



PARLIAMENT OF THE COOK ISLANDS

TELECOMMUNICATIONS BILL 2019

EXPLANATORY NOTE

This explanatory note relates to the Telecommunications Bill 2019 as presented to the Parliament of the Cook Islands. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and is intended to indicate its general effect.

General policy statement

Purpose

This Bill repeals and replaces the *Telecommunications Act 1989* and its purpose is to provide for the regulation of competitive markets for telecommunications services in the Cook Islands, the licensing of telecommunications and radiocommunications operators, and for related purposes.

Policy rationale

Telecommunications services – fixed line, mobile, internet and other services – have been provided in the Cook Islands by a single service provider, pursuant to a statutory monopoly since 1989 under the *Telecommunication Act 1989* (and amendments of 1991, 1992, 1997 and 2003).

The Government considers that the Cook Islands would benefit, as many other Pacific islands countries have benefitted, from the introduction of competition to the market for telecommunications services. Competition has been defined as ‘a process of rivalry between firms seeking to win customers’ business over time by offering them a better deal.’

Competition is expected to deliver benefits to consumers through lower prices, increased consumer choice and service quality, and improved incentives to invest and innovate. Prices will be lower because the pressure of competition will force service providers to find the most efficient, lowest cost ways of providing services.

The provision of telecommunications services is not currently subject to formal independent regulation in the Cook Islands. In the past, while the telecommunications operator has been licensed by the Government and has agreed with the Government to meet certain services commitments, it has otherwise been largely self-regulating. Where there are no competitive forces at play nor independent scrutiny, there exists the potential for inefficiency in terms of either higher prices or lower service.

In addition, innovation and development are highly desirable in the Cook Islands telecommunications industry. The construction of the Manatua Cable will bring an important opportunity for innovation in services and will pose new challenges for established regulation.

Finally, the current statutory and regulatory framework for telecommunications in the Cook Islands has not been substantially revised since 1989, though postal services have been added and some changes made by amendments. That framework has not kept pace with the rapid developments in technology and business models in the telecommunications industry. The framework is also affected by various gaps and inconsistencies.

The Government therefore considers that revising and updating the telecommunications regulatory framework is in the interests of the telecommunications industry and users alike.

Policy response

The Government's ICT vision, as stated in the National Information and Communication Technology Policy 2015–20, is:

‘ICT will be effectively utilized to achieve sustainable improvements in social, economic, cultural, and good governance thus improving the quality of life of all Cook Island citizens.’

The Cook Islands Telecommunications Market Competition Policy 2019 aims to further the achievement of the Government's ICT vision by creating a policy and legal framework under which service providers will have the opportunity to enter, invest in and competitively supply telecommunications services in the Cook Islands.

The primary objective of the Policy is to enable the emergence and development of competition among suppliers of telecommunications services, in the interests of:

- promoting consumer welfare (e.g. access to new services and lower service prices);
- creating opportunities for investment; and
- ensuring high quality, sustainable reliable telecommunications infrastructure.

The new regulatory framework will be given effect through two Bills:

- the Competition and Regulatory Authority Bill 2019; and
- the Telecommunications Bill 2019.

Identification of alternative policy options

Three policy options have been considered in relation to the Government's objectives for the telecommunications industry.

Option 1: Status quo

The first option, the status quo, entails no change to the current regulatory framework, with a continuation of the current monopoly service provider. The status quo is characterised by a single service provider, which is subject to neither competitive forces nor independent economic

regulation. This would be out of step with the modern telecommunications world, and entail a lack of transparency around universal service arrangements. For all of these reasons, the status quo does not meet the Government's objectives.

Option 2: Monopoly with independent regulation

A second option would be to retain the current monopoly service provider, but subject to the scrutiny of an independent economic regulator. The regulator would aim to promote efficiency by ensuring the service provider's costs are prudent and efficient and guarding against any abuse of market power, for example by regulating prices.

This approach is common in utility industries such as water and sewerage, and electricity and gas distribution, which are characterised by natural monopolies. For example, the Australian Energy Regulator regulates monopoly electricity and gas distribution service providers under this model. A 'heavy-handed' regulatory approach is common in this situation with service providers subject to regular price reviews that entail detailed scrutiny of operating and capital costs to ensure prudence and efficiency.

While certain elements of the telecommunications industry might have natural monopoly characteristics, such as the 'last mile' in fixed-line telephone networks, the current consensus is that there is little in mobile technology that is a natural monopoly. This implies that competition is feasible throughout a mobile network.

Independent economic regulation of a monopoly service provider can never be a perfect substitute for competitive forces because of information asymmetry. A fully informed regulator with complete authority could, by micro-managing the firm, simply order the firm to choose the competitive – or first-best – outcome. However, regulators are never fully informed and have limited powers.

As such, this option, while this option would be preferable to option 1 in terms of meeting the Government's objectives, it is unsatisfactory, because of the information asymmetry problem.

Option 3: Competition with independent regulation

The third option entails opening the telecommunications market to competition among service providers, overseen by an independent regulator to ensure effective competition by curtailing any anti-competitive practices to which a service provider with market power may resort. Effective competition substitutes market forces for the more 'heavy-handed' direct regulatory oversight that would be required under option 2.

The Government's view is that competition will deliver benefits to consumers through lower prices, increased consumer choice and service quality, and improved incentives to invest and innovate. Prices will be lower because competition will drive down prices by compelling service providers to find the least cost ways of providing services.

As such, the Government's preferred option is option 3, a combination of competition and the establishment of a regulator.

Competition and Regulatory Authority

In concert with the Telecommunications Bill 2019, the Government is establishing a new independent regulator under the auspices of the Competition and Regulatory Authority Bill 2019. The Authority will be responsible for regulating telecommunications service providers under the auspices of the *Telecommunications Act 2019* when it comes into force.

Consultation

In developing this Bill, the Government undertook a comprehensive public consultation process including:

- the publication of a draft policy and draft Bill along with a call for submissions;
- public forums on Rarotonga and the Pa Enuu; and
- individual meetings with a range of stakeholders.

More detail on the consultation on the Bill can be found in the **Cook Islands Telecommunications Market Competition Policy 2019** published on the Ministry of Finance and Economic Management website at <http://www.mfem.gov.ck/economic-planning/telecommunications-reform-2019>.

Contents of the Bill

Clause 1 Title

Provides that, once enacted, the Bill will be called the **Telecommunications Act 2019**.

Clause 2 Commencement

Stipulates that the Bill commences the day after the date on which it receives the assent of the Queen's representative or on the day that the *Competition and Regulatory Authority Act 2019* commences, whichever is the later. This ensures that the Bill does not commence before the *Competition and Regulatory Authority Act 2019* comes into force.

Clause 3 Repeal

Repeals the Telecommunications Act 1989 and revokes the Radio Regulations 1993.

Part 1 – Preliminary matters

Part 1 of the Bill sets out a number of preliminary matters.

Clause 4 Purpose

Specifies that the purpose of the Bill is to provide for the regulation of competitive markets for telecommunications services in the Cook Islands, the licensing of telecommunications and radiocommunications operators, and for related purposes.

Clause 5 Interpretation

Clause 5(1) sets out the definitions of certain terms used in the Bill.

The definitions include 'telecommunications network' which is defined as 'a system, or series of systems, that carries or is capable of carrying, communications by means of guided or unguided electromagnetic energy'. 'Telecommunications service' is defined in relation to a telecommunications network as 'a service enabling communications by means of a telecommunications network'. A 'service provider' is defined as 'any person that provides or offers to provide a telecommunications service in the Cook Islands'.

Clause 5(2) provides for a provision of this Bill to prevail over a provision of the Competition and Regulatory Authority Bill 2019, to the extent of any inconsistency.

Clause 6 Act binds the Crown

Specifies that the *Telecommunications Act 2019* binds the Crown. For instance, the relevant provisions of the Act will apply to Avaroa Cable Limited, as a telecommunications network operator, as they will apply to a private operator such as Telecom Cook Islands Limited (TCI).

Part 2 – Authority

Part 2 of the Bill sets out certain matters related to the Competition and Regulatory Authority (**Authority**).

Clause 7 Competition and Regulatory Authority

Stipulates that the Authority has the functions and powers given to it under this Bill. This clause also requires the Authority to have regard to the long term benefit of end users in exercising powers or performing functions, and defines a range of matters through which the long term benefit of end users will be promoted.

Part 3 – Competition and consumer protection

Part 2 of the Bill sets out provisions that are intended to guard against the possibility of anti-competitive conduct and protect consumers' rights.

There are various forms of behaviour by a telecommunications service provider that possesses market power that can exclude or hinder competition. The service provider that is the first to be established in a market enjoys incumbency advantages, which normally include a large market share and possibly a position of substantial market power or dominance. These advantages can enable a service provider to engage in conduct that is detrimental to other operators attempting to enter the market, such as:

- failing to respond in a timely way to requests to provide or upgrade facilities access, resale services or interconnection;
- reducing retail charges to a level which does not cover costs and drives competitors out of the market;
- making the sale of one product (to competitors or customers) conditional on the purchase of a different product; and
- providing services to competitors at lower quality or higher price than the same service is provided to a wholly-owned or affiliated retailer.

Subpart 1 – Competition**Clause 8 Anti-competitive conduct**

Stipulates that a person must not engage in a practice or enter into a contract, arrangement, or understanding which has the effect or is likely to have the effect of substantially lessening competition in a market for

telecommunications services in the Cook Islands, unless authorised under section 10. Clause 8 also defines a number of instances in which a practice, contract, arrangement or understanding would have the effect of substantially lessening competition. This includes the fixing or controlling the price or other terms on which a telecommunications service is offered.

Clause 9 Non-discrimination

Prohibits a service provider from discriminating on the basis of the terms and conditions of the services it is offering, unless:

- on commercially reasonable grounds that can be substantiated; or
- permitted by an exemption under clause 10.

If a service provider is unable to validate its reasons for discrimination to the satisfaction of the Authority, the Authority is permitted to require it to stop the discrimination.

Clause 10 Authorisation

Permits the Authority to exempt a practice, contract, arrangement, or understanding from the Part 3 prohibitions on anti-competitive conduct under certain conditions.

Clause 11 Safe harbour for facilities sharing

Allows for service providers to share facilities without contravening clause 8, as long as other service providers are able to also share the facilities on a non-discriminatory basis.

Subpart 2 – Service pricing

Clause 12 Regulations controlling prices

Allows for price control regulations to be made by Order in Executive Council that specify the maximum price that may be charged for a telecommunications service, or the methodology for determining the maximum price. Price control regulations can only be made if the Authority has advised the Minister that the market for the telecommunications service in question is not workably competitive and price controls are justified having regard to the long term benefit of end users.

Clause 13 Charging excessive price

Creates an offence for a service provider to supply, or offer to supply a service which is subject to a price control regulation, at a price greater than that specified or calculated in accordance with the regulation.

Subpart 3 – Consumer protection

Clause 14 Misleading or deceptive conduct

Prohibits service providers from engaging in misleading or deceptive conduct in relation to their own services, facilities, or equipment, or those of a competing licensee.

Clause 15 Service quality indicators

Provides for the Authority to require a service provider to establish and report on performance indicators for telecommunications services offered to retail customers. If a service provider fails to meet an applicable indicator, a remediation plan to address the failure must be drawn up, either by the service provider for approval by the Authority, or failing that by the Authority. The service provider is required to comply with any remediation plan approved by the Authority.

Clause 16 Customer Service Guarantee

Provides for the Authority to specify minimum customer service guarantees with which service providers must comply. The guarantees relate to the supply, or proposed supply, of a telecommunications service to a customer, and may include service connection periods and fault rectification periods. The guarantees must include a scale of compensation for contraventions, with the service provider required to pay the customer the amount specified in the scale for a particular contravention. The customer has 2 years after becoming aware of the contravention to pursue a claim for compensation.

Clause 17 Directory assistance

Provides for the Authority to require a service provider that provides a standard telephone service to provide directory assistance to end users of that service.

Clause 18 Emergency call service

Requires a service provider that provides a standard telephone service to provide each end user of that service with access, free of charge, to emergency calls.

Clause 19 Standard terms

Specifies that the standard terms and conditions on which a service provider offers its services must be fair and reasonable and expressed in plain language. This clause also obliges a service provider to publish its standard terms and conditions at the time the services are offered and at the time it changes any of the terms and conditions, including the price. Precedence is given to a service provider's standard terms and conditions

published on its website in accordance with this clause, to the extent of any disagreement between the service provider and an end user.

Clause 20 Complaints and disputes

Obliges service providers to establish, publish and annually report on to the Authority a procedure for dealing with complaints from and disputes with customers that is fair, expeditious and reasonable. The procedure must provide for remedies, including refunds and compensation where circumstances warrant. Clause 20 also allows for intervention by the Authority at the request of an end user that considers that a complaint or dispute has not been handled in accordance with procedure.

Clause 21 Consumer Protection Code

Provides for the Authority, in consultation with the public and service providers, make a code for the protection of end users' rights and sets out a range of service provider activities that can be dealt with by a Consumer Protection Code. Service providers are obliged to comply with a Code.

Subpart 4 – Confidentiality and privacy

Clause 22 Unsolicited communications

Provides for the Authority to make rules regulating or prohibiting the use of a telecommunications network or service to provide unsolicited communications.

Clause 23 Privacy of communications

Deals with a service provider's obligations to ensure the privacy of its customer's communications. This clause sets out the conditions under which a service provider can intercept, modify, alter or modify the content of a customer's communications. An offence is created for the use or disclosure of information received unintentionally without reasonable excuse, and except to the extent authorised by, or regulations made or a licence issued under, this Act.

Clause 24 Confidentiality of customers' information

Deals with a service provider's obligations to protect the confidentiality and accuracy of its customers' information in the absence of customer consent. A service provider is permitted to disclose customers' names, addresses and listed telephone numbers in a telephone directory without customer consent.

Clause 25 Confidentiality of information

Sets out a service provider's obligations to protect the confidentiality and accuracy of information more generally than in Clause 24. This clause provides for the Authority to prohibit or restrict the collection, use, maintenance, or

disclosure of customer information, and require the disclosure of information, with certain exceptions.

Part 4 – Telecommunications Licensing

Part 4 of the Bill sets out the arrangements for the licensing of network operators and service providers by the Authority.

Clause 26 Requirement for a telecommunications licence

Creates an offence for any person that constructs or operates a telecommunications network or provides a telecommunications service except in accordance with a telecommunications licence granted by the Authority.

Clause 27 Application for telecommunications licence

Deals with the process of making a licence application to the Authority.

Clause 28 Authority may issue telecommunications licences

Provides for the Authority to grant two types of telecommunications licence: a network operator licence that permits the construction and operation of a network and the provision of services; and a service provider licence. The Authority is required to comply with any relevant Telecommunications Licensing Rules (see clause 29) and provide written reasons to the applicant if it refuses to issue a licence. A decision by the Authority to refuse to issue a licence is reviewable by a Review Panel constituted under the *Competition and Regulatory Authority Act 2019*, on application by the licence applicant.

Clause 29 Telecommunications Licensing Rules

Provides for the Minister, following advice from the Authority and public consultation on draft rules, to make rules that may relate to:

- the types of network operator licence and service provider licence, their eligibility criteria and transfer arrangements;
- technical requirements applying to the construction or operation of a telecommunications network or the provision of a telecommunications service;
- conditions the Authority must include in particular kinds of telecommunications licences.

Clause 30 Telecommunications licence fees

Provides for the Authority to charge a fee for telecommunications licenses and licence applications, in accordance with fees prescribed in regulations made under clause 106.

Clause 31 Register of telecommunications licences

Requires the Authority to establish and maintain a public register recording details about telecommunications licences.

Clause 32 Telecommunications licence conditions

Obliges a licensee to comply with this Act, pay any applicable licence fees and comply with any applicable determination of the Authority. The Authority is permitted to impose licence conditions consistent with the long term benefit of end users, which may include the provision of services to rural, remote or sparsely populated areas of the Cook Islands, and financial contributions in support of such services.

Clause 33 Transfer of telecommunications licence

Sets out the arrangements for the transfer of a license, ownership of a substantial part of a licensee's telecommunications network or equipment, or more than 30 per cent of voting control, to another person. A transfer requires the consent of the Authority, with a decision to give or deny consent reviewable by a Review Panel constituted under the *Competition and Regulatory Authority Act 2019*.

Clause 34 Acquisition of network or shares in network operator

Prohibits the acquisition of a network operator licence, or a substantial shareholding in a network operator without the consent of the Authority. This includes acquiring beneficial ownership or voting control, either alone or with any other associated person. Consent is obligatory if the Minister considers the acquisition would not have, or would not be likely to have, the effect of substantially lessening competition in a market for a telecommunications service.

Clause 35 Decisions on acquisitions

Requires the Authority, before making a decision under clause 34 on a proposed acquisition, to conduct an investigation into the proposed acquisition, and provide an opportunity for public submissions.

Clause 36 Variation of telecommunications licence

Provides for the Authority to vary a telecommunications licence by including additional conditions or revoking or varying licence conditions. The Authority's powers to vary a licence are limited to circumstances where:

- the licensee has agreed to the variation, there have been material contraventions of licence conditions, this Act, directions or determinations, and failure to remedy the contravention in a timely manner; or
- there has been a material change in circumstances since the licence was issued or the variation would promote the long term benefit of end users.

This provision is reviewable by a Review Panel constituted under the *Competition and Regulatory Authority Act 2019*.

Clause 37 Suspension, cancellation and surrender of telecommunications licence

Provides for the Authority, by written notice, to suspend or cancel a telecommunications licence. The Authority's powers are limited to circumstances where:

- the licensee has contravened its licence conditions or this Act;
- the Authority has notified the licensee of the contravention and the licensee has not remedied the contravention in a timely manner;
- the licensee has been provided with an opportunity to make representations to the Authority to which the Authority has given due consideration.

This clause limits a cancellation without compensation to circumstances where the Authority is satisfied that the licensee is no longer eligible to be issued a licence of the kind that it holds and the licensee has been provided with an opportunity to make representations to the Authority.

Clause 38 Expiry and renewal of telecommunications licence

Stipulates that a licence is in effect from the date on which it is issued, or any later day specified in the licence, until revocation by the Authority or the expiry of the term specified in the licence, which is limited to a maximum of 15 years. This clause requires the Authority to issue a new licence to a network operator licensee on application unless the licensee has contravened their licence conditions, this Act, directions or determinations, and failed to remedy the contravention in a timely manner.

Part 5 – Interconnection

Part 5 of the Bill sets out provisions for:

- the physical and logical interconnection of telecommunications networks;
- access by a network operator or service provider to infrastructure (e.g. towers, poles, ducts, manholes, cabinets, etc.) that is owned by another operator; and
- access by a network operator or service provider to services provided by another network operator for the purposes of resale.

Interconnection is essential to enable a customer of one network to place a call to a customer of another network. Without interconnection, a customer of the first network would only be able to call other customers of the same network and competition could not be expected to develop between the two networks.

Market power in telecommunications often arises from control of an essential facility. Typically, the incumbent has a legacy access network

which it is uneconomic to duplicate and for which there are no close substitutes (i.e. a natural monopoly). This market power is removed with mandated open access.

Resale is the purchase of a network operator's services, at the wholesale level, for the purpose of distribution to customers at the retail level, using the reseller's branding and billing arrangements, without the reseller having to own extensive (or any) network infrastructure.

Clause 39 Neutrality

Prohibits service providers from blocking access by end users of its internet access services to content services offered or hosted by another network, and implementing discriminatory practices that would materially degrade the quality or render those content services unusable.

A number of exceptions are provided, including blocking access to content services where required by another Cook Islands law or a Court order, and where, in the reasonable opinion of the service provider, the content concerned would offend public sensibilities within the Cook Islands. The Authority can also exempt a specified service provider or service from the neutrality provision.

Clause 40 Mandated access services

Lists a number of specified telecommunications services as Mandated Access Services.

Clause 41 Declared access services

Provides for the Authority to declare that a specified telecommunications service, or a service that facilitates a telecommunications service as a Declared Access Service. The declaration must specify a number of matters, including the Wholesale Pricing Principles applicable to the supply of the service.

Clause 42 Obligation to supply Regulated Access Services

Clause 43(1) deals with a network operator's (the Access Provider) obligations to supply a Regulated Access Service – defined as either a Mandated Access Service or a Declared Access Service – to another network operator or service provider (the Access Seeker). It also deals with allowing interconnection to the network operator's network or equipment to enable another network operator or service provider to obtain a Regulated Access Service.

Clause 43(2) obliges an Access Provider to provide a quality of service equivalent to that which it provides itself, and prohibits quality of service discrimination between different Access Seekers. Clause 43(3) sets out the circumstances in which a service is deemed to be an equivalent quality of service.

Clause 43(4) provides a number of exceptions to the requirement for an Access Provider to supply a Regulated Access Service. This includes where supplying the service would prevent the Access Provider from meeting its own reasonably forecast requirements. Clause 43(5) provides for the Authority to exempt a specified service provider or class of service providers from the obligation to provide Regulated Access Services.

Clause 43 Handover principle

Deals with an Access Seeker's obligation to carry interconnected traffic through its network and hand it over to a terminating operator at a location which is closest to the called or messaged party.

Clause 44 Sender keeps all

Provides for a 'bill and keep' or 'sender keeps all' (SKA) charging regime as the primary cost principle for access and interconnection. Under this approach, each network operator recovers its costs of providing interconnection to other operators through its retail charges. Bill and keep is intended to apply only so long as the volume of relevant traffic is broadly symmetrical between networks.

Clause 45(1) lists each Mandated Access Service that will be a SKA Service when supplied for a particular purpose, with clause 45(2) providing for the sender keeps all charging principle. Clause 45(3) through 45(5) allow for an exception to this charging principle, providing for termination charges to be paid in accordance with the Wholesale Pricing Principles where there is a traffic imbalance.

Clause 45 Wholesale pricing principles

Provides for the Authority to issue Wholesale Pricing Principles. The principles, which may specify a price or a method for calculating a price, payable by operators where SKA ('bill and keep') does not apply. Clause 46(3) requires the Authority, when determining a Declared Access Service, to specify the Wholesale Pricing Principles that will apply to that service. This allows for different principles to be applied to different services. For example, a particular service may be priced on a cost-basis, another may be price benchmarked, while a third might involve a retail-minus price.

Clause 46 Standard access terms

Provides for the Authority to determine Standard Access Terms which specify any or all of the price and non-price terms and conditions on which an Access Provider must supply a Regulated Access Service to Access Seekers.

Clause 47 Negotiated access terms

Provides for an Access Provider and an Access Seeker to agree on the terms and conditions of access to a Regulated Access Service. If the agreed terms and

conditions are inconsistent with any Standard Access Terms, the Standard Access Terms will prevail to the extent of the inconsistency.

Clause 48 Interconnection and access disputes

Provides for the Authority to assist in resolving an interconnection or access dispute on application by an Access Provider or an Access Seeker.

Clause 49 Mediation

Provides for the Authority, or a person appointed by the Authority, to mediate resolution of a dispute submitted under clause 48.

Clause 50 Adjudication

Provides for the Authority, or a person appointed by the Authority, to determine by adjudication a dispute submitted under clause 48.

Part 6 – Numbering

Part 6 of the Bill sets out provisions for allocation of numbers by the Authority to licensed operators, assignment of individual numbers by operators to their customers, and the ability of customers potentially to move their numbers between networks and services.

Clause 51 Numbering Plan

Requires the Authority to issue a National Numbering Plan, which will include, for example, rules for the allocation of numbers and number ranges to service providers, the use of allocated numbers by service providers and end users and the transfer of allocated numbers between service providers.

Clause 52 Allocation of numbers

Requires the Authority to ensure that numbers are allocated in an open, objective, transparent and non-discriminatory manner. It also requires service providers to comply with the National Numbering Plan. This clause affirms TCI's rights to use numbers allocated to it at the commencement of this Act until a National Numbering plan is issued.

Clause 53 Vacation of numbers

Provides for the Authority, two years after the commencement of this Act, to review the allocation of numbers and require a service provider to vacate, without compensation, specified number blocks to enable the introduction of other telecommunications services. A determination under this clause is reviewable by a Review Panel constituted under the Competition and Regulatory Authority Act.

Clause 54 Number portability

Provides for the Authority to make Number Portability Rules if the Authority considers that there is a likely to be a reasonable level of demand for number portability, and the likely benefits outweigh the likely costs. In making such rules, the Authority is required to first publish and consult on draft rules.

Clause 55 Numbering Register

Requires the Authority to maintain and publish a Numbering Register.

Clause 56 Integrated number database

Provides for the Authority, if more than one service provider uses numbers allocated from the Numbering Plan, to require a specified person to establish and maintain a database which integrates numbers allocated to all service providers and used by them in providing telecommunications services.

Clause 57 Numbering charges

Provides for a charge for allocation of numbers to be specified in regulations made under clause 106.

Part 7 – Domain administration

Part 7 of the Bill sets out provisions dealing with the management, including allocation, of the Cook Islands country code top-level domain '.ck'.

Clause 58 Domain name registration

Requires the Authority or a nominated person to take responsibility for the allocation and registration of .ck domains, in compliance with the rules and procedures of the Internet Assigned Numbers Authority.

Clause 59 Transfer of responsibility for domains

Deals with the continuing responsibility of TCI for the allocation and registration of .ck domains until such time as the transfer of the registry and systems and processes to the Authority or a nominated person has been completed.

Clause 60 Domain registration rules, etc.

Provides for the Authority or any nominated person to make rules for the registration and allocation of domains under its responsibility and charge reasonable fees to recover service costs. The rules must be transparent and non-discriminatory and the Authority or nominated person is required to take all reasonable steps to avoid any actual or perceived conflict of interest.

Part 8 – Radio spectrum

Part 8 of the Bill sets out provisions dealing with the management of the radiofrequency spectrum in the Cook Islands. The radio spectrum is a subset of the electromagnetic waves lying between the frequencies from 9 kilohertz (kHz - thousands of cycles per second) to 30 gigahertz (GHz - billions of cycles per second).

The efficient allocation of spectrum and pricing of access to it is critical to meet the growing demand for mobile services of various kinds, including mobile telephony and Wi-Fi, which depend on access to radiofrequency spectrum.

Subpart 1 – Spectrum management

Clause 61 Advisory role

Requires the Authority to advise the Minister on matters related to the use and management of the radio frequency spectrum.

Clause 62 Management of radio frequency spectrum

Provides a broad exclusive power for the Authority to manage the radio frequency spectrum in the Cook Islands. This includes allocating and assigning radio frequency spectrum and managing matters related to the transmission and reception of radio communications. This clause restricts any person from using radio frequencies in a manner inconsistent with plans, rules, licences or directions made by the Authority. It also requires the Authority to publish a radio frequency register.

Clause 63 Management principles

Sets out the principles the Authority is required to follow in managing the radio frequency spectrum in the Cook Islands. The principles include non-discrimination and competitive neutrality, reliance on self-regulation where reasonable, consistency with applicable international treaties, commitments and standards, and economic efficiency.

Clause 64 Spectrum planning, allocation, and assignment

Requires the Authority to prepare, publish, and maintain a national radio frequency Spectrum Plan that divides up the spectrum into a number of frequency bands each with a general purpose. The Authority is required to consult on a draft version of the Spectrum Plan.

Clause 65 Frequency band plans

Provides for the Authority to prepare, publish, and maintain Frequency Band Plans that must be consistent with the Spectrum Plan. The Authority is required to consult on a draft version of a Frequency Band Plan.

Clause 66 Compliance with International Radio Regulations

Requires every person transmitting radio waves in the Cook Islands to comply with the International Telecommunications Convention's Radio Regulations.

Clause 67 Vacation of spectrum with compensation

Provides for the Authority to require a person to vacate radio frequency spectrum with compensation and assign that spectrum to a different person if necessary to:

- further the long term benefit of end users; or,
- comply with Cook Islands law or international treaties, commitments or standards; and
- any likely hardship to the licensee is justified.

This clause also provides for reasonable compensation to be paid to the affected licensee by the Authority or the person to whom the relevant spectrum is re-assigned. A vacation notice and compensation amount can be challenged in Court by the licensee.

Clause 68 Vacation of spectrum without compensation

Provides for the Authority to require a person to vacate radio frequency spectrum without compensation and assign that spectrum to a different person. This provision is subject to a number of conditions, including the licensee:

- agreeing to vacate the spectrum; or
- failing to comply with this Act, spectrum licence conditions, or an Authority determination and failing to remedy that failure within a reasonable time.

This clause also provides for the Authority to vacate radio frequency spectrum without compensation, following public consultation, if:

- the spectrum is not being used to an appreciable extent; and
- the licensee has not committed to make significant use of the spectrum; and
- other persons propose to make significant use of the spectrum.

A vacation notice amount can be challenged in Court by the licensee.

*Subpart 2 – Radiocommunications Licensing***Clause 69 Requirement for a radiocommunications licence**

Creates an offence for the operation or possession of a radiocommunications device in the Cook Islands except in accordance with

a spectrum, apparatus or class licence or a radiocommunications exemption.

Clause 70 Radiocommunication within territorial limits

Creates an offence for the operation of a radio transmitter on any ship or aircraft within the Cook Islands territorial limits except in accordance with a spectrum or apparatus licence, a licence or authority for the transmitter from a member of the International Telecommunications Union, or a radiocommunications exemption.

Clause 71 Authority may issue radiocommunications licences

Provides for the Authority to issue spectrum, apparatus and class licences, having regard to the requirements of the Spectrum Plan, any applicable Frequency Band Plan, and any Radiocommunications Licensing Rules.

Clause 72 Application for spectrum licence or application licence

Provides for a person to apply to the Authority for a spectrum or apparatus licence.

Clause 73 Right to operate under class licence

Provides for any person to operate a radiocommunications device as long as it is done in accordance with the conditions of the class licence. In deciding whether to issue a class licence, the Authority is required to have regard to the requirements of the Spectrum Plan, any applicable Frequency Band Plan, and any Radiocommunications Licensing Rules.

Clause 74 Radiocommunications Licensing Rules

Provides a broad power for the Minister, following advice from the Authority and public consultation on draft rules, to make rules.

Clause 75 Radiocommunications licence fees

Provides for the Authority to charge apparatus and spectrum licence application and use fees in accordance with regulations made by Order in Executive Council.

Clause 76 Register of radiocommunications licences

Requires the Authority to maintain a public register of apparatus, spectrum and class licences issued under this Part of the Act.

Clause 77 Radiocommunications licence conditions

Provides for the Authority to subject apparatus, spectrum and class licences to any conditions the Authority sees fit and requires licence holders to comply with this Act and any applicable determination of the Authority, and pay any applicable licence fees.

Clause 78 Transfer of spectrum licence or apparatus licence

Provides for an apparatus or spectrum licensee to transfer the licence to another person subject to consent from the Authority. A decision to give or deny consent under this section is reviewable by a Review Panel constituted under the *Competition and Regulatory Authority Act 2019*.

Clause 79 Authorisation of third parties

Provides for an apparatus or spectrum licensee to authorise another person to use spectrum or operate a radiocommunications device under the licence, and requires the licensee to notify the Authority. The clause also provides for the Authority to direct the licensee to revoke the authorisation.

Clause 80 Variation of spectrum licence, apparatus licence

Provides for the Authority to vary an apparatus or spectrum licence by adding or revoking licence conditions. A variation is limited to circumstances where the Authority is satisfied that the licensee has contravened a condition of the licence, or this Act and has not remedied that contravention within a reasonable period, or the licensee has agreed in writing to the variation. A variation notice is reviewable by a Review Panel constituted under the *Competition and Regulatory Authority Act 2019*.

Clause 81 Suspension, cancellation and surrender of spectrum licence, apparatus licence

Provides for the Authority to cancel or suspend an apparatus or spectrum licence. A suspension or cancellation is limited to circumstances where the Authority is satisfied that the licensee has materially contravened a condition of the licence or this Act, operated a radiocommunications device in contravention of, or in the course of materially contravening, any other Cook Islands law. This clause also provides for a licensee to surrender a licence to the Authority. A suspension or cancellation notice is reviewable by a Review Panel constituted under the *Competition and Regulatory Authority Act 2019*.

Clause 82 Variation and cancellation of class licence

Provides for the Authority to vary, by adding or revoking licence conditions, or cancel a class licence. The Authority is required to consult with and consider submissions from affected parties.

Clause 83 Expiry of spectrum licence

Specifies a maximum term of 15 years for a spectrum licence, and requires the Authority, not less than 3 months before expiry, to invite expressions of interest from persons who wish to apply for a spectrum licence for that particular spectrum. The Authority

may issue a new licence to the licensee of a spectrum licence that has expired or revoked but is not obliged to do so.

Clause 84 Expiry of apparatus licence

Specifies a maximum term of 5 years for an apparatus licence, and provides for the licensee, within 6 months preceding expiry, to apply to the Authority for reissuance of the licence. The Authority may issue a new licence to the licensee of an apparatus licence that has expired or has been revoked but is not obliged to do so.

Subpart 3 – Interference

Clause 85 Interference generally

Creates an offence for knowingly or recklessly causing substantial interference, disruption or disturbance to radiocommunications.

Clause 86 Harmful interference

Creates an offence for harmful interference to radiocommunications, which:

- seriously degrades, obstructs, or repeatedly interrupts radiocommunications; or
- endangers the functioning of a radionavigation service or other safety service; or
- is likely to endanger the safety of another person or cause another person to suffer or incur substantial loss or damage.

Clause 87 Notice to modify or cease operation

Creates an offence for failure to comply with an Authority notice requiring a person to modify or cease operating any interfering equipment. This clause also provides for a Court, upon application by or on behalf of the Authority, to order the forfeiture of any interfering equipment that has been involved in any contravention or attempted contravention of this Act.

Clause 88 Interference disputes

Provides for the Authority to assist in resolving disputes between parties regarding interference, including requesting the parties to seek arbitration under the *Arbitration Act 2009*. In the event of a dispute not being settled, the Authority may make a determination to resolve the dispute. A resolution determination is reviewable by a Review Panel constituted under the *Competition and Regulatory Authority Act 2019*.

Subpart 4 – Certificates of competency

Clause 89 Certificates of competency

Provides for the Authority to issue a certificate of competency in the operation of radiocommunications to persons who have successfully completed examinations prescribed by the Authority, or hold an equivalent certificate issued by an overseas counterpart of the Authority.

Clause 90 Examinations and rules for certificates

Provides for the Authority to prescribe qualifying examinations, eligibility criteria and rules to be observed by the holder of a certificate.

Clause 91 Suspension and revocation of certificate

Provides for the Minister to suspend or revoke a certificate of competency for a range of reasons. These include breach of a term or condition of the certificate and failing to remedy the breach within a reasonable time of being notified, contravention of this Act or a determination by the Authority and failing to pay license fees.

Part 9 – Technical standards

The telecommunications industry is technically complex. The operation of networks and successful provision of services depends to a great extent on the interoperability of services and equipment. The quality, reliability and security of services, and the safety and security of end-users, depends on operators' and customers' use of equipment that meets appropriate standards.

Part 9 of the Bill sets out provisions dealing with the specification and enforcement of technical standards for telecommunications equipment and services.

Clause 92 Determination of technical standards

Provides for the Authority to determine technical standards for telecommunications equipment and services, and approval processes for importing telecommunications equipment to the Cook Islands. The Authority is required to consult before prescribing a technical standard or approval process. It also provides for the Authority to adopt technical standards or approval processes of other countries.

Clause 93 Customer equipment

Prohibits the supply, installation, or use of any customer equipment or cabling that does not comply with an applicable technical standard or approval process.

Clause 94 Network equipment

Requires a service provider to ensure that its network equipment and facilities comply with any applicable technical standard, including for interconnection.

Clause 95 Prohibited devices

Creates an offence for the use or supply of a device that has been determined to be a prohibited device by the Authority.

Part 10 – Universal Access

Part 10 of the Bill sets out provisions to ensure that all Cook Islanders are provided with access to a certain level of telecommunications, regardless of where they live. The provisions in this part provide for a set of powers that are flexible, within reasonable bounds, for subsidising the provision of telecommunications to those areas, or those groups of customers, which telecommunications operators cannot reasonably serve on a profit-making basis.

Clause 96 Universal Access Plan

Gives the Authority one year to consult on and prepare a Universal Access Plan that will promote universal access to telecommunications services of a reasonable quality in the Cook Islands. The Plan, which is subject to annual review, will:

- define the characteristics and service standards of a universal service;
- identify geographic areas, or groups of telecommunications users, as universal service clients; and
- identify the funds available to support universal access.

Clause 97 Universal access levies

Allows for the making of regulations that impose levies to support universal access. Levy regulations can only be made if the Minister has first obtained and had regard to advice provided by the Authority and to the long term benefit of end users. The levies may be applied to any service provider, class of end users and telecommunications service.

Clause 98 Universal Access Fund

Provides for the Authority to establish and manage a universal access fund. Contributions to the fund can include levies, grants or donations, budgetary

appropriations from Parliament and interest or repayment of any loan granted from the fund.

Clause 99 Eligible areas, providers, and users

Provides for the Authority to determine recipients of financial support to promote universal access, including geographic areas, groups of end users, landowners or associations of residents and service providers. Before making a determination, the Authority is obliged to publicly consult and consider arrange of matters, including access and cost differentials between particular areas or groups.

Clause 100 Disbursements from Universal Access Fund

Provides for the Authority to determine rules for the administration of the Universal Access Fund and to disburse funds in accordance with the Universal Access Plan and any rules. The disbursements may be used to support:

- the construction, maintenance or operation of telecommunications networks and the provision of telecommunications services in particular areas or to particular groups of end users
- the acquisition of telecommunications services by persons in particular areas or by particular groups of end users:
- community access points to telecommunications services, such as at community centres; and
- services of benefit to community welfare (for example, tele-health and tele-education services) being made available by means of telecommunications networks.

Disbursements from the fund are subject to a range of matters, including public consultation.

Clause 101 Universal access tender

Provides for the Authority to call for a tender in circumstances where there is likely to be competition for funding from the Universal Access Fund.

Clause 102 Universal access direction

Provides for the Authority to direct one or more service providers to construct, maintain or operate telecommunications facilities and provide telecommunications services in particular areas or to particular groups of end users, on specified terms and conditions, including price. In making such a direction, the Authority is required to consult with any affected service provider.

Clause 103 Reporting on universal access

Requires the Authority to report annually on the Universal Access Fund, activities undertaken to promote the objects of the Universal Access Plan, and the extent to which the objects have been accomplished.

**Part 11 – Status of Telecommunications Licensees as
Infrastructure Managers under the Infrastructure Act 2019**

The construction of telecommunications networks involves the installation of physical infrastructure (such as towers, poles, ducts and cabinets) on land owned or leased by third parties. Part 11 relies on the *Infrastructure Act 2019* to provide telecommunications licensees with certain rights to access to third parties' land.

Clause 104 Network operator licensees

Specifies that a network operator licensee is an infrastructure manager for the purposes of the *Infrastructure Act 2019* and has all the powers and duties of an infrastructure manager.

Clause 105 Service providers who own or use network equipment

Specifies that a service provider who owns or uses network equipment is an infrastructure manager for the purposes of the *Infrastructure Act 2019* and has all the powers and duties of an infrastructure manager.

Part 12 – General and miscellaneous provisions

Part 12 of the Bill sets out a number of general and miscellaneous provisions dealing with disasters and emergencies, offences, regulations, Amendments, savings and transitional provisions.

Disasters and emergencies

Clause 106 Disaster Plans

Provides for the Authority to require a service provider to consult on, prepare, publish and implement a plan setting out the actions the service provider will take to cope with disasters and civil emergencies and improve the resilience of its network and services to the adverse impacts of climate change.

Clause 107 Powers of Government during disaster or emergency

Provides for the Minister, after a state of disaster or emergency has been declared, to direct a licensed operator to carry, or refrain from carrying, messages of a specified nature, or to provide telecommunications services of a specified kind. The Government is required to pay compensation to any licensed operator for any costs reasonably incurred in complying with a direction of this kind.

Offences

Clause 108 General penalty for offences

Specifies a general penalty for an offence against this Act, or regulations made under this Act, for which no penalty is otherwise provided by this Act or by the regulations.

Regulations

Clause 109 Regulations

Confers a broad power to make regulations by Order in Executive Council necessary for the full administration of this Act. The making of regulations on the advice of the Minister must be in accordance with a recommendation of the Authority.

Amendments, savings and transitional provisions

Clause 110 Transitional period and related terms

Defines a 4-year transitional period beginning from the commencement of this Act. It also provides for the determination by Order in Executive Council of shorter or longer transitional periods for community services — Pa Enea services, broadcasting support services, marine radio services and postal services.

Clause 111 Amendments to other enactments

Refers to consequential amendments to the Acts set out in Schedule 1.

Clause 112 Saving of postal services provisions

A savings provision that affirms the current and ongoing status of postal services as set out under the *Telecommunications Act 1989*.

Clause 113 Saving of radiocommunications licences and certificates

A savings provision that affirms the current and ongoing status of radiocommunications licences and certificates as set out in Schedule 5 that were in force immediately before the commencement of this Act.

Clause 114 Saving of Radio Regulations 1993

A savings provision that affirms the current and ongoing status of the Radio Regulations 1993 provisions relating to the testing and certification of radiocommunications operators.

Clause 115 Saving of Radio (Shipping) Regulations 1993

A savings provision that affirms the current and ongoing status of the Radio (Shipping) Regulations 1993.

Clause 116 Revocation of regulations

Revokes a number of postal, telegraph and telex regulations.

Clause 117 TCI network operator licence

Provides a network operator licence in Schedule 2 for TCI on commencement of this Act.

Clause 118 Transitional mobile operator licensing

Specifies that only one mobile network or service provider licence will be issued by the Authority during the transitional period. This restriction is subject to TCI meeting its community service commitments.

Clause 119 Transitional licence fee

Specifies that TCI will not be subject to a licence fee in respect of its network operator licence for a 3-year period, subject to meeting its community service commitments.

Clause 120 Pa Enea services

Requires TCI to continue to provide Pa Enea services during the transitional period at customer charges no higher and service quality no lower than as at 1 January 2019. This requirement ceases from the date that the Minister gives notice in writing that a Universal Access Plan under Part 10 is in operation.

Clause 121 Broadcasting Support Services

Requires TCI to continue to provide broadcasting services during the transitional period at customer charges no higher and service quality no lower than as at 1 October 2019. This requirement ceases when satisfactory commercial arrangements have been put in place.

Clause 122 Marine Radio Services

Requires TCI to continue to provide marine radio services during the transitional period at customer charges no higher and service quality no lower than as at 1 October 2019. This requirement ceases when satisfactory commercial arrangements have been put in place.

Clause 123 Postal Services

Requires TCI to continue to provide postal services during the transitional period at customer charges no higher and service quality no lower than as at 1 October 2019. This requirement ceases when satisfactory commercial arrangements have been put in place.

Clause 124 Certificate of competency examinations during transitional period

Requires TCI to continue to provide certificate of competency services during the transitional period at customer charges no higher and service quality no lower than as at 1 October 2019 and in accordance with Part V and the Third Schedule of the Radio Regulations 1993.

Clause 125 Transitional maritime radio station licensing

Provides for Telecom Cook Islands Limited to issue radio apparatus licences to ships registered in the Cook Islands under the Ship Registration Act 2007 until a date to be specified.
