, arrangement or understanding with any one or more other service providers which has the purposes or has or is likely to have the effect of:

- fixing, controlling or maintaining the prices for or any discount, allowance, credit or rebate for any relevant product or service;
- allocating as between the service providers or any of them:
  - the customers or potential customers;
  - the suppliers or potential suppliers;
  - the geographic areas of a communication services market; or
- preventing, restricting or limiting:
  - the supply or acquisition of a relevant product or service; or
  - access to a relevant product or service by any person or class of persons;
- ensuring that in relation to a request for a bid or tender from a person for the supply or acquisition of any relevant product or service one or more of the service providers that is a party to the agreement, arrangement or understanding:
  - does not submit a bid or does not submit a bid that is likely to be successful; or
  - submits a bid that is more likely to be successful than any other service provider that is a party to the agreement, arrangement or understanding.

This clause does not apply to a service provider that enters into or gives effect to a provision that is:

- in a joint venture agreement between one or more other service providers that governs a joint venture for the supply or acquisition of a relevant product or service; and
- necessary for the purposes of the joint venture mentioned in this subclause.

**Clause 87** is the specific prohibition provision on anti-competitive practices.

A service provider shall not supply a relevant product or service on the condition that the person acquiring the relevant product or service shall agree to or shall acquire any other product or service from another person; or not acquire any product or service from any other person.

A service provider shall not supply a relevant product or service to a relevant person on the condition that the relevant person shall not supply any relevant product or service to a person or class of persons; or acquire any relevant product or service from a person or class of persons.

A service provider shall not refuse to supply a relevant product or service to a relevant

person if that relevant person has supplied or acquired; or has not agreed not to supply or acquire, any goods or services from another service provider.

A service provider shall not supply a relevant product or service, to a person with a requirement that the person shall not re-supply that relevant product or service at a price other than; or lower than, a price specified by the service provider.

A service provider shall have imposed a requirement on a person in contravention of subclause (4) if it:

- induces or attempts to induce a person by way of a commercial or other incentive;
- makes it known that the service provider shall withhold the supply of any good or service if a person does not agree; or
- makes it known that a person shall suffer a commercial detriment if the person does not agree not to re-supply a relevant product or service at a price that is:
  - other than; or
  - lower than, -a price specified by the service provider.

A service provider does not contravene this clause in respect of any conduct if the service provider is able to establish that the relevant conduct did not have the purpose or have the effect or likely effect of substantially lessening competition in any communication services market.

**Clause 88** aims to prohibit the misuse of substantial market power by a service provider for the purpose of:

- eliminating or substantially damaging another service provider in that market or in any other communication services market;
- preventing the entry of any other person into that market or any other communication services market; or
- deterring any other service provider from engaging in competitive conduct in that or in any other communication services market.

Regard may be had to any conduct involving the service provider:

- supplying a relevant product or service at a price that is equal to or less than the cost to the service provider of supplying that relevant product or service over a sustained period;
- refusing to supply a person with a relevant product or service that is essential to the supply of another relevant product or service in the same or any other

- communication services market;
- supplying a person with a relevant product or service referred to in subparagraph (b) on terms that would prevent the person from supplying another product or service in the same or any other communication services market at a competitive price; or
- refusing to supply on a timely basis such technical information that is necessary for a person to supply a relevant product or service.

This clause allows the Authority by an Order published in the Gazette to define “*a sustained period*”.

**Clause 89** aims to ensure that a service provider with substantial market power in a communication services market shall not in the supply of any relevant product or service make the relevant supply to a person on terms that are less favourable than the terms on which the same relevant supply is made to another person.

Regard may be had to the following:

- any fee or charge for the relevant supply;
- the performance characteristics of the relevant supply;
- the timeliness with which the relevant supply is made; and
- any conditions or restrictions on which the relevant supply is provided to the person by the service provider.

A service provider may make a relevant supply to a particular person on terms different to that on which a relevant supply is made to another person in circumstances where the difference results from the service provider making reasonable allowance for:

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

**Clause 90** provides for merger or acquisition of interest. A service provider shall not directly or indirectly acquire any interest in:

- any other service provider; or
- the assets of any other service provider,
  - without the prior written consent of the Authority.

A service provider or a person acting on behalf of a service provider may make a written application to the Authority to provide its written consent for a service provider to

obtain a prohibited interest.

This clause allows the Authority to make rules regarding what information to be included in an application in order for it to be valid for written consent.

The Authority shall provide its written consent for a service provider to acquire a prohibited interest unless the Authority is satisfied that the acquisition by a service provider of the prohibited interest shall have the effect or is materially likely to have the effect of substantially lessening competition in a communication services market.

Before the Authority makes a decision, the Authority shall carry out a consultation with the service providers, subscribers or any other stakeholders in accordance with the regulations.

**Clause 91** is the authorisation provision which allows the Authority, upon application by a service provider, to grant an authorisation to the service provider in respect of any conduct that would or may contravene this Part.

An application for authorisation includes:

- such documents and supporting information; and
- the prescribed fee.

This clause allows the Cabinet on the recommendation of the Authority to make regulations specifying procedures to be followed for the determination of an application for authorisation, after the Authority carries out consultation with the service providers, subscribers and other stakeholders.

The Authority will be required to keep a register of:

- applications for authorisations received;
- authorisations granted; and
- authorisations revoked.

The Authority must be satisfied that in all the circumstances, the public benefits to be derived from the conduct that is the subject of the authorisation application are likely to outweigh the public detriments that are likely to result from that conduct.

An authorisation granted by the Authority under this clause shall commence on the date specified in the authorisation and remain in force for a period of:

- 2 years; or

- such other period that is less than 2 years as the Authority may decide in its discretion.

The Authority may vary an authorisation:

- upon application by the service provider that holds the authorisation; and
- if the Authority is satisfied that it is appropriate to do so, having regard to the matters in subsection (7) and any other relevant considerations.

The Authority will have the discretion as well to revoke an authorisation if the Authority is satisfied that:

- the authorisation was granted on the basis of evidence or information which was false or misleading in a material way;
- a condition on which the authorisation was expressed to be granted has not been or is no longer complied with; or
- there has been a material change in the circumstances that led to the Authority granting the authorisation.

A service provider can apply for an authorisation for the conduct that has been the subject of an authorisation that has expired or was revoked.

**Clause 92** is the general offence provision under this Part which provides that a person who contravenes one or more provisions of this Part commits an offence and upon conviction is liable to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 2 years or to both.

## **PART 15 – SOCIAL CONTENT REGULATION**

**Clause 93** allows the Cabinet by regulations to make standards for content applications services supplied in the Republic which shall apply to all service providers that supply a content applications service.

**Clause 94** allows the Cabinet to make regulations under this Part which may include:

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

**Clause 95** requires service providers to comply with any directions of the Cabinet given under this Part.

**Clause 96** allows the Authority to enforce or require any service provider to comply with the regulations made under this Part.

**Clause 97** provides for censorship requirements which will ensure that a service provider does not knowingly and with unlawful intent supply any content which:

- is indecent or obscene;
- displays excessive violence;
- is blasphemous;
- is treasonous or seditious; or
- will contravene the laws of the Republic.

**Clause 98** allows the Cabinet to require a service provider to supply without any charge divine worship content or other content of a religious nature during such periods as the Cabinet may determine.

**Clause 99** allows the Cabinet to require a service provider to supply without charge such content relating to national interest matters as the Cabinet may determine.

**Clause 100** allows the Cabinet to require a service provider to supply with reasonable fee or without charge such educational content as the Cabinet may determine.

**Clause 101** provides that a service provider who supplies content applications services contrary to the provisions of this Act, commits an offence and upon conviction is liable to a fine not exceeding \$10,000 or to a term not exceeding 2 years or to both.

## **PART 16 – INTERNET SERVICE PROVIDERS AND HOST SERVICE PROVIDERS**

**Clause 102** includes definitions for “*computer data storage medium*”, “*prohibited content*” and “*take-down notice*”.

This clause allows the Authority, in response to a complaint or on its own initiative, to investigate whether a hosting service provider is hosting prohibited content.

If the Authority is satisfied after an investigation that the content hosted by a hosting service provider is prohibited content, the Authority may give the hosting service provider a written notice directing the hosting service provider to take such steps as are necessary to ensure that the hosting service provider ceases to host the content.



This clause requires a service provider to comply with a take-down notice issued to it as soon as practicable by in any event within 7 working days after the notice was received by the hosting service provider.

This clause also allows where practicable for the hosting service provider to notify the person who made the offending content accessible to the public that the offending content is subject to a take-down notice.

**Clause 103** includes definitions for “*filtering*” and “*family friendly filtering*”. This clause will allow the Authority to direct the internet service provider to make family friendly filtering available to subscribers. This clause aims to limit access to certain types of content available on the internet.

**Clause 104** provides that the Cabinet may direct the Authority to implement a procedure and devise a scheme in consultation with service providers to prevent access to child pornography material otherwise accessible on the internet.

In devising such a scheme, regard shall be had to:

- the benefits of free communication and access to information on the internet;
- community expectations and the Republic’s cultural and national values;
- the technical feasibility of the scheme;
- the costs and other impacts on internet service providers and residual users of implementing the scheme; and
- the need to ensure the scheme is as transparent as possible and that there are appropriate avenues to ensure that access to domains that do not contain child pornography remains unrestricted.

‘*child pornography material*’ has the meaning provided under section 3 of the Cybercrime Act 2015.

**Clause 105** provides that internet service providers have an obligation to report child pornography material to the Nauru Police Force.

## **PART 17 – NATIONAL SECURITY AND PUBLIC EMERGENCIES**

**Clause 106** requires a service provider to comply with any written request, directions or other requirements by the President regarding access to any part of the service provider’s communications network or services or related information in connection with national security requirements or prevention or prosecution of contravention of any laws of the Republic.

Such requests by the President facilitated by the service provider shall be on the basis that the service provider does not profit from nor bears the costs of facilitating any such request, direction or other requirement.

**Clause 107** provides that during a national emergency or a state of disaster, service providers shall comply with the directions issued by the Cabinet, Secretary of the Department of National Emergency Services or the Commissioner of Police to respond or alleviate problems faced by the public or the Government pertaining to the emergency or disaster.

Compensation may be applied for by the service providers to the Government, which will be on the basis that the service provider neither profits from nor bears the costs of giving such service.

**Clause 108** relates to national emergency numbers which shall be the responsibility of the Authority.

A provider of the communication services shall provide access to emergency numbers to the subscribers free of charge. The Authority shall ensure that the services are maintained by service providers and that all service providers allocate priority and sufficient quality of capacity on their networks to ensure quick transmission of emergency calls to appropriate services.

## **PART 18 – MISCELLANEOUS**

**Clause 109** prevents any staff of the Authority from being personally liable for any act or omission done or made in good faith in their capacity as officers and in the exercise of reasonable care and diligence in the course of the operations of the Authority. The Authority shall indemnify the staff member in respect of any liability incurred in connection with any act or omission.

**Clause 110** prevents liability for any action, suit or proceedings for any act or omission or exercise of any function, power or duty under this Act brought or maintained against any person who has been or is a member of the Authority or is acting under the directions of the Authority where the person has been or is acting in good faith.

Any claims made by or against the Authority are to be made under the Republic Proceedings Act 1972.

**Clause 111** is the offence provision for corporations. It provides that a person who at the time of the commission of the offence was a director, chief executive officer, manager, secretary, or other similar officer of the corporation or was purporting to act in any such capacity or was in any manner or to any extent responsible for the

management of any of the affairs of the corporation or was assisting in such management:

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

**Clause 112** is the liability provision for acts of employees and an agent which allows any person to be liable under this Act to any punishment or penalty for an act, omission, neglect or default if the act, omission, neglect or default was committed:

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

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

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

**Clause 113** makes it an offence for a person other than a service provider in respect of its own communications equipment, facility or property, by misconduct or negligence causes any damage or destroys any communications equipment or property relating to communication services.

Penalty – fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or to both.

This clause also provides that if damage is caused to any communications facility, equipment or property by any motor vehicle or motor bike or by anything loaded onto any motor vehicle, the driver or person in charge of any such motor vehicle shall be:

- prima facie deemed to be guilty of an offence under this section without the proof of negligence or misconduct but such person is entitled to rebut such presumption; and
- liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or to both.

Such a person shall also be liable to make good the damage in the amount to be determined by a court of competent jurisdiction even though the person may have been imprisoned or fined or both.

**Clause 114** provides that the Cabinet may make regulations prescribing all matters necessary or convenient to be prescribed for carrying out or giving effect to the Act.

#### **PART 19 – REPEAL, SAVINGS AND TRANSITIONAL**

**Clause 115** repeals the Telecommunications and Regulatory Affairs Act 2017.

**Clause 116** is the savings provision for the Wireless Telegraphy Regulations 1976 and existing licences.

**Clause 117** is the savings and transitional provisions. Despite the repeal of the Telecommunications and Regulatory Affairs Act 2017 all appointments, licences, permits and decisions made under the Act mutatis mutandis remain in force.

Any proceedings instituted or action commenced under the repealed Act before the commencement of the Act which has not been determined before the commencement of this Act continues until determined under the repealed Act.