



Tonga

COMMUNICATIONS ACT

Chapter 15.01

2020 Revised Edition



COMMUNICATIONS ACT

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COMMUNICATIONS ACT

AN ACT TO REGULATE COMMUNICATIONS SERVICES IN TONGA¹

Commencement [29th February 2016]

PART I – PRELIMINARY

1 Short title and commencement

- (1) This Act may be cited as the Communications Act 2020.
- (2) This Act shall come into force on such date as Cabinet may proclaim, and Cabinet may proclaim different dates for the coming into force of different sections of this Act.

2 Interpretation

- (1) In this Act, unless the context otherwise requires:
 - “**access agreement**” means an agreement for the supply of a declared service;
 - “**advertising content**” means content which is used to promote a product or service or the interests of a person whether or not for payment;
 - “**appeals panel**” has the meaning given under section 183(4);
 - “**approved reference offer**” means a proposed reference offer approved under sections 136(4)(a) or 137(3)(b) or determined under section 136(6)(a);
 - “**broadcasting service**” means a service that delivers television programs or radio programs (including advertising or sponsorship matter, whether or not of a commercial kind, and matter, the primary purpose of which is to entertain, to

educate or to inform an audience) to persons having equipment appropriate for receiving that service, whether the delivery uses the radio frequency spectrum, cable, optical fibre, satellite or any other means or a combination of those means, but does not include:

- (a) a service (including a teletext service) that provides no more than data, or that provides visual images (whether or not combined with sounds) that consist predominantly of alphanumeric text;
- (b) a service for delivering subscription content;
- (c) an internet service; or
- (d) a service or a class of service of a kind specified in a declaration made by the Minister as not falling within this definition;

“business day” means a day other than a Saturday, Sunday or public holiday under the Public Holidays Act;

“cabling” means a wire, cable, optical fibre, tube, conduit, waveguide or other physical medium used, or for use, as a continuous artificial guide for or in connection with carrying communications by means of guided electromagnetic energy;

“Chief Executive Officer” means the Government chief executive officer responsible for communications;

“communications” means any communication, whether between persons and persons, things and things or persons and things, in the form of sound, data, text, visual images, signals or any other form or any combination of those forms;

“Communications Commission” means the commission established under section 3 of the Communications Commission Act 2015;

“communications facility” means a network facility or a passive facility;

“communications network” means a system, or series of systems, that carries, or is capable of carrying, communications by means of guided or unguided electromagnetic energy;

“communications service” means a service for carrying communications by means of guided or unguided electromagnetic energy (including a broadcasting service);

“competitive process” means an auction, tender, commercial negotiations, or market-based allocation process;

“computer data” has the meaning given in the Computer Crimes Act 2003;

“Consumer Affairs Division” means the entity of that name established under the Consumer Protection Act 2000;

“consumer standards” mean consumer standards made by the Regulator under section 53;

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

“content applications service” means:

- (a) a broadcasting service (including a service that delivers content that enhances or provides information about content delivered by a broadcasting service);
- (b) a service for delivering subscription content;
- (c) an on-line information service (for example, a dial-up information service or audio-text service);
- (d) an on-line entertainment service (for example, a video-on-demand service or an interactive computer game service);
- (e) any other on-line service (for example, an education service provided by the government); or
- (f) a service or a class of service of a kind specified in a declaration made by the Minister as falling within this definition, but which shall not include an internet service.

“content standards” mean content standards made by the Minister in accordance with section 94;

“customer” means a person who contracts with a licensee for a communications service;

“customer cabling” means cabling that is used, installed ready for use or intended for use on the customer side of the network boundary;

“customer equipment” means equipment, including cabling, hardware and software, that is used, installed ready for use or intended for use on the customer side of the network boundary and includes customer cabling;

“declaration criteria” has the meaning given in section 126;

“declaration recommendation” means a recommendation of the Regulator under section 124(1);

“declared service” means a service declared under section 125 or deemed to be declared under section 127;

“eligible revenues” means, in respect of a financial year, revenues derived either directly from end users or indirectly (for example, through advertising revenues) from the provision of communications services in Tonga net of:

- (a) taxes;
- (b) amounts paid to network operators for interconnection; and

- (c) amounts paid to international correspondents for the origination or termination of international calls;

“eligible service” means a wholesale access service or a facilities access service;

“facilities access service” means the supply of access to, or use of, a passive facility, but only to the extent that the passive facility may be used to supply a communications service;

“hosting service provider” means a person who provides to the public a service that stores, in the Kingdom, computer data, other than:

- (a) voicemail messages, video mail messages, email messages, SMS messages or MMS messages; or
- (b) other content specified in a declaration made by the Minister for the purposes of this definition;

“infringement notice period” has the meaning given in section 162(3)(c)(ii);

“infringement notice provision” means a provision of this Act that has been specified to be an infringement notice provision under section 162(7);

“interconnection” means the physical and logical linking of communications networks of different licensees in order to allow the customers of one licensee to communicate with customers of the same or another licensee, or to access the communications services of another licensee;

“interconnection and access rules” means rules made by the Regulator under section 132;

“internet service” means a communications service that enables end users to access the internet;

“internet service provider” means a person who supplies, or proposes to supply, an internet service to the public;

“licensee” means a network operator or service provider;

“licensing rules” means rules made by the Regulator under section 47;

“Minister” means the Minister responsible for communications;

“Ministry” means the Ministry responsible for communications;

“National Frequency Allocation Table” means the frequency allocation table of that name developed by the Regulator under section 87;

“National Spectrum Plan” has the meaning given in section 86;

“network boundary” means, unless otherwise declared by the Minister:

- (a) the first equipment socket in a private residence;
- (b) the main distribution frame in a building; or

- (c) the point at which a network facility receives communications from or sends communications to an end user;

“network facility” means any element or combination of elements of physical infrastructure used principally for, or in connection with, the provision of communications services, but does not include customer equipment or a passive facility;

“network operator” means a person who holds a network operator licence;

“network operator licence” means a licence granted under section 32;

“numbering plan” means the numbering plan made by the Regulator under section 70;

“numbering rules” means rules made by the Regulator under section 70;

“passive facility” means any passive infrastructure or building, including a switching equipment location, mast site, tower, pole, duct or other underground facility, that is used or is capable of being used for communications or for any operation directly connected with communications, but does not include customer equipment;

“proposed reference offer” means a reference offer submitted to the Regulator under sections 135, 136 or 137;

“providing licensee” means, in relation to a declared service, a licensee that supplies that declared service whether to itself or to other persons;

“radio frequency spectrum” means the continuous range of electromagnetic wave frequencies up to and including a frequency of 420 terahertz;

“radio spectrum licence” means a licence to use radio frequency spectrum under the radio spectrum rules;

“radio spectrum rules” means rules made by the Regulator under section 89;

“radiocommunications service” means a communications service that uses the radio frequency spectrum;

“Regulator” means the Communications Commission;

“requesting licensee” means, in relation to a declared service, a licensee who:

- (a) wants access to the service;
- (b) wants to change some aspect of the licensee’s existing access to the service; or
- (c) has access to the service in circumstances where the providing licensee of the service wants to change some aspect of the licensee’s access to the service;

“reviewable decision” has the meaning given in section 180(3);

“reviewable Ministerial decision” has the meaning given in section 180(4);

“**sensitive information**” has the meaning given under section 24(5);

“**service provider**” means a person registered under section 41(2);

“**special licence condition**” means a licence condition imposed in accordance with section 34;

“**subscription content**” means content which is made available to an end user only upon payment of a subscription fee;

“**tariff rules**” means rules made by the Regulator under section 64;

“**technical standards**” mean technical standards made or adopted by the Regulator under section 76;

“**universal service agreement**” means an agreement entered into by a licensee in accordance with the universal service rules;

“**universal service facility**” means a communications facility installed in accordance with a universal service agreement;

“**Universal Service Fund**” has the meaning given in the Communications Commission Act 2015;

“**universal service regime**” means the system described in section 65;

“**universal service rules**” means rules made by the Regulator under section 67(1);

“**valuable state resource**” means part the radio frequency spectrum where the demand for that spectrum is likely to exceed supply, as identified in the National Spectrum Plan and as determined to be valuable resources of the Kingdom in a declaration made by the Minister acting on the recommendation of the Regulator;

“**webpage**” means a file of content accessible on the world wide web by requesting a single URL (uniform resource locator); and

“**wholesale access service**” means:

- (a) a communications service; or
 - (b) a service that facilitates the supply of a communications service (excluding intellectual property except to the extent that it is an integral but subsidiary part of the communications service),
where that service is supplied to another licensee (except where it is supplied to the other licensee for that licensee’s own personal use).
- (2) Section 10(a) and sections 10(c) to (f) of the Interpretation Act apply to the instruments referred to in sections 12, 13, 19 and 20 of this Act as if those instruments were regulations.

3 Territorial application

- (1) This Act (including all regulations and instruments made under it) shall apply within the geographical limits of the Kingdom and its territorial waters.
- (2) Notwithstanding sub-section (1), this Act (including all regulations and instruments made under it) shall apply to any person beyond the geographical limits of the Kingdom or its territorial waters provided that such person —
 - (a) is a licensee or holds a radio spectrum licence under this Act; or
 - (b) provides a service or owns or operates communications facilities that are subject to licensing under this Act in a place within the Kingdom.
- (3) For the purpose of this section, a "**place**" means a point of any nature or description whether on land, in the atmosphere, in outer space, underground, underwater, at sea or anywhere else.
- (4) For the purposes of this section, a place that is —
 - (a) in or below the stratosphere; and
 - (b) within the geographical limits of the Kingdom and its territorial waters, is deemed to be a place within the Kingdom.

4 Act binds the Crown

Except as otherwise provided, this Act binds the Crown.

PART II – OBJECTS

5 Objects

- (1) The objects of this Act are —
 - (a) to establish a communications licensing and regulation framework in support of the national development policy objectives;
 - (b) to establish the powers and functions of the Ministry of Communications;
 - (c) to establish the powers and functions of the Regulator;
 - (d) to establish the powers and procedures for the administration of this Act;
 - (e) to establish and to promote fair and sustainable competition in the supply, installation, maintenance and operation of customer equipment and related services;
 - (f) to promote fair and sustainable competition in the supply and provision of network facilities, passive facilities and communications services;
 - (g) to promote and to protect the interests of consumers of communications services;

- (h) to promote the efficiency of licensees;
 - (i) to ensure the safety, quality and international compatibility of services through technical standards; and
 - (j) to pursue and promote the national communications sector policy objectives.
- (2) The national communications sector policy objectives are —
- (a) to ensure the existence of a sustainable, performing and financially viable communications sector;
 - (b) to maximise the availability of communications infrastructure;
 - (c) to provide communications infrastructure to support new industry investment; and
 - (d) to maximise strategic and economic benefits from communications assets.

PART III - ESTABLISHMENT AND GENERAL ADMINISTRATION

6 Minister responsible for communications

- (1) There shall be a Minister responsible for communications whose functions shall be:
- (a) to exercise general supervision and control over all matters relating to the communications sector in the Kingdom;
 - (b) to perform functions and exercise powers conferred on the Minister under this Act, the Tonga Broadcasting Commissions Act (Cap. 100), the Telegraph Act (Cap. 99), the Tonga Communications Corporation Act 2000 and other applicable laws;
 - (c) to issue written policy directions to the Regulator on matters affecting the communications sector; and
 - (d) to perform such other functions and exercise such other powers as are, or may from time to time be, lawfully conferred upon the Minister.

7 Ministry responsible for communications

There shall be a Ministry responsible for communications within the supervision, responsibility and control of the Minister.

8 Powers and functions of the Ministry

The Ministry shall have the authority to undertake the following functions —

- (a) to advise the Minister on all matters concerning the national communications sector policy objectives and policies;
- (b) to perform functions and exercise powers conferred on the Ministry under this Act and other applicable laws;
- (c) to oversee and manage the allocation of the Government's orbital satellite slot interests;
- (d) to oversee and manage the registration and allocation of domain names under Tonga's internet country code top-level-domain (ccTLD) ".to";
- (e) to ensure the observation and enforcement of international communications conventions and practices;
- (f) to liaise with foreign governments on communications sector and other related matters;
- (g) to enforce section 96 of this Act;
- (h) to perform such other functions or exercise such other powers conferred on the Ministry by this Act; and
- (i) subject to the powers and functions conferred on the Regulator under this Act, to perform any other functions consistent with the objects of this Act, as notified by the Minister from time to time.

9 Chief Executive Officer of the Ministry

- (1) There shall be appointed a Chief Executive Officer, who shall be the head of the Ministry.
- (2) The Chief Executive Officer shall perform the functions and exercise the powers vested in him and the Ministry under this Act and other applicable laws.

10 Staff of the Ministry

- (1) All officers and employees of the Ministry shall be appointed under the Public Service Act.
- (2) No officer or employee of the Ministry shall be personally responsible for any acts or omissions in performing the Ministry's functions, exercising the Ministry's powers or discharging the Ministry's duties except in the case of gross negligence or misconduct.

PART IV - MINISTERIAL POWERS

11 Powers to direct the Chief Executive Officer

The Minister may issue directions to the Ministry on the exercise of the Ministry's power and the performance of the Ministry's functions under this Act and other applicable laws, consistent with those Acts and subject to the powers and functions conferred on the Regulator under this Act.

12 Ministerial declaration

The Minister may make declarations on any matter specified as being subject to the Minister's declaration under this Act, the Telegraph Act (Cap. 99) and other applicable laws.

13 Powers to make guidelines

- (1) The Minister may make guidelines on any matter which the Minister may from time to time consider necessary for giving full effect and for due administration of the Minister's powers, the performance of the Minister's functions or the discharge of the Minister's duties under this Act, the Telegraph Act (Cap. 99) and other applicable laws.
- (2) The Minister may direct the Ministry to undertake the Minister's role and duties under sub-section (1).

14 Delegation of powers to the Chief Executive Officer

- (1) Subject to the approval of the Cabinet, the Minister may delegate functions, powers, authority and duties to the Chief Executive Officer for specific purposes under this Act, the Telegraph Act (Cap. 99) and other applicable laws.
- (2) All delegations made under sub-section (1), shall be made in writing.
- (3) The Minister may, either generally or in any particular case, appoint any person who is not an officer or employee of the Ministry to render such assistance as the Minister may specify, in the exercise of the Minister's powers, the performance of the Minister's functions or the discharge of the Minister's duties under this Act, the Telegraph Act (Cap. 99) and other applicable laws.

15 Assistance from advisory committees

The Minister may, either generally or in any particular case, appoint persons as the Minister may determine, who may or may not be officers or employees of the Ministry, to form an advisory committee to render such assistance as the Minister may specify in the exercise of the Minister's powers, the performance of the Minister's

functions or discharge of the Minister's duties under this Act, the Telegraph Act (Cap. 99) and other applicable laws.

PART V - THE REGULATOR

16 Functions

The Regulator shall have the following functions —

- (a) to advise the Minister on all matters concerning the national communications sector policy objectives and policies;
- (b) to monitor, and report to the Minister on, all significant matters relating to the communications sector and the licensing of persons that provide communications services;
- (c) to give effect to policy directions of the Minister as required by this Act;
- (d) to be responsible for control, planning, administration, management and licensing of the radio frequency spectrum in the Kingdom;
- (e) to be responsible for control, planning, administration, management and assignment of numbering of communications services;
- (f) to manage Tonga's input into the setting of international standards for telecommunications;
- (g) to make available to the public information about matters relating to the communications sector;
- (h) to impose, collect and administer fees and levies imposed by this Act;
- (i) to enforce the provisions of this Act other than as provided in section 96;
- (j) to perform functions and exercise powers conferred on the Regulator by the Communications Commission Act;
- (k) to perform such other functions or exercise such other powers conferred on the Regulator by this Act; and
- (l) to perform any other functions consistent with the objects of this Act as specified in a declaration made by the Minister.

17 Powers

The Regulator shall have the power to do all things necessary or convenient to be done for or in connection with the performance of its functions under this Act, including but not limited to —

- (a) the power to enter into universal service agreements in accordance with this Act;

- (b) the power to accept enforceable undertakings;
- (c) the power to institute proceedings for recovery of pecuniary penalty and apply for other orders in a Court of competent jurisdiction, issue desist orders and remedial directions and take any other enforcement action permitted under this Act; and
- (d) the power to determine fees in accordance with section 18.

18 Power to determine fees

- (1) The Regulator may determine the following fees and levy —
 - (a) fees for any applications required under this Act;
 - (b) licence fees and registration fees determined in accordance with sections 36 and 43;
 - (c) any universal service levy determined in accordance with the universal service rules;
 - (d) fees determined in accordance with the numbering rules;
 - (e) fees determined in accordance with the radio spectrum rules; and
 - (f) fees for supplying or making copies of documents.
- (2) Any fees prescribed under this Act shall be calculated and applied on a transparent, non- discriminatory, and competitively neutral basis.
- (3) Fees prescribed under sub-sections (1)(a),(d) and (f) shall as far as practicable, be based on the costs incurred by the Regulator in the performance of a function or exercise of a power to which the relevant fee relates; and
- (4) Fees prescribed under sub-sections(1)(b),(c) and (e) shall be set in accordance with the relevant provision.

19 Regulator may make secondary instruments

The Regulator may make rules, standards, declarations or any other instruments the Regulator is expressly permitted to make under this Act.

20 Regulator may make guidelines

The Regulator may make guidelines on any matter which the Regulator may from time to time consider necessary for giving full effect to and for due administration of the Regulator's powers, the performance of the Regulator's functions or the discharge of the Regulator's duties under this Act and other applicable laws.

21 Ministerial policies and international obligation

- (1) The Regulator shall, when performing its functions and exercising its powers under this Act:
 - (a) give effect to, and not perform its functions or exercise its powers in a manner that is inconsistent with, general policy directions notified to the Regulator by the Minister in writing, to the extent they are consistent with this Act; and
 - (b) have regard to obligations under any international treaties or conventions to which the Kingdom is a party or any funding arrangements with international bodies.
- (2) The Regulator shall publish on its website all policies notified to it under sub-section (1)(a).

22 Regulatory principles and burden of regulation

- (1) The Regulator shall, when performing its functions and exercising its powers under this Act:
 - (a) have regard to the objects of this Act;
 - (b) act transparently and fairly;
 - (c) refrain from taking any regulatory action where it reasonably anticipates that effective competition in the communications sector shall be sufficient to achieve the object of the regulatory action within a reasonable period of time; and
 - (d) ensure that the burden of any regulatory action is proportionate to its purpose and no more than reasonably necessary to achieve the object of the regulatory action.
- (2) The Regulator shall:
 - (a) perform its functions and exercise its powers without favour, prejudice or political or commercial interference; and
 - (b) on and from the day that this Act comes into force, be an independent, autonomous and impartial body.

23 Consultation

- (1) The Regulator may carry out consultations with interested persons as it considers appropriate.
- (2) Where this Act requires the Regulator to carry out a consultation under this section, the Regulator shall carry out that consultation in accordance with guidelines made by the Regulator except where that consultation has been deemed under section 188(2) to have been carried out.
- (3) The Regulator shall ensure that the guidelines made under sub-section (2):

- (a) provide persons likely to be affected by the Regulator's decision a reasonable opportunity to make submissions on the matter; and
 - (b) where appropriate, require the Regulator to publish any decision or draft decision (including reasons).
- (4) The Regulator shall take into account any submission that it receives in accordance with the guidelines made under sub-section (2). The Regulator is not prohibited from taking into account a submission which was not received in accordance with the guidelines.
- (5) The Minister may direct the Regulator to carry out a consultation under this section.

24 Publication

- (1) Subject to sub-sections (3) and (4), the Regulator shall publish:
- (a) this Act;
 - (b) all regulations, rules, declarations, standards and other secondary instruments made under this Act (other than guidelines);
 - (c) any guidelines the Regulator considers it in the public interest to publish;
 - (d) a list of all network operators and service providers (including any special licence conditions imposed under section 34);
 - (e) the numbering plan under section 70;
 - (f) the register of assigned numbers under section 55;
 - (g) the register of approved types of customer equipment under section 79;
 - (h) a register of all assignments of radio frequency spectrum under section 91(2);
 - (i) a register of authorisations under section 121;
 - (j) the register of declared services under section 128;
 - (k) the register of approved reference offers under section 139;
 - (l) the register of access agreements under section 140;
 - (m) a register of decisions of the appeals panel (including reasons for the decisions) under section 183;
 - (n) any decision (including reasons) made following a consultation under section 23;
 - (o) any submissions made during a consultation under section 23; and
 - (p) such other documents information as the Regulator is required to publish under this Act or by a declaration made by the Minister.
- (2) Where the Regulator is required to publish a document, the Regulator shall publish the document on its website, and may also publish the document in such other manner as the Regulator considers appropriate.

- (3) Neither the Regulator nor any employee or agent of the Regulator shall knowingly publish or disclose sensitive information to any person, knowingly allow sensitive information to be disclosed to any person, or use sensitive information for personal advantage except:
 - (a) with the consent of the person who provided the sensitive information; or
 - (b) where the Regulator is required by law to publish or disclose that information.
- (4) Sub-section (3) shall also apply to a person who publishes, discloses or uses sensitive information after ceasing to be a member, employee or agent of the Regulator.
- (5) Subject to sub-sections (6) to (8), “**sensitive information**” means information that is:
 - (a) submitted or disclosed to the Regulator by a person;
 - (b) not already in the public domain; and
 - (c) provided to the Regulator in accordance with sub-section (9).
- (6) Sensitive information does not include information that the Regulator reasonably determines shall not be regarded as sensitive information having regard to:
 - (a) the likelihood and seriousness of any harm to the person to which the information relates of disclosing that information; and
 - (b) the Regulator’s duty to act transparently and fairly in performing its functions and exercising its powers under section 22.
- (7) The Regulator may only determine under sub-section (6) that information provided to it is not sensitive information within 15 business days of receiving the information. If the Regulator does so, it shall:
 - (a) promptly notify the person who provided the information of its determination; and
 - (b) in the case of information that the person is not required to provide to the Regulator (which, for the avoidance of doubt, does not include information in any documents provided to the Regulator in accordance with sections 97(7), 134(3), 138(2)(b), 168 and 169), give the person an opportunity to:
 - (i) withdraw the information, in which case the Regulator shall not have regard to the information and sub-sections (3) and (4) apply as if that information were sensitive information; or
 - (ii) re-submit any information it wishes the Regulator to consider in accordance with sub-section (9) within any reasonable timeframe specified by the Regulator.
- (8) For the purposes of this section, unless the Regulator determines otherwise, the following shall not be considered sensitive information:

- (a) details of any charges for the supply of the declared services; and
 - (b) essential terms and conditions of the supply of the declared services.
- (9) If a person is required to provide the Regulator with (or wishes the Regulator to consider) any information that contains sensitive information, that person shall provide the Regulator with:
- (a) a copy of that information in which the sensitive information is visible; and
 - (b) a copy of information in which only the sensitive information has been redacted but all other information is visible.
- (10) Any person who wilfully acts in contravention of sub-sections (3) or (4) commits an offence and shall, on conviction, be liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 3 years or both.

25 Assistance from advisory committees

The Regulator may, either generally or in any particular case, appoint persons as the Regulator may determine, who may or may not be officers or employees of the Regulator, to form an advisory committee to render such assistance as the Regulator may specify in the exercise of the Regulator's powers, the performance of the Regulator's functions or discharge of the Regulator's duties under this Act and other applicable laws.

PART VI - LICENSING

DIVISION 1- LICENSING REQUIREMENT

26 Supply of communications services

Subject to sections 27, 28 and 29, no person shall:

- (a) own or operate a communications facility used to provide communications services to the public, without a network operator licence issued under section 32; or
- (b) provide communications services to the public, except:
 - (i) in accordance with a network operator licence issued under section 32; or
 - (ii) if the person is registered as a service provider under section 41.

27 Network operator licence required by owner or operator

- (1) The owner of a communications facility used to provide communications services to the public is authorised to own that communications facility if a

person operating the communications facility is a network operator or if section 26 does not apply to that communications facility in accordance with sections 28 or 29.

- (2) An operator of a communications facility used to provide communications services to the public is authorised to operate that communications facility if the owner of the communications facility is a network operator or if section 26 does not apply to that communications facility in accordance with sections 28 or 29.

28 Network facilities and communications services beyond the network boundary

The prohibitions under section 26 shall not apply to the ownership or operation of communications facilities or the provision of communications services solely on the customer side of the network boundary.

29 Exempt communications services

The Minister may, where necessary and expedient to pursue the objects of this Act, by declaration, exempt a type of communications facility or communications service from the operation of section 26.

30 Supply without authorisation is an offence

Any person who contravenes section 26, commits an offence and shall, on conviction, be liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or both.

DIVISION 2 - NETWORK OPERATORS

31 Eligibility for a network operator licence

- (1) A network operator licence shall be issued for the activities specified in section 26 only where the applicant is:
- (a) a company as defined under the Companies Act 1995;
 - (b) a natural person who is a citizen of the Kingdom and of at least 18 years of age;
 - (c) a partnership, one of the members of which is a citizen of the Kingdom and of at least 18 years of age;
 - (d) a charitable trust, incorporated society, or other body organised under a law of the Kingdom that has capacity to contract;

- (e) a government school, recognised school or registered school under the Education Act; or
 - (f) an entity listed in Schedule 1 of the Public Service Act 2002.
- (2) Notwithstanding sub-section (1), the Minister may, by declaration, exempt a person or a class of persons from meeting the eligibility criteria in subsection (1).

32 Network operators

- (1) A network operator licence authorises a network operator to:
- (a) own or operate communications facilities used to provide communications services to the public; and
 - (b) provide communications services to the public.
- (2) The Regulator shall promptly issue a licence to an applicant provided that:
- (a) the applicant fulfils the eligibility requirements in section 31;
 - (b) the applicant's application complies with the process for submitting an application under the licensing rules;
 - (c) the applicant pays any applicable application fee specified in the licensing rules; and
 - (d) the Regulator is satisfied that the applicant would be financially and technically capable of meeting its legislative and regulatory obligations as a network operator.
- (3) The Regulator shall provide an applicant with written reasons for any refusal to grant a network operator licence to an applicant.

33 Standard licence conditions

Network operators shall comply with the standard licence conditions specified in Schedule 1 of this Act.

34 Special licence conditions for network operators

- (1) Subject to sub-section (2), the Regulator may, by declaration, determine and impose special licence conditions in addition to the standard licence conditions on a network operator.
- (2) The Regulator may only determine and impose special licence conditions if:
- (a) the Regulator is satisfied that the standard licence conditions cannot adequately provide regulatory controls that the Regulator considers necessary to achieve the objectives of this Act or any general policy directions notified to the Regulator by the Minister under section 21; and

- (b) the special licence conditions are limited to the extent reasonably necessary to achieve the objectives of this Act.
- (3) Without limiting the Regulator's powers under sub-sections (1) and (2), the Regulator may impose special licence conditions about the following:
 - (a) network rollout obligations;
 - (b) any conditions needed to implement any general policy directions notified to the Regulator by the Minister under section 21;
 - (c) conditions necessary for compliance with international law or funding arrangements with international bodies; and
 - (d) matters relating to the licence transition process specified section 187.
- (4) Before making a declaration under sub-section (1), the Regulator shall carry out a consultation under section 23.

35 Compliance with licence conditions

- (1) A network operator shall comply with —
 - (a) the standard licence conditions as specified in Schedule 1 of this Act; and
 - (b) the special licence conditions as declared by the Regulator under section 34.
- (2) Any person who contravenes section 35(1), commits an offence and shall, on conviction, be liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 3 years or both.

36 Network operator licence fees

- (1) Each network operator shall pay an annual licence fee.
- (2) The licence fee payable under sub-section (1) shall be:
 - (a) if the network operator's eligible revenues for the previous financial year is below the threshold amount, which shall be a fixed amount prescribed under the licensing rules; or
 - (b) if the network operator's eligible revenues for the previous financial year is equal to or greater than the threshold amount, which shall be the sum of the fixed amount referred to in paragraph (a) and an amount calculated as a fixed percentage of network operator's eligible revenues less the threshold amount for the previous financial year.
- (3) The fixed amount under sections 2(a) and (b) shall be prescribed in the licensing rules.
- (4) The threshold amount under sections 2(a) and (b) shall be prescribed in the licensing rules.
- (5) The fixed percentage under section 2(b) shall:

- (a) be specified in the licensing rules every 3 years either:
 - (i) as a single percentage to apply for a period of 3 years; or
 - (ii) as three percentages to apply over each of the next 3 years;
 - (b) be set having regard to:
 - (i) the principle of cost recovery, so that the Regulator ensures that aggregate fees it intends to recover from network operators and service providers are sufficient to recover its anticipated funding requirements;
 - (ii) the principle of fee minimisation, so that the Regulator endeavours to minimise the fees payable by network operators and service providers, subject to the principle of cost recovery; and
 - (iii) any funds available to the Regulator that have been retained from the previous financial year; and
 - (c) be no greater than 2%.
- (6) The Regulator shall ensure that the licensing rules deal with the following matters:
- (a) the amounts described in this section;
 - (b) the provision of information by network operators to enable the Regulator to verify the accuracy of eligible revenues reported by network operators;
 - (c) any auditing requirements relating to the information provided to the Regulator;
 - (d) the process for calculating the eligible revenues of the network operator; and
 - (e) the process for invoicing and the payment of the fees described in this section.
- (7) Network operators shall provide the Regulator with any information required under the licensing rules.
- (8) A person who intentionally provides false or misleading information under subsection (7) commits an offence and shall be liable upon conviction to a fine not exceeding amount \$20,000 or imprisonment for a period not exceeding period 5 years or to both.

37 Term of network operator licences

Subject to sections 38 and 39, the term of a licence granted under section 32 shall be indefinite.

38 Suspension, amendment of revocation of a licence

- (1) Subject to sub-section (2), the Regulator may, by declaration, suspend or revoke, or amend the special licence conditions of, a network operator licence in the event that:
 - (a) the network operator has failed to pay an amount required by this Act;
 - (b) the network operator has materially failed to comply with the provisions of this Act and has not remedied that failure within a period of 20 business days of receipt of a notice by the Regulator stating the provision and the acts or omissions that allegedly constitute or would constitute the failure;
 - (c) the network operator has made false or misleading statements to the Regulator in its licence application or in any other information submitted to the Regulator under this Act;
 - (d) the network operator no longer meets the requirements of section 31;
 - (e) the network operator is bankrupt or enters into receivership or liquidation, takes any action for its voluntary winding-up or dissolution, or is the subject of any order by a competent court or tribunal for its compulsory winding-up or dissolution, except if the Regulator is satisfied that it is likely to remain in full compliance with the terms and conditions of its licence;
 - (f) changes to international treaties or commitments by the Kingdom to other governmental organisations or international agencies require an amendment, suspension or a revocation, and the amendment, suspension or revocation is only to the extent that is reasonably required as a result of such changes; or
 - (g) in the case of an amendment or a suspension, the network operator agrees to the amendment or the suspension.
- (2) Prior to amendment, suspension or revocation of a licence under this section, the Regulator:
 - (a) shall notify the network operator in writing that the Regulator is considering the relevant action, the grounds for the action and any procedures the Regulator will use in considering the relevant action;
 - (b) shall give the network operator sufficient time to prepare comments on the relevant action, taking into account the nature of the proposed action, which shall not be less than 10 business days;
 - (c) may (at the Regulator's discretion) invite comments from other interested parties or the public; and
 - (d) shall consider any comments under paragraph (b) or (c).
- (3) In suspending or revoking, or amending the special licence conditions of any licence under this section, the Regulator shall take into account continuity of service to end users and any hardship that may result to the network operator.

- (4) The Regulator may only revoke a licence under this section if it is satisfied that suspension or amendment is not appropriate in the circumstances, including by having regard to the seriousness of any breach of licence and of any false or misleading statements.
- (5) The Regulator may, in any declaration revoking a licence under this section, include such terms and conditions as the Regulator deems appropriate, including authorising the network operator to continue providing any communications service or undertake any other act for such duration as the Regulator may, in its absolute discretion, specify in the declaration, for the purpose of permitting the network operator to cease its activities in a manner that mitigates any adverse consequences to any end users.
- (6) If the Regulator suspends or revokes, or amends the special licence conditions of a licence under this section, the Regulator shall provide the network operator with reasonable time to comply with the amendment, suspension or revocation.

39 Surrender of network operator licence

A network operator may surrender a network operator licence by written notice to the Regulator.

40 Register of network operator licences

The Regulator shall establish and maintain a register of network operators and any special licence conditions.

DIVISION 3 - SERVICE PROVIDERS

41 Service providers

- (1) A person registered as a service provider may provide communications services to the public.
- (2) The Regulator shall promptly register an applicant as a service provider and notify that person of the registration, provided that:
 - (a) the applicant for registration fulfils the eligibility requirements in section 31;
 - (b) the applicant's application for registration complies with the process for submitting an application specified in the licensing rules;
 - (c) the applicant pays any applicable application fee under the licensing rules; and
 - (d) the Regulator is satisfied (or deemed to be satisfied in accordance with the licensing rules) that the applicant would be financially and

technically capable of meeting its legislative and regulatory obligations as a service provider.

- (3) The Regulator shall provide an applicant with written reasons for any refusal to register an applicant as a service provider.

42 Service provider conditions

Service providers shall comply with the standard service provider rules set out in Schedule 2 of this Act.

43 Service provider registration fees

- (1) Each service provider shall pay an annual registration fee.
- (2) The registration fee under sub-section (1) shall be:
 - (a) if the service provider's eligible revenues for the previous financial year is below the threshold amount , which shall be a fixed amount; or
 - (b) if the service provider's eligible revenues for the previous financial year is equal to or greater than the threshold amount , which shall be the sum of the fixed amount referred to in paragraph (a) and an amount calculated as a fixed percentage of service provider's eligible revenues less the threshold amount for the previous financial year.
- (3) The fixed amount under sections 2(a) and (b) shall be prescribed in the licensing rules.
- (4) The threshold amount under sections 2(a) and (b) shall be prescribed in the licensing rules.
- (5) The fixed percentage under section 2(b) shall:
 - (a) be specified in the licensing rules every 3 years either:
 - (i) as a single percentage to apply for a period of 3 years; or
 - (ii) as three percentage to apply over each of the next 3 years;
 - (b) be set having regard to:
 - (i) the principle of cost recovery, so that the Regulator ensures that aggregate fees it intends to recover from network operators and service providers are sufficient to recover its anticipated funding requirements;
 - (ii) the principle of fee minimisation, so that the Regulator endeavours to minimise the fees payable by network operators and service providers, subject to the principle of cost recovery; and
 - (iii) any funds available to the Regulator that have been retained from the previous financial year.
 - (c) be no greater than 2%.

- (6) The Regulator shall ensure that the licensing rules deal with the following matters:
 - (a) the amounts described in this section;
 - (b) the provision of information by service providers to enable the Regulator to verify the accuracy of eligible revenues reported by service providers;
 - (c) any auditing requirements relating to the information provided to the Regulator;
 - (d) the process for calculating the eligible revenues of the service provider;
 - (e) the process for invoicing and the payment of the fees described in this section; and
 - (f) matters relating to the licence transition process specified in section 187.
- (7) Service providers shall provide the Regulator with any information required under the licensing rules.
- (8) A person who intentionally provides false or misleading information under sub-section (7) commits an offence and shall be liable upon conviction to a fine not exceeding amount \$20,000 or imprisonment for a period not exceeding period 5 years or to both.

44 De-registration or suspension of a service provider

- (1) Subject to sub-section (2), the Regulator may, by declaration, de-register or suspend the registration of a service provider in the event:
 - (a) that the service provider has failed to pay an amount required by this Act;
 - (b) that the service provider has materially failed to comply with the provisions of this Act and has not remedied that failure within a period of 20 business days receipt of a notice by the Regulator stating the condition and the acts or omissions that allegedly constitute or would constitute the breach;
 - (c) the service provider no longer meets the requirements of section 31;
 - (d) the service provider has made false or misleading statements to the Regulator in its application for registration or in any other information submitted to the Regulator under this Act;
 - (e) the service provider is bankrupt or enters into receivership or liquidation, takes any action for its voluntary winding-up or dissolution, or is the subject of any order by a competent court or tribunal for its compulsory winding-up or dissolution, except if the Regulator is satisfied that it is likely to remain in full compliance with the terms and conditions of its registration;
 - (f) changes to international treaties or commitments by the Kingdom to other governmental organisations or international agencies require the suspension or de-registration of the service provider, and the suspension

- or de-registration is only to the extent that is reasonably required as a result of such changes; or
- (g) in the case of a suspension, the service provider agrees to the suspension.
- (2) Prior to suspension or de-registration of a service provider under this section, the Regulator:
- (a) shall notify the service provider in writing that the Regulator is considering the relevant action, the grounds for the action and any procedures the Regulator will use in considering the relevant action;
 - (b) shall give the service provider sufficient time to prepare comments on the relevant action, taking into account the nature of the proposed action, which shall not be less than 10 business days;
 - (c) may (at the Regulator's discretion) invite comments from other interested parties or the public; and
 - (d) shall consider any comments under paragraph (b) or (c).
- (3) In de-registering or suspending the registration of any service provider under this section, the Regulator shall take into account continuity of service to end users and any hardship that may result to the service provider.
- (4) The Regulator may only de-register a service provider under this section if it is satisfied that suspension is not appropriate in the circumstances, including by having regard to the seriousness of any breach of terms of the service provider's registration and of any false or misleading statements.
- (5) The Regulator may, in any declaration de-registering a service provider under this section, include such terms and conditions as the Regulator deems appropriate, including authorising the service provider to continue providing any communications service or undertake any other act for such duration as the Regulator may, in its absolute discretion, specify in the declaration, for the purpose of permitting the service provider to cease its activities in a manner that mitigates any adverse consequences to any persons to whom the service provider supplies services.
- (6) If the Regulator de-registers or suspends the registrations of a service provider under this section, the Regulator shall provide the service provider with reasonable time to comply with the suspension or de-registration.

45 Withdrawal of registration as a service provider

A service provider may withdraw its registration as a service provider by written notice to the Regulator.

46 Register of service providers

The Regulator shall establish and maintain a register of all persons registered as a service provider.

DIVISION 4 - OTHER MATTERS

47 Licensing rules

- (1) The Regulator shall make rules about the licensing of network operators and registration of service providers, specifying:
 - (a) the process for submitting an application for a network operator licence and for registering as a service provider;
 - (b) any application fees to be paid to the Regulator for a network operator licence or for registering as a service provider;
 - (c) the timeframes within which the Regulator will endeavour to process applications for network operator licences and applications for registering as a service provider;
 - (d) any criteria that the Regulator will consider when assessing under sections 32(2)(d) and 41(2)(d) whether an applicant for a network operator licence or for registration as a service provider is financially and technically capable of meeting its legislative and regulatory obligations; and
 - (e) any other matter required under this Part V to be specified in the licensing rules.
- (2) The rules under sub-section (1) may also specify:
 - (a) any matter that the Regulator considers necessary or convenient for or in connection with the licence transition process described under section 187; and
 - (b) any other matter relating to the licensing of network operators or registration of service providers that the Regulator considers necessary or convenient for or in connection with the performance of its functions under this Division.
- (3) Before making rules under this section, the Regulator shall carry out a consultation under section 23.

48 No rights to use radio frequency spectrum under Division 2 or 3

A network operator licence granted under Division 2 or registration as a service provider under Division 3 does not confer any right to use any part of the radio frequency spectrum.

49 Licences is a unilateral grant of permission

Regardless of form and content, a licence granted under Part V is a unilateral grant of permission from the Regulator and not a bilateral agreement or contract.

50 No exclusive licences

- (1) Nothing in this Act shall permit the conferral on any person of monopoly or exclusive rights to provide a type of communications services or install or operate a type of communications facility.
- (2) The Regulator, Minister and Ministry shall ensure that no monopoly or exclusive rights referred to in sub-section (1) are conferred on any person.

51 Exemption from licence fees in the public interest

The Minister may, by declaration, exempt a licensee from the obligation to pay some or all fees under this Act where that person is required by, or is under a duty imposed by, legislation to provide a communications service to the public.

52 Regulator not to discriminate

The Regulator shall exercise its powers and perform its functions under this Part in a manner that does not discriminate between applicants or licensees.

PART VII - CONSUMER PROTECTION

DIVISION 1 - CONSUMER STANDARDS

53 Consumer standards

- (1) The Regulator may make relevant and appropriate consumer standards which shall apply to all licensees.
- (2) Before making consumer standards under sub-section (1), the Regulator shall carry out a consultation under section 23.
- (3) In making consumer standards under sub-section (1), the Regulator shall have regard to:
 - (a) existing consumer standards applying to the communications sector in the region (including in Australia and New Zealand);
 - (b) the ability of licensees to meet the proposed standards;
 - (c) the benefits to consumers of the proposed standards; and
 - (d) any other matter the Regulator thinks appropriate.
- (4) The Regulator may specify, in any consumer standard made under sub-section (1):
 - (a) classes or categories of consumers to which the consumer standard does not apply; or

- (b) classes or categories of consumers who may, by agreement with the relevant licensee, agree that part or all of the consumer standard does not apply.

54 Matters for consumer standards

Consumer standards made by the Regulator under section 53 may include, but shall not be limited to:

- (a) the provision of information to consumers about services, tariffs and performance;
- (b) the handling of consumer complaints and dispute resolution;
- (c) the protection of individual consumer information;
- (d) the provisioning and maintenance (including fault repair) of services;
- (e) the advertising or representation of services;
- (f) consumer charging, billing, collection and credit practices;
- (g) service standards; and
- (h) any other matter of concern to consumers or as may be considered to be appropriate by the Regulator.

55 Consumer law not to be excluded

- (1) Any term of a contract (including a term that is not set out in the contract but is incorporated in the contract by another term) that purports to exclude, restrict or modify, or has the effect of excluding, restricting or modifying, any of the following is void:
 - (a) the application of a consumer law provision;
 - (b) the exercise of a right conferred by a consumer law provision; or
 - (c) any liability under a consumer law provision.
- (2) A term of a contract is not taken to exclude, restrict or modify the application of a consumer law provision unless the term does so expressly or is inconsistent with that provision.
- (3) For the purpose of this section, a “**consumer law provision**” means a provision in this Division or a standard made under this Division.

56 False, misleading or deceptive conduct and representations

- (1) A licensee shall not engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

- (2) A licensee shall not engage in conduct that is likely to mislead the public as to the nature, the characteristics, the suitability for their purpose, price or the quantity of any communications services.
- (3) A licensee shall not in connection with the supply or use of goods or services:
 - (a) make a false or misleading representation that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or mode;
 - (b) make a false or misleading representation that goods are new;
 - (c) make a false or misleading representation that goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits;
 - (d) make a false or misleading representation that the licensee has a sponsorship approval or affiliation;
 - (e) make a false or misleading representation about the need for any goods, services, replacements or repairs; or
 - (f) make a false or misleading representation about the existence or effect of any warranty or guarantee.
- (4) For the purposes of sub-section (3), a representation is misleading if, at the time the representation was made, the licensee knew or reasonably ought to have known that the representation was misleading in any material respect or that the representation was reasonably likely to mislead the person to whom the representation was made.

57 Consumer complaints

- (1) A consumer may apply to the Regulator for an order under sub-section (2) if:
 - (a) the consumer has a bona fide complaint against, or is involved in a bona fide dispute with, a licensee;
 - (b) the consumer has made reasonable efforts to resolve the dispute (or the issues the subject of the complaint); and
 - (c) the complaint or dispute has not been treated by the licensee in accordance with any relevant consumer standard made under section 53 of this Act.
- (2) In response to any referral under sub-section (1), the Regulator may, by written notice:
 - (a) assign a member of the Regulator's staff or a consultant to attempt to mediate the complaint or dispute;
 - (b) issue an order to resolve the dispute or deal with the complaint; or
 - (c) issue an order to the licensee to follow its complaint-handling procedures,

provided that any remedy ordered by the Regulator is not inconsistent with any reasonable conditions and procedures established by the licensee and provided the Regulator has consulted with the licensee prior to making the order.

- (3) For the purposes of this Division, “**consumer**” means a customer.

DIVISION 2 - TARIFFS FOR SERVICES

58 Application of Division 2

For the purposes of this Division:

- (a) “**retail communications services**” means communications services or classes of communications services specified in the tariff rules, but does not include a wholesale access service; and
- (b) “**tariff**” means, in relation to any retail communications service offered by the licensee, the amount payable by a customer for that communications service (including any discounts, promotions, rights, privileges or other benefits conferred on or made available to the customer as part of the offer).

59 Tariffs for retail communications services

- (1) A licensee shall notify the Regulator in writing of all tariffs for its retail communications services:
 - (a) within 10 business days of the commencement of this section; and
 - (b) for any retail communications services that the licensee did not provide before the commencement of this section, before (or at the same time as) those tariffs take effect.
- (2) In notifying the Regulator of tariffs under sub-section (1), a licensee shall comply with the tariff rules.

60 Licensee to provide services in accordance with tariffs

A licensee shall not, in respect of a retail communications service, impose any charge or make any claim or demand for an amount that does not form part of a tariff notified to the Regulator under sections 59 or 61.

61 Variation or revocation of tariffs

- (1) A licensee shall notify the Regulator in writing of any variation or revocation of a tariff notified under section 43 before (or at the same time as) that variation or revocation takes effect.

- (2) In providing notices under sub-section (1), a licensee shall comply with the tariff rules.

62 Publication of tariffs for retail communications services

- (1) A licensee shall at all times:
 - (a) publish on the licensee's website; and
 - (b) make available for public inspection, without charge, at all of the licensee's business offices during normal business hours,
all tariffs that have been notified to the Regulator under sections 59 or 61
- (2) In complying with its obligations under sub-section (1), a licensee shall comply with the tariff rules.

63 Register of tariffs

The Regulator shall establish and maintain a register of tariffs notified to the Regulator under sections 59 and 61.

DIVISION 3 - REGULATION OF TARIFFS

64 Rules about tariffs

- (1) The Regulator may make rules about tariffs for any communications services other than wholesale access services.
- (2) Rules made under sub-section (1) may include but shall not be limited to:
 - (a) tariffs and variation of tariffs for certain communications services or classes of communications services;
 - (b) publication or disclosure of tariffs for certain communications services or classes of communications services;
 - (c) penalties for contravening the rules made under this section;
 - (d) the process for filing tariffs (including the form in which they shall be filed and any accompanying information required by the Regulator); and
 - (e) any other matter as may be required by the Regulator.
- (3) Before making rules under sub-section (1), the Regulator shall carry out a consultation under section 23.

DIVISION 4 - UNIVERSAL SERVICE REGIME**65 Universal service regime**

- (1) The Minister may direct the Ministry to develop a system, to be known as the universal service regime, to promote the widespread availability of communications services throughout the Kingdom.
- (2) The universal service regime developed by the Ministry shall be subject to the approval by declaration of the Minister.

66 Matters to be considered in a universal service regime

- (1) The matters which may be addressed in a universal service regime developed under section 65, may include but shall not be limited to:
 - (a) the needs of underserved areas within the Kingdom;
 - (b) the needs of underserved groups within the community;
 - (c) measures to encourage the installation of communications facilities and the provision of communications services to serve such underserved areas and underserved groups;
 - (d) affordability of such services;
 - (e) costs of providing such services;
 - (f) equitable sharing of the costs of such service throughout the community; and
 - (g) any other matter as may be required by the Minister.
- (2) The Ministry shall consult with the Regulator and hold consultations with interested parties when developing the universal service regime.

67 Universal service rules

- (1) After the Minister has approved the universal service regime under section 65, the Regulator shall make rules about the universal service regime that may include:
 - (a) provisions governing the operation of any universal service fund;
 - (b) how any universal service funds may be applied;
 - (c) the provision of services under universal service agreements;
 - (d) a requirement on licensees to pay a universal service levy and details on how that levy will be calculated;
 - (e) a fair and transparent method of selecting a person to become a party to a universal services agreement, which may include a competitive process; and

- (f) any other matter relating to universal service that the Regulator considers necessary or convenient for or in connection with the performance of its functions under this Division.
- (2) The rules made under sub-section (1) shall be consistent with the universal service regime.
- (3) The Regulator shall ensure that any universal service levy under the rules made under sub-section (1) is set in such a way that the sum of:
 - (a) the amount payable by a licensee under the universal service levy; and
 - (b) any amount payable by the licensee under Part V that is based on a percentage the licensee's eligible revenues,is no greater than 2% of the licensee's eligible revenue.
- (4) Before making rules under sub-section (1), the Regulator shall carry out a consultation under section 23.

PART VIII - TECHNICAL REGULATION

DIVISION 1 - NUMBERING AND ELECTRONIC ADDRESSING

68 Responsibility for numbering

The Regulator shall be responsible for the control, planning, administration, management and assignment of the numbering of communications services.

69 Responsibility for electronic addressing

- (1) Subject to sub-section (3), the Minister or one or more persons nominated by the Minister shall assume and be responsible for electronic addressing.
- (2) The nominated person under sub-section (1) may be the Regulator.
- (3) Any assumption of responsibility for electronic addressing shall be subject to the requisite approvals and consents of the Internet Assigned Numbers Authority.
- (4) The nominated person shall comply with the procedures, conditions of and agreements with the Internet Assigned Numbers Authority.
- (5) The Minister shall monitor compliance by any nominated person with the provisions of this section.
- (6) For the purposes of this Division:
 - (a) **“electronic addressing”** means the registration and allocation of domain names under Tonga's internet country code top-level-domain (ccTLD) ".to";

- (b) “**Internet Assigned Numbers Authority**” means the organisation responsible for the international coordination of the DNS Root, IP addressing and certain other internet protocol resources and includes any successor to that organisation; and
- (c) “**nominated person**” means a person nominated by the Minister under sub-section (1).

70 Numbering plan and numbering rules

- (1) The Regulator shall develop a national numbering plan for the numbering of communications services which shall apply to licensees under this Act.
- (2) The numbering plan developed by the Regulator shall:
 - (a) specify the numbers that are for use in connection with communications services and may specify different numbers for use in connection with the supply of different types of communications services;
 - (b) take into account any existing numbering plan and assignment of numbers; and
 - (c) be consistent with the requirements of any international agreements, commitments or conventions to which the Kingdom is a party or has otherwise subscribed to.
- (3) The Regulator shall make rules specifying:
 - (a) the process for submitting an application for an assignment of numbers;
 - (b) the criteria for who is eligible to submit an application;
 - (c) the process for the assignment of numbers by the Regulator;
 - (d) any applicable fees;
 - (e) any rules about the use of numbers or particular number ranges;
 - (f) any rules identifying shared numbers and regulating how they can be used;
 - (g) the circumstances in which numbers can be surrendered, cancelled or withdrawn and the processes by which this can occur; and
 - (h) any other matter relating to numbering that the Regulator considers necessary or convenient for or in connection with the performance of its functions under this Division.
- (4) The rules in sub-section (3) shall be consistent with the numbering plan and shall ensure that numbers are assigned on a non-discriminatory basis.
- (5) The Regulator shall ensure that any assignment of numbers is in accordance with the numbering plan and any rules made under this section.
- (6) Before developing a national numbering plan or making any rules under this section, the Regulator shall carry out a consultation under section 23.

71 Register of numbering assignments

The Regulator shall establish and maintain a register of assigned numbers that includes details of all numbering assignments.

72 Emergency calls

- (1) The Regulator may make a declaration dealing with calls made to emergency service organisations in the Kingdom using emergency service numbers.
- (2) Matters dealt with in a declaration under sub-section (1) may include, but shall not be limited to:
 - (a) identifying emergency service numbers and emergency service organisations for the purpose of this Act;
 - (b) requiring licensees to provide services that enable end users to use emergency service numbers to call emergency service organisations;
 - (c) identifying an emergency call operator, who will be responsible for receiving and handling calls to an emergency service number and transferring such calls to the appropriate emergency service organisation; and
 - (d) imposing obligations on licensees or emergency call operators about the time taken to answer calls to emergency service numbers.
- (3) Before making a declaration under sub-section (1), the Regulator shall carry out a consultation under section 23.

73 Number portability

- (1) Subject to sub-sections (2) to (5), the Regulator may make rules about number portability.
- (2) Before making rules about number portability, the Regulator shall:
 - (a) carry out a consultation about the proposed rules under section 23; and
 - (b) prepare a report for the Minister outlining the results of the consultation and the Regulator's recommendations on whether number portability shall be implemented and any proposed rules for implementing numbering portability.
- (3) The Regulator shall not recommend the implementation of number portability under sub-section (2) unless, having considered the results of the consultation under sub-section (2), the Regulator is satisfied that:
 - (a) there is a reasonable likelihood of demand for number portability; and
 - (b) the benefits of introducing number portability outweighs the costs.
- (4) If the Regulator recommends, under sub-section (2), that rules be made about number portability, the Minister may, by declaration, approve or reject (either in whole or part) the Regulator's recommendations.

- (5) The Regulator shall not make rules about number portability under sub-section (1), unless those rules are consistent with recommendations approved by the Minister under sub-section (4).
- (6) The Minister shall notify the Regulator in writing of the reasons for any decision under sub-section (4), and the Regulator shall publish those reasons on its website.

74 Directories

- (1) The Regulator may make a declaration dealing with the publication of telephone directories and provision of directory services.
- (2) Matters dealt with in a declaration under sub-section (1) may include, but shall not be limited to:
 - (a) the collection, use and accuracy of information collected from customers that may (subject to rules about unlisted numbers) be published in a telephone directory or used in a directory information service;
 - (b) listed and unlisted numbers;
 - (c) the provision directory information services; and
 - (d) the publication of telephone directories.
- (3) Before making a declaration under sub-section (1), the Regulator shall carry out a consultation under section 23.

75 No property rights in numbers

Licensees, customers and end users shall not have any property rights in numbers.

76 Technical standards

- (1) The Regulator may, by declaration:
 - (a) make technical standards; and
 - (b) adopt technical standards promulgated by international standard setting bodies or national regulatory authorities of other countries,
which shall apply to licensees and any other person specified in the relevant technical standard.
- (2) Before making or adopting any technical standards under sub-section (1), the Regulator shall carry out a consultation under section 23.

DIVISION 2 - TECHNICAL STANDARDS**77 Matters for technical standards**

Technical standards made or adopted by the Regulator under section 76, may include, but shall not be limited to:

- (a) technical requirements for communications facilities, communications networks, communications services and customer equipment;
- (b) the qualifications of installers of communications facilities and customer equipment (but excluding customer cabling);
- (c) the promotion of electromagnetic immunity and compatibility;
- (d) the promotion of safety; or
- (e) any other technical matter that the Regulator considers necessary or convenient for or in connection with the performance of its functions under this Division.

78 Technical rules

- (1) The Regulator shall make rules about customer equipment that specify:
 - (a) the types of customer equipment that shall be approved before it is connected to a communications network in Tonga;
 - (b) the criteria for the approval of customer equipment;
 - (c) the process for certifying conformity with those criteria;
 - (d) how the Regulator may recognise and apply rules, conditions and approval processes of other countries; and
 - (e) any special arrangements for the certification of customer equipment already in use.
- (2) The rules under sub-section (1) may also specify:
 - (a) a process for the Regulator to accredit conformity assessment bodies in Tonga; and
 - (b) any other matter relating to customer equipment or network facilities that the Regulator considers necessary or convenient for or in connection with the performance of its functions under this Division.
- (3) Before making rules under this section, the Regulator shall carry out a consultation under section 23.

79 Register of customer equipment

The Regulator shall establish and maintain a register of approved types of customer equipment.

80 Mutual recognition agreements

The Regulator may enter into mutual recognition agreements with authorities in other countries to provide for the mutual recognition of, certification and approval of communications equipment in other countries and in Tonga.

81 Customer cabling

The Minister may, upon the recommendation of the Regulator, make regulations under section 186 for the supervision and licensing of installers of customer cabling.

82 Disconnection of customer equipment

A licensee may refuse to supply or cease supplying a communications service in the event that the licensee considers the customer equipment which is connected to the licensee's network, for the utilisation of the communications services, is a threat or poses a threat to the safety or functioning of the communications service or the safety of any person or is not approved.

83 Request for the Regulator to direct licensees

Where a licensee refuses to provide or ceases to provide a communications service to a person under section 82, that person may apply to the Regulator for a direction under section 84.

84 Regulator may direct the provision of communications services

- (1) Upon receipt of an application under section 83, the Regulator shall, by notice in writing:
 - (a) inform the licensee concerned of the application; and
 - (b) invite the licensee to make submissions to the Regulator within 5 business days after receiving the notice as to whether a direction shall be made under sub-section (2).
- (2) After the later of the receipt of submissions by the licensee or the expiry of the period referred to in sub-section 1(b), the Regulator shall consider any submissions received and if, having considered those submissions, it is satisfied that the connection of customer equipment disconnected under section 82 is not a threat or does not pose a threat to the safety or functioning of the communications service or to the safety of any person and is approved, the Regulator shall direct the relevant licensee, by written notice, to supply the requested communications service.
- (3) A licensee shall comply with any direction under sub-section (2).

DIVISION 3 - RADIO FREQUENCY SPECTRUM MANAGEMENT**85 Regulator to manage radio frequency spectrum**

- (1) The Regulator shall be responsible for the control, planning, administration, management and licensing of the radio frequency spectrum in the Kingdom.
- (2) In performing its functions under this Division, the Regulator shall ensure that the management of radio frequency spectrum in the Kingdom:
 - (a) is carried out in a manner that is non-discriminatory and economically efficient; and
 - (b) is in accordance with the standards and regulations of the International Telecommunications Union and other international and regional treaties, commitments, protocols, and standards as agreed to or adopted by the Kingdom.
- (3) Without limiting its obligations under section 85(2), in performing its functions under sections 87 to 88, the Regulator shall take into account:
 - (a) the objects of the Act;
 - (b) the impact of the National Spectrum Plan and National Frequency Allocation Table on existing and future use of the radio frequency spectrum; and
 - (c) the orderly and efficient use of the radio frequency spectrum.

86 National Spectrum Plan

- (1) The Regulator shall develop, and at least once every 2 years update, a plan to be known as the National Spectrum Plan.
- (2) The National Spectrum Plan developed by the Regulator under subsection (1) shall set out the Regulator's plan for managing the radio frequency spectrum over a period of at least 5 years including:
 - (a) the policy for how different parts of radio frequency spectrum are used or allocated;
 - (b) any proposed changes to how parts of the radio frequency spectrum are used or allocated (including the details of the changes and relevant timelines); and
 - (c) the identification of any part of the radio frequency spectrum that is valuable state resource.
- (3) The National Spectrum Plan developed or updated by the Regulator shall be subject to the approval by declaration of the Minister.
- (4) Before developing or updating the National Spectrum Plan, the Regulator shall carry out a consultation under section 23.

- (5) The National Spectrum Plan shall be maintained by the Regulator and published by the Regulator on its website.

87 Determination of the National Frequency Allocation Table

- (1) The Regulator shall develop a document known as the National Frequency Allocation Table in order to manage the use of the radio frequency spectrum.
- (2) The National Frequency Allocation Table shall be maintained by the Regulator and published by the Regulator on its website.

88 Contents of the National Table of Frequency Allocations

The National Frequency Allocation Table developed by the Regulator under section 87 shall state how the radio frequency spectrum may be used and may include but shall not be limited to:

- (a) the existing and planned frequency allocations;
- (b) the existing and planned frequency reservations; and
- (c) any other matter as may be required by the Minister.

89 Radio spectrum rules

- (1) The Regulator shall make rules about the radio frequency spectrum specifying:
 - (a) the categories of radio spectrum licences that may be issued in relation to spectrum blocks or particular frequencies;
 - (b) the circumstances in which a radiocommunications device is exempt from a radio spectrum licence;
 - (c) the process for submitting an application for a radio spectrum licence;
 - (d) the criteria for who is eligible to submit an application;
 - (e) application fees to be paid to the Regulator (if any);
 - (f) any rules about the use of radio frequency spectrum or particular parts of radio frequency spectrum, including any interference requirements;
 - (g) any licence conditions and technical standards that apply to particular radio spectrum licences or particular devices;
 - (h) any licence fees that are payable for radio spectrum licences;
 - (i) the circumstances in which radio spectrum licences can be surrendered, suspended, revoked or amended; and
 - (j) the processes for determining any disputes about radio frequency spectrum interference.
- (2) The rules under sub-section (1) may also specify:

- (a) a fair and transparent method of issuing radio spectrum licences for valuable state resources, which may include a competitive process;
 - (b) any rules or processes for the assignment of radio frequency spectrum to a licensee as part of the licence transition process specified in section 187; and
 - (c) any other matter relating to radio spectrum that the Regulator considers necessary or convenient for or in connection with the performance of its functions under this Division.
- (3) The Regulator shall ensure that any fees prescribed under the rules made under sub-section (1) shall be:
 - (a) where the fee is for the allocation of a valuable state resource by means of a competitive process — the amount payable as a result of the competitive process; and
 - (b) otherwise, a fixed amount published by the Regulator on its website or any other form the Regulator thinks fit.
- (4) Before making rules under this section, the Regulator shall carry out a consultation under section 23.

90 Radio spectrum licences

- (1) A person shall not:
 - (a) establish, operate or use a radiocommunications service;
 - (b) install, operate or use any radio transmitting equipment; or
 - (c) establish, operate or use any apparatus or radiocommunication service in any place or on board any ship or aircraft registered in the Kingdom, without a radio spectrum licence granted by the Regulator in accordance with the radio spectrum rules, except where the use is permitted under the radio spectrum rules.
- (2) Where a person applies for a licence to own, operate or use communications facilities or provide communications services and the operation of the relevant network facilities and the provision of the communications services requires access to radio frequency spectrum:
 - (a) that person shall apply for a radio spectrum licence at the same time as the application for a network operator licence; and
 - (b) the Regulator shall consider both applications together and may refuse to issue the network operator licence if the applicant does not comply with the requirements for a radio spectrum licence.

91 Assignments of radio frequency spectrum

- (1) The Regulator shall ensure that any assignment of radio frequency spectrum in a radio spectrum licence is in accordance with the National Spectrum Plan, the National Frequency Allocation Table and any radio spectrum rules.
- (2) The Regulator shall establish and maintain a register of all assignments of radio frequency spectrum to licensees.

DIVISION 4 - MANAGEMENT OF SATELLITE ORBITAL SLOTS**92 Management of satellite orbital slots**

- (1) The Minister (or one or more persons nominated by the Minister) shall assume and be responsible for the overall management and allocation of the Government's orbital satellite slot interests.
- (2) The nominated person under sub-section (1) may be the Regulator.

PART IX - SOCIAL REGULATION**DIVISION 1 - CONTENT APPLICATIONS SERVICES****93 Application of Division 1 of Part VIII**

This Division only applies to content supplied by a licensee by means of a content applications service.

94 Broadcasting and content standards

The Minister may, by declaration, make standards for content applications services supplied in the Kingdom which shall apply to all licensees that supply a content applications service.

95 Matters for broadcasting and content standards

Broadcasting and content standards made by the Minister under section 71 may include but shall not be limited to:

- (a) the restrictions or prohibitions relating to the supply of unsuitable content or particular types of content;
- (b) the methods of classifying content;

- (c) the restrictions or prohibitions relating to advertising content;
- (d) the representation of Tongan culture and national identity; and
- (e) restrictions on the hours during which broadcasting services or services for delivering subscription content may be supplied.

96 Ministry may direct a licensee to comply

Subject to the approval of the Minister, the Ministry may direct a licensee or a class of licensees to:

- (a) comply with an approved content standard or with sections 98, 100, 101, 102, or 104; or
- (b) vary a content applications service provided in order that such a service shall be in compliance with the content standards or with sections 98, 100, 101, 102 or 104.

97 Ministry to have enforcement powers of the Regulator

For the purpose of enforcing section 96, the Minister shall have the powers granted to the Regulator in sections 159, 160, 161, 162, 163, 164 and 169 and references to the Regulator in those sections shall be read as references to the Minister.

98 Censorship

A licensee shall not supply any content which:

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

99 Defamation Act

For the purposes of the Defamation Act (Cap. 33), any content supplied by a licensee, in the case of:

- (a) audio content, shall be deemed to be in the form of sound or speech; and
- (b) audio visual content, shall be deemed to be in the form of visual, speech and sound.

100 Religion

Subject to the approval of Cabinet, the Minister or any person delegated by him, may by declaration require a licensee, to supply, without charge, divine worship content or other content of a religious nature during such periods as the Minister, or such person delegated by him, may determine.

101 National Interest

Subject to the approval of Cabinet, the Minister or any person delegated by him, may by declaration require a licensee, to supply without charge, such content relating to national interest matters as the Minister, or such person delegated by him, may determine.

102 Education

Subject to the approval of the Cabinet, the Minister or any person delegated by him, may by declaration require a licensee, to supply, either subject to a reasonable fee or without charge, such educational content as the Minister, or such person delegated by him, may determine.

103 National emergency

During any period of national emergency, a licensee shall place its facilities that are used to provide content applications services, free of charge, at the service of Government, and shall also supply competent persons to operate such facilities and provide content applications services.

104 Political and controversial content

Subject to the approval of Cabinet, the Minister may determine, by declaration, the extent and manner in which a licensee may provide political or controversial content.

105 Offence

A licensee who supplies content applications services contrary to the provisions of this Act or its subsidiary legislation, or its licence, commits an offence and shall, on conviction, be liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 3 years or both.

DIVISION 2 - INTERNET SERVICE PROVIDERS AND HOSTING SERVICE PROVIDERS

106 Take-down notices

- (1) The Ministry may, either in response to a complaint or on its own initiative, investigate whether a hosting service provider is hosting prohibited content.
- (2) If, after an investigation under sub-section (1), the Ministry is satisfied that content hosted by a hosting service provider is prohibited content, then the Ministry may give the hosting service provider a written notice (**take-down 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.
- (3) A hosting service provider shall comply with a take-down notice issued to it under sub-section (2) as soon as practicable, but in any event within 10 business days after the notice was received by the hosting service provider.
- (4) Each hosting service provider shall have in place a procedure for receiving and responding to take-down notices, including nominating a contact person to whom the Ministry shall send take-down notices.
- (5) As soon as practicable after a hosting service provider receives a take-down notice under sub-section (2), it shall, where practicable, notify the person who made the offending content accessible to the public that the offending content is subject to a take-down notice.
- (6) For the purpose of this section:
 - (a) **“computer data storage medium”** has the meaning given in section 2 of the Computer Crimes Act 2003;
 - (b) **“offending content”** means content subject to a take-down notice under sub-section (2);
 - (c) **“prohibited content”** means:
 - (i) content that contravenes the standards of section 98 of the Communications Act;
 - (ii) content that constitutes defamatory matter under the Defamation Act (Cap. 33); or
 - (iii) content that formed the basis of an action of under section 8E of the Computer Crimes Act 2003; and
 - (d) **“take-down notice”** has the meaning given in sub-section (2).

107 Opt-out filtering

- (1) Where an internet service provider supplies an internet service to a customer in the Kingdom, the Minister may direct the internet service provider to make family friendly filtering available to customers.
- (2) An internet service provider shall not charge a customer for family friendly filtering any amount greater than the total cost incurred by the internet service provider in obtaining, supplying and maintaining the family friendly filtering.
- (3) A customer may request that an internet service provider that supplies an internet service to that customer disable family friendly filtering applying to that internet service.
- (4) If an internet service provider receives a request under sub-section (3):
 - (a) the internet service provider shall take reasonable steps to verify that the request came from the customer and that the customer was at least 18 years of age at the time of the request; and
 - (b) if the internet service provider is satisfied of the matters referred to in paragraph (a), it shall disable the family friendly filtering applying to the relevant internet service and shall not charge the customer any fee that exceeds the internet service provider's reasonable costs of disabling the family friendly filtering.
- (5) Internet service providers shall take all reasonable steps to ensure that the family friendly filtering only denies or restricts access to content on the internet that is unlawful to possess, access, distribute or publish under the Laws of the Kingdom, and in doing so internet service providers shall take reasonable steps to ensure unrestricted access to bona fide scientific, medical and health information.
- (6) Subject to section 109, an internet service provider shall not use any information that:
 - (a) it obtains in the course of providing family friendly filtering to a customer; and
 - (b) relates to content accessed by that customer or the contents of that customer's communications,
for any purpose other than implementing the family friendly filtering for that customer.
- (7) For the purposes of this section:
 - (a) "**filtering**" means a product or service designed to restrict or deny access to a web page or other content available on the internet;
 - (b) "**family friendly filtering**" means filtering that is designed to deny or restrict access to content on the internet where it is unlawful to possess, access, distribute or publish that content under the Laws of the Kingdom.

108 Mandatory filtering

- (1) The Ministry may, by declaration, determine a scheme to prevent access to child pornography otherwise accessible on the internet.
- (2) Internet service providers shall comply with a scheme under sub-section (1).
- (3) In determining a scheme referred to in sub-section (1), the Ministry shall have regard to:
 - (a) the benefits of free communication and access to information on the internet;
 - (b) community expectations and Tongan cultural and national values;
 - (c) the technical feasibility of the scheme;
 - (d) the costs and other impacts on internet service providers and end users of implementing the scheme; and
 - (e) the need to ensure the scheme is as transparent as possible and that there are appropriate avenues to ensure that access to domains that do not contain child pornography remains unrestricted.
- (4) For the purposes of this section, "**child pornography**" has the meaning given in section 115A of the Criminal Offences Act.

109 Internet service providers shall report child pornography

If an internet service provider or hosting service provider:

- (a) becomes aware that a communications service provided by the internet service provider or hosting service provider can be used to access material act a particular webpage, website or internet protocol address that the internet service provider or hosting service provider has reasonable grounds to believe is child pornography; or
 - (b) is advised of a webpage, website or internet protocol address where child pornography may be stored or made available to the public,
- the internet service provider or hosting service provider shall, within a reasonable time of becoming aware or being informed of those details, report those details to Tonga Police.

PART X - ECONOMIC REGULATION

DIVISION 1 - GENERAL COMPETITION PRACTICE

SUBDIVISION A – GENERAL

110 Definitions

For the purposes of this Division:

- (a) **"licensee"** means a person or a company to which this Division applies in accordance with section 111 and includes all related companies of that person or company;
- (b) **"communications service"** means a service that incorporates assets, infrastructure or technology, the ownership, operation or use of which requires a licence issued under the Act;
- (c) **"communications services market"** means, subject to section 112, a market within the Kingdom for the supply or acquisition of a relevant product or service;
- (d) **"related company"** has the meaning given in the Companies Act 1995;
- (e) **"relevant person"** includes a person or a class of persons; and
- (f) **"relevant product or service"** means a communications service, or any product or service used in connection with a communication service.

111 Application of this Division

This Division applies to:

- (a) a licensee or a person issued with a licence in accordance with this Act; and
- (b) a person or a class of persons engaged in conduct that:
 - (i) requires a licence in accordance with the Act; or
 - (ii) would require a licence mentioned in sub-section (a) but for —
 - (A) an exemption from the requirement to hold a licence prescribed in accordance with the Act; or
 - (B) a declaration by the Minister that the person or class of persons is exempt from the requirement to hold a licence under the Act.

112 Communications services markets

- (1) For the purposes of this Division, the definition of a communications services market for a particular communications service or the product or service used in connection with a relevant product or service (**applicable service**) shall include:
 - (a) the applicable service; and
 - (b) all other products or services, that are reasonably substitutable for the applicable service, having regard to:
 - (i) the nature and function of the applicable service;
 - (ii) the geographic areas in which the applicable service is supplied or acquired; and
 - (iii) the relevant persons that acquire or supply the applicable service.
- (2) Subject to sub-section (3) and without limiting sub-section (1), the following shall each be considered communications services markets for the purposes of this Division:
 - (a) wholesale mobile voice call termination provided in the Kingdom by a licensee to other network operators or service providers; and
 - (b) wholesale local access in the Kingdom.
- (3) The Regulator may for the purposes of this Division, having regard to the requirements of sub-section (1), determine, by declaration, that:
 - (a) a particular market shall be considered to be a communications services market; or
 - (b) a market referred to in sub-sections (2)(a), (2)(b) or (3)(a) shall not be considered to be a communications services market.
- (4) Before making a declaration under sub-section (3), the Regulator shall carry out a consultation under section 23.
- (5) The Regulator may hold a consultation under sub-section (4) either:
 - (a) on its own initiative; or
 - (b) where the Regulator:
 - (i) has received a written request from any person asking the Regulator to hold such a consultation; and
 - (ii) decides to hold a consultation after having regard to:
 - (A) whether the request under sub-paragraph (i) was made in good faith; and
 - (B) any other matter it thinks is relevant.
- (6) If the Regulator receives a written request under sub-section (5)(b)(i), the Regulator shall:
 - (a) within 10 business days, publish a statement on its website notifying that it has received the request; and

- (b) if the Regulator decides not to hold a consultation, publish a statement notifying of its decision and of the reasons for the decision.

113 Substantial market power

- (1) For the purposes of this Division, in determining whether a licensee has substantial market power in a communication services market, regard shall be had to:
 - (a) the terms of any licence under this Act;
 - (b) the extent to which the conduct of the licensee is constrained by:
 - (i) any competitors, or potential competitors, of the licensee; or
 - (ii) any person that the licensee:
 - (A) supplies goods or services to; or
 - (B) acquires goods or services from;
 - (c) the licensee's market share in that or any other communications services market;
 - (d) the power derived from any agreement, arrangement or understanding the licensee has entered into with the Regulator, the Government of Tonga, another licensee or any other person; and
 - (e) whether the licensee has access to any technology or infrastructure that is not readily available to any other person.
- (2) The list of matters that shall be taken into account in sub-section (1) does not preclude the consideration of any other relevant matter in determining whether a licensee has substantial market power in a communications services market under this Division.
- (3) In the absence of sufficient evidence to the contrary, a licensee shall be presumed to have substantial market power in a communications services market if the gross revenue derived by the licensee from the products or services supplied by the licensee in that communications services market is greater than or equal to 60 percent of the total revenue derived by all market participants in the relevant communications services market.
- (4) Nothing in this section precludes a finding that two or more licensees possess substantial market power within the same communications services market.
- (5) For the purposes of this section:
 - (a) "**gross revenue**" of a licensee shall be calculated as the sum of the market value of all products or services supplied in the relevant communications services market by the licensee; and
 - (b) "**total revenue**" derived by all market participants in the relevant communications services market shall be calculated as the sum of the market value of all products or services supplied in the relevant communications services market.

114 Competition guidelines

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

SUBDIVISION B – PROHIBITIONS**115 General prohibition on anti-competitive conduct**

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

116 Anti-competitive agreements

- (1) A licensee contravenes this Division if it enters into or gives effect to any agreement, arrangement or understanding with any one or more other licensees which has the purpose, or has or is likely to have the effect of:
 - (a) fixing, controlling or maintaining the prices for, or any discount, allowance, credit or rebate for, any relevant product or service;
 - (b) allocating as between the licensees, or any of them:
 - (i) the customers or potential customers;
 - (ii) the suppliers or potential suppliers;
 - (iii) the geographic areas, of a communications services market; or
 - (c) preventing, restricting or limiting:
 - (i) the supply or acquisition of a relevant product or service; or
 - (ii) access to a relevant product or service, by any person or class of persons;
 - (d) ensuring that, in relation to a request for a bid or tender from a person for the supply or acquisition of any relevant product or service, one or more of the licensees that is a party to the agreement, arrangement or understanding:
 - (i) does not submit a bid, or does not submit a bid that is likely to be successful; or
 - (ii) submits a bid that is more likely to be successful than any other licensee that is a party to the agreement, arrangement or understanding.
- (2) Sub-section (1) does not apply to a licensee that enters into, or gives effect to, a provision that is:

- (a) in a joint venture agreement between one or more other licensees that governs a joint venture for the supply or acquisition of a relevant product or service; and
- (b) necessary for the purposes of the joint venture mentioned in paragraph (2)(a).

117 Prohibition on anti-competitive practices

- (1) A licensee shall not supply a relevant product or service on the condition that the person acquiring the relevant product or service shall agree to, or shall:
 - (a) acquire any other product or service from another person; or
 - (b) not acquire any product or service from any other person.
- (2) A licensee shall not supply a relevant product or service to a relevant person on the condition that the relevant person shall not:
 - (a) supply any relevant product or service to a person or class of persons; or
 - (b) acquire any relevant product or service from a person or class of persons.
- (3) A licensee shall not refuse to supply a relevant product or service to a relevant person for the reason that the relevant person:
 - (a) has supplied or acquired; or
 - (b) has not agreed not to supply or acquire,
any goods or services from another licensee.
- (4) A licensee shall not supply a relevant product or service, to a person with a requirement that the person shall not re-supply that relevant product or service at a price:
 - (a) other than; or
 - (b) lower than,
a price specified by the licensee.
- (5) A licensee shall have imposed a requirement on a person in contravention of sub-section (4) if it:
 - (a) induces, or attempts to induce, a person by way of a commercial or other incentive;
 - (b) makes it known that the licensee shall withhold supply of any good or service if a person does not agree; or
 - (c) makes it known that a person shall suffer a commercial detriment if the person does not agree, not to re-supply a relevant product or service at a price that is:
 - (d) other than; or
 - (e) lower than,
a price specified by the licensee.

- (6) A licensee does not contravene sub-sections (1), (2), (3), or (4) in respect of any conduct if the licensee 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 communications services market.

118 Prohibition on misuse of substantial market power

- (1) A licensee with substantial market power in a communications services market shall not use that substantial market power for the purpose of:
 - (a) eliminating or substantially damaging another licensee in that market, or in any other communications services market;
 - (b) preventing the entry of any other person into that market or any other communications services market;
 - (c) deterring any other licensee from engaging in competitive conduct in that or in any other communications services market.
- (2) In determining whether a licensee has contravened sub-section (1), regard may be had to any conduct involving the licensee:
 - (a) supplying a relevant product or service at a price that is equal to or less than the cost to the licensee of supplying that relevant product or service over a sustained period;
 - (b) refusing to supply a person with a relevant product or service that is essential to the supply of another relevant product or service in the same or any other communications services market;
 - (c) supplying a person with a relevant product or service referred to in paragraph (2)(b) on terms that would prevent the person from supplying another product or service in the same or any other communications services market at a competitive price; or
 - (d) refusing to supply on a timely basis such technical information that is necessary for a person to supply a relevant product or service.
- (3) The Regulator may, by declaration, define "**a sustained period**" for the purposes of sub-section (2).

119 Prohibition on discrimination

- (1) Subject to sub-section (3), a licensee with substantial market power in a communications services market shall not, in the supply of any relevant product or service (**relevant supply**), make the relevant supply to a person on terms that are less favourable than the terms on which the same relevant supply is made to another person.
- (2) For the purposes of determining whether a licensee has contravened sub-section (1), regard may be had to the following terms on which the relevant supply is made by a licensee to a person:

- (a) any fee or charge for the relevant supply;
 - (b) the performance characteristics of the relevant supply;
 - (c) the timeliness with which the relevant supply is made; and
 - (d) any conditions or restrictions on which the relevant supply is provided to the person by the licensee.
- (3) Nothing in this section prevents a licensee with substantial market power from making a relevant supply to a particular person on terms different to that on which a relevant supply is made to another in person in circumstances where the difference results from the licensee making reasonable allowance for:
 - (a) a difference in the quantity in which the relevant supply is made;
 - (b) a difference in transmission capacities needed for the relevant supply;
 - (c) a difference in the geographic location the relevant supply is made to;
 - (d) the length of time over which the relevant supply is made; or
 - (e) any differences in the performance characteristics of the relevant supply.

120 Consolidations

- (1) A licensee shall not, directly or indirectly, acquire any interest (a prohibited interest) in:
 - (a) any other licensee; or
 - (b) the assets of any other licensee, without the prior written consent of the Regulator.
- (2) For the purposes of sub-section (1), a prohibited interest includes any legal or beneficial interest acquired by a licensee that satisfies the requirements of sub-sections (1)(a) or (1)(b).
- (3) A licensee or a person acting on behalf of a licensee may make a written application to the Regulator to provide its written consent for a licensee to obtain a prohibited interest.
- (4) The Regulator may make rules regarding what information shall be included in an application in order for it to be a valid application for written consent in accordance with sub-section (3).
- (5) Upon receipt of a valid application, the Regulator shall provide its written consent for a licensee to acquire a prohibited interest unless the Regulator is satisfied that the acquisition by the licensee of the prohibited interest:
 - (a) shall have the effect; or
 - (b) is materially likely to have the effect, of substantially lessening competition in a communications services market.
- (6) Before making rules under sub-section (4), the Regulator shall carry out a consultation under section 23.

121 Authorisation

- (1) Subject to this Division, the Regulator may, upon application by a licensee, grant an authorisation to a licensee in respect of any conduct that would or may contravene this Division, other than conduct which would or may contravene section 118(1) or section 120.
- (2) A licensee shall not contravene this Division in respect of conduct which is the subject of an authorisation that has been granted to the licensee in accordance with this section.
- (3) An application for authorisation in accordance with this section shall:
 - (a) be submitted to the Regulator in a manner and in a form;
 - (b) be accompanied by such documents and supporting information; and
 - (c) be accompanied by the applicable fee (if any),
as determined by the Regulator under the rules made in accordance with sub-section (4).
- (4) The Regulator shall make rules specifying the procedure to be followed for the determination of an application for authorisation in accordance with this section.
- (5) Before making rules under sub-section (4), the Regulator shall carry out a consultation under section 23.
- (6) The Regulator shall keep a register of all:
 - (a) applications for authorisations received;
 - (b) authorisations granted; and
 - (c) authorisations revoked,
by the Regulator.
- (7) The Regulator shall not grant an application for authorisation submitted by a licensee in accordance with this section unless the Regulator is satisfied that, in all the circumstances, the public benefits to be derived from the conduct that is the subject of the authorisation application are likely to outweigh the public detriments that are likely to result from that conduct.
- (8) An authorisation granted by the Regulator in accordance with this section shall commence on the date specified in the authorisation and remain in force for a period of:
 - (a) 2 years; or
 - (b) such other period that is less than 2 years as the Regulator may decide in its discretion.
- (9) During the period in which an authorisation is in force, the Regulator may vary an authorisation:
 - (a) upon application by the licensee that holds the authorisation; and

- (b) if the Regulator is satisfied that it is appropriate to do so, having regard to the matters in sub-section (7) and any other relevant considerations.
- (10) During the period in which an authorisation is in force, the Regulator may revoke an authorisation if the Regulator is satisfied:
 - (a) the authorisation was granted on the basis of evidence or information which was false or misleading in a material way;
 - (b) a condition on which the authorisation was expressed to be granted has not been, or is no longer, complied with; or
 - (c) there has been a material change in the circumstances that led to the Regulator granting the authorisation.
- (11) Nothing in this section precludes a licensee from applying for an authorisation for conduct that has been the subject of an authorisation that:
 - (a) has expired; or
 - (b) was revoked in accordance with sub-section (10).

DIVISION 2 - ACCESS TO DECLARED SERVICES

SUBDIVISION A – DECLARED SERVICES

122 Objectives of Division 2

The objectives of Division 2 are:

- (a) to promote effective competition in markets for communications services for the long-term benefit of end users of communications services within Tonga by providing for the regulation of the supply of certain communications services between licensees;
- (b) to promote the economically efficient use of, and the economically efficient investment in, the communications facilities by which communications services may be supplied; and
- (c) to provide for access on an equitable and non-discriminatory basis and costbased interconnection for licensees, and to promote end-to-end connectivity of separate communications networks.

123 Public inquiry into declared services

- (1) The Regulator may hold a public inquiry into whether:
 - (a) an eligible service shall be declared under section 125 (including the appropriate terms of that declaration); or
 - (b) an existing declaration under section 125 or 127 shall be revoked or varied (including the appropriate terms of that revocation or variation).

- (2) The Regulator may hold a public inquiry under sub-section (1) either:
 - (a) on its own initiative; or
 - (b) where the Regulator:
 - (i) has received a written request from any person asking the Regulator to hold such a public inquiry; and
 - (ii) decides to hold a public inquiry after having regard to:
 - (A) the objectives in section 122;
 - (B) whether the request under sub-section (i) was made in good faith; and
 - (C) any other matter it thinks is relevant.
- (3) If the Regulator receives a written request under sub-section (2)(b)(i), the Regulator shall:
 - (a) within 10 business days, publish a statement on its website notifying that it has received the request; and
 - (b) if the Regulator decides not to hold a public inquiry, publish a statement notifying of its decision and of the reasons for the decision.
- (4) The Regulator shall hold a public inquiry under sub-section (1) upon receipt of a written direction from the Minister directing the Regulator to do so.
- (5) After deciding to hold a public inquiry under sub-section (2) or receiving a written direction under sub-section (4), the Regulator:
 - (a) shall publish a notice of:
 - (i) the fact that it is holding the inquiry;
 - (ii) the period during which the inquiry is to be held;
 - (iii) the nature of the matter to which the inquiry relates;
 - (iv) the period within which, and the form in which, members of the public may make submissions to the Regulator about that matter;
 - (v) the matters that the Regulator would like such submissions to deal with; and
 - (vi) the address or addresses to which submissions may be sent.
 - (b) may publish a discussion paper that:
 - (i) identifies the issues that, in the Regulator's opinion, are relevant to that matter; and
 - (ii) sets out such background material about, and discussion of, those issues as the Regulator thinks appropriate;
 - (c) shall consider all submissions that have been received within the period, and are substantially in the form, notified under sub-section (5)(a)(iv); and

- (d) after considering all submissions that satisfy sub-section (5)(c), shall publish a report setting out its findings as a result of the inquiry and give a copy of the report to the Minister.
- (6) For the purposes of sub-section (5), the period within which members of the public may make submissions to the Regulator shall be no less than 20 business days.

124 Declared services recommendation

- (1) The Regulator may, by notice in writing, recommend that the Minister declare a particular eligible service or revoke or vary an existing declaration if:
 - (a) the Regulator has held a public inquiry under section 123 about the proposal to make, revoke or vary the declaration (as applicable);
 - (b) the Regulator has complied with the requirements section 123; and
 - (c) the Regulator is satisfied that the making, revocation or variation of the declaration (as applicable) satisfies the declaration criteria.
- (2) In considering whether the making or variation of a declaration satisfies the declaration criteria under sub-section (1)(c), the Regulator may have regard to whether the making or variation (as applicable) of the declaration is necessary to overcome the substantial market power of one or more licensees in a market for an eligible service.
- (3) A recommendation under sub-section (1) shall be made within 6 months of the publication of the report under section 123(5)(d).
- (4) A recommendation to make or vary a declaration under sub-section (1) shall specify the terms of the declaration (including the period for which the eligible service will be a declared service).

125 Ministerial declaration of an eligible service

- (1) On receiving a declaration recommendation from the Regulator, the Minister shall, not before 10 business days after receiving the declaration recommendation, either:
 - (a) by declaration, accept the declaration recommendation and (as applicable):
 - (i) specify the eligible service to be a declared service on the terms recommended under section 124;
 - (ii) vary the existing declaration on the terms recommended under section 124; or
 - (iii) revoke the existing declaration; or
 - (b) reject the declaration recommendation and not declare the eligible service or vary or revoke the existing declaration (as applicable).

- (2) In making a decision under sub-section (1), the Minister:
 - (a) shall have regard to the declaration criteria and the declaration recommendation, including any report under section 123(5)(d); and
 - (b) may have regard to such other matters as the Minister considers are relevant, provided that the Minister identifies those other matters in the Minister's published decision under sub-section (4).
- (3) If the Minister does not, within 40 business days after receiving the declaration recommendation, make a decision to accept or reject the declaration recommendation, then the Minister is deemed, at the end of that 40 business day period, to have accepted that recommendation and made the declaration.
- (4) The Minister shall notify the Regulator in writing of a decision under this section as soon as practicable after making that decision and, if the Minister's decision is to reject the declaration recommendation, the Minister shall publish reasons for the rejection within 20 business days of that rejection.

126 Declaration criteria

The "**declaration criteria**" are as follows:

- (a) the declaration of the eligible service:
 - (i) will further the achievement of the objectives set out in section 122;
 - (ii) is necessary for the promotion of effective competition in at least one market other than the market for the eligible service; and
 - (iii) is consistent with any general policy directions notified to the Regulator by the Minister under section 21;
- (b) in the case of eligible services that are wholesale access services:
 - (i) the wholesale access service is supplied in whole or in part via a communications facility that cannot feasibly be substituted, as a matter of commercial reality, via another communications facility in order to supply that wholesale access service;
 - (ii) access to the wholesale access service (as a consequence of declaration) is technically feasible having regard to the technology available or likely to become available, the reasonableness of the costs involved and the effect of supplying the communications services on the integrity, operation or performance of other communications services or facilities; and
 - (iii) the declaration of the wholesale access service would not materially compromise the incentives to innovate or incentives for efficient investment in any communications facility over which the wholesale access service may be supplied;
- (c) in the case of eligible services that are facilities access services:

- (i) there is likely to be significant demand from end users or potential end users for the communications services for which access to the passive facility is required;
- (ii) the passive facility is essential for the provision of communications services;
- (iii) access to the facilities access service would avoid inefficient replication of underlying facilities that may be efficiently shared;
- (iv) the lack of access to the passive facility presents a barrier to entry into the market of a new licensee or to expansion of an existing licensee; and
- (v) the declaration of the facilities access services would not materially compromise the incentives to innovate or incentives for efficient investment in any passive facility for which access is sought.

127 Deemed declared services

- (1) As soon as practicable after the commencement of this section, the Regulator shall, by declaration, deem the following services to be declared services:
 - (a) on such terms as it thinks fit having regard to the declaration criteria:
 - (i) a domestic fixed terminating access service;
 - (ii) a domestic mobile terminating access service;
 - (iii) access to and interconnection with international cable capacity;
 - (iv) co-location space and physical access to international cable landing stations (including essential services at those stations);
 - (v) wholesale carriage over backhaul fibre from any international cable landing station to the first exchange at which interconnection is offered; and
 - (vi) a facilities access service for towers, poles, masts or similar structures used to supply a radiocommunications service; and
 - (b) on the terms which are to be set out in the relevant universal service agreement, a facilities access service for universal service facilities,.
- (2) The declaration of an eligible service under this section can be amended or revoked under sections 123 to 125, but only after 5 years of the commencement of this section.

128 Register of declared services

- (1) The Regulator shall keep a register in relation to declarations under section 34.
- (2) The register under sub-section (1) shall:
 - (a) include the following:

- (i) particulars of all such declarations (including declarations that have been revoked);
- (ii) particulars of variations and revocations of such declarations; and
- (iii) copies of reports prepared under section 123(5)(d);
- (b) be maintained by electronic means; and
- (c) be published by the Regulator on its website.

SUBDIVISION B – SUPPLY OF DECLARED SERVICES

129 Access to facilities and services

- (1) Subject to sub-sections (2) and (3), a providing licensee shall, if requested in writing to do so by a requesting licensee, supply the requesting licensee a declared service.
- (2) The providing licensee is not required to comply with sub-section (1) unless:
 - (a) where the requesting licensee's request under sub-section (1) is for the supply of a facility access service, the access is for the sole purpose of enabling the requesting licensee to:
 - (i) provide competitive communications facilities or communications services; or
 - (ii) establish its own communications facilities;
 - (b) where the requesting licensee's request under sub-section (1) is for the supply of a wholesale access service, the access is for the sole purpose of enabling the requesting licensee to supply communications services, or content applications services; and
 - (c) the requesting licensee gives the providing licensee reasonable notice that the requesting licensee requires the access.
- (3) Nothing in this Division imposes an obligation on a providing licensee who receives a request from a requesting licensee for the supply of a declared service:
 - (a) to the extent that the obligation would:
 - (i) prevent the providing licensee or a licensee who already has access to the declared service from obtaining a sufficient amount of the service to be able to meet their reasonably anticipated requirements over the following 24 months measured at the time when the request was made; or
 - (ii) prevent a person from obtaining, by the exercise of a right under a contract that was in force at the time when the request was made, a sufficient level of access to the declared service to be able to meet the person's actual requirements; or

- (b) that would require a providing licensee to supply a declared service if there are reasonable grounds to believe that:
 - (i) the requesting licensee would fail, to a material extent, to comply with the terms and conditions on which the providing licensee supplies the declared service; or
 - (ii) the requesting licensee would fail, in connection with that obligation, to protect the integrity of a communications network or the safety of individuals working on, or using services supplied by means of, a communications network or a communications facility.
- (4) Examples of grounds for the belief in sub section (3)(b)(i) include:
 - (a) evidence that the requesting licensee is not creditworthy; or
 - (b) repeated failures by the requesting licensee to comply with the terms and conditions on which the same or similar access has been provided (whether or not by the providing licensee).

130 Standard obligations for supply of declared services

- (1) Where a providing licensee is required to supply a declared service to a requesting licensee under section 129, the providing licensee shall:
 - (a) meet all reasonable requests for interconnection at any technically feasible point where interconnection would not affect the security, performance or efficiency of the providing licensee's network;
 - (b) maintain end-to-end operability to facilitate the provision of communications services by the requesting licensee to its customer notwithstanding that the customer is directly connected to the providing licensee's communications network;
 - (c) supply the declared services on terms that do not unfairly discriminate between requesting licensees and are of at least the same or more favourable technical standard and quality as those the providing licensee provides for its own communications services or those of its affiliates;
 - (d) provide access to communications facilities, communications networks, software and services (including colocation):
 - (i) as is reasonably required for the requesting licensee to interconnect and provide communications services to its customer; and
 - (ii) in a manner that is sufficiently unbundled so that the requesting licensee does not need to pay for communications facilities, communications networks, software and services that it does not need to provide communications services to its customers;
 - (e) take all reasonable steps to ensure that the requesting licensee receives, in relation to the declared service supplied to the requesting licensee:

- (i) fault detection, handling and rectification; and
- (ii) ordering and provisioning,
of a technical and operational quality and timing that is equivalent to that which the providing licensee provides to itself or its affiliates;
- (f) only use information received from a requesting licensee for the purposes for which it was supplied to the providing licensee and not disclose the information or otherwise use the information to obtain a competitive advantage;
- (g) make available to, upon request from a requesting licensee, in a timely manner all information, including technical specifications and other commercially relevant information, reasonably required for interconnection and for the requesting licensee to provide communication services to its customers; and
- (h) provide, upon request from a requesting licensee, such billing information in connection with matters associated with, or incidental to, the supply of the declared service as is reasonably required to enable the requesting licensee to provide accurate and timely billing information to customers of its communications services.

131 Terms of access

The terms and conditions of the supply of declared services under sections 129 and 130 are to be set in one or more of the following ways:

- (a) by agreement between the providing licensee and the requesting licensee;
- (b) by entry into an approved reference offer under section 138; or
- (c) to the extent that the requesting licensee's request under section 129 is for a declared service that is not covered in an approved reference offer submitted by the providing licensees, by arbitration under section 133.

132 Preparation of interconnection and access rules

- (1) The Regulator may make rules about interconnection and access, setting out:
 - (a) the pricing principles for declared services that promote the achievement of the objects of this Act and of this Part, including, if appropriate, acceptable price ranges;
 - (b) any minimum requirements for agreements for the supply of declared services;
 - (c) any limitations that may apply to the term of such agreements or to parts of such agreements;
 - (d) any technical standards for interconnection and access; and

- (e) such other matters that are relevant and necessary for the purposes of interconnection and access.
- (2) Before making rules under sub-section (1), the Regulator shall carry out a consultation under section 23 of the Act.

SUBDIVISION C – ARBITRATION AND NEGOTIATED AGREEMENTS

133 Arbitration

- (1) Where:
 - (a) a providing licensee is required to supply a declared service to a requesting licensee under section 129;
 - (b) the providing licensee and the requesting licensee cannot agree on terms and conditions of the supply of the declared service; and
 - (c) the terms and conditions do not relate to the supply of a declared service covered in an approved reference offer submitted by the providing licensees,
either licensee may, in writing, request that the Regulator determine the terms and conditions in an arbitration under this section.
- (2) The Regulator shall only conduct arbitration under this section where it is satisfied that the licensees have had reasonable opportunity to negotiate on the terms and conditions for the supply of the declared services and such commercial negotiations between the licensees have failed.
- (3) Where the Regulator accepts the request for arbitration under sub-sections (1) and (2):
 - (a) the Regulator shall notify both parties in writing of its acceptance of the request for arbitration;
 - (b) the providing licensee and requesting licensee shall have 2 months from the date of the notice under paragraph (a) (unless the Regulator, with the consent of both licensees, determines otherwise) to provide submissions to the Regulator;
 - (c) the Regulator shall provide the providing licensee and requesting licensee with copies of each other's submissions;
 - (d) the providing licensee and requesting licensee shall have 10 business days from receipt of the other licensee's submissions under paragraph (c) (unless the Regulator, with the consent of both licensees, determines otherwise) to provide the Regulator with a written reply to the other licensee's submission; and
 - (e) the Regulator shall, within 6 months of the notice under paragraph (a), determine the terms and conditions of the supply of declared services

under section 131(c) and notify the providing licensee and requesting licensee of its decision and those terms and conditions.

- (4) In determining terms and conditions under sub-section (3)(e), the Regulator shall have regard to:
 - (a) written submissions and replies made by the parties to the arbitration in accordance with sub-section (3);
 - (b) the interconnection and access rules;
 - (c) the requirements of sections 129 and 130;
 - (d) any relevant approved reference offers submitted by the access provider or any other licensee under Subdivision D; and
 - (e) whether the terms and conditions are reasonable having regard to the following matters:
 - (i) the extent to which the terms and conditions are likely to further the achievement of the objectives in section 122;
 - (ii) the legitimate business interests of the licensees concerned, and the provider licensee's investment in facilities used to supply the declared service concerned;
 - (iii) the interests of any persons who have rights to use the declared service concerned;
 - (iv) the operational and technical requirements necessary for the safe and reliable operation of communications services and facilities; and
 - (v) terms and conditions under which similar communications services are offered in other jurisdictions.
- (5) Subject to sub-sections (3) and (4), the Regulator may, by written notice, set the rules applying to an arbitration under this section.
- (6) In determining terms and conditions for access under this section for the purposes of section 131(c), the Regulator may determine that those terms and conditions shall take effect from the date that a licensee requested the Regulator determine the terms and conditions under section 133(1).
- (7) A licensee shall file a copy of any agreement that is on terms and conditions determined under this section within 10 business days of entry into the agreement.

134 Negotiated agreements

- (1) If a licensee supplies a declared service to another licensee in accordance with an agreement that was neither:
 - (a) an agreement with terms and conditions determined under section 133; or
 - (b) entered into in accordance with section 131(b),

the Regulator may, by written notice, direct the licensees to amend the agreement to make it consistent with the matters referred to in section 133(4)(b) to (c).

- (2) Before issuing a written notice under sub-section (1), the Regulator shall:
 - (a) notify the parties to the agreement that it is considering exercising its power under sub-section (1);
 - (b) provide the parties with a reasonable opportunity to make submissions to the Regulator; and
 - (c) consider all submissions that have been received in accordance with sub-section (2)(b).
- (3) The parties to the agreement shall comply with a notice under sub-section (1) or terminate the agreement.
- (4) A licensee that is a party to an agreement referred to in sub-section (1) shall file a copy of that agreement to the Regulator:
 - (a) where the agreement was entered into before the commencement of this section, within 20 business days of the commencement of this section;
 - (b) where the agreement relates to a declared service that was not a declared service at the time the agreement was entered into, within 20 business days of the declaration; and
 - (c) in any other case, within 10 business days of entry into the agreement.

SUBDIVISION D – REFERENCE OFFERS

135 Submission of proposed reference offers

- (1) The Regulator may, by written notice, direct a providing licensee to produce and submit (within a specified time) a proposed reference offer for a declared service consistent with the matters referred to in section 133(4)(b) to (e).
- (2) A licensee may, on its own initiative, submit a proposed reference offer for an eligible service.

136 Review of proposed reference offers

- (1) The Regulator shall undertake a public consultation about any proposed reference offer submitted by a licensee under sections 135 or 137.
- (2) In undertaking the public consultation under sub-section (1), the Regulator shall publish a notice of:
 - (a) the fact that it is holding the consultation;
 - (b) the period during which the consultation is to be held;
 - (c) the nature of the matter to which the consultation relates;

- (d) the period within which, and the form in which, members of the public may make submissions to the Regulator about that matter;
 - (e) the matters that the Regulator would like such submissions to deal with; and
 - (f) the address or addresses to which submissions may be sent.
- (3) For the purposes of sub-section (2), the period within which members of the public may make submissions to the Regulator shall be no less than 20 business days.
- (4) After completing the public consultation in sub-section (1) and (2) or receiving a proposed reference offer under sub-section (6), the Regulator may, by written notice to the licensee:
 - (a) approve the proposed reference offer;
 - (b) reject the proposed reference offer; or
 - (c) direct the providing licensee submit a revised proposed reference offer under section 135(1) within a specified time.
- (5) In deciding how to exercise its power under section 136(4), the Regulator shall have regard to:
 - (a) all submissions that:
 - (i) have been received within the period notified under subsection (2)(d); and
 - (ii) are substantially in the form notified under sub-section (2)(d); and
 - (b) the matters referred to in section 133(4)(b) to (e).
- (6) If a licensee fails to comply with sections 135(1) or 136(4)(c) in good faith, the Regulator may by written notice to the licensee:
 - (a) determine an approved reference offer to apply for that licensee, having regard to the matters referred to in sub-section (5); or
 - (b) direct the licensee to take specified action (such as to engage a consultant to prepare a proposed reference offer for reassessment by the Regulator under sub-section (4)).
- (7) A licensee shall comply with a direction under sub-section (6)(b) except where the licensee no longer supplies or intends to supply declare services (to itself or any other person).
- (8) The Regulator shall publish reasons for any rejection of a proposed reference offer under sub-section (4)(b), determination of an approved reference offer under sub-section (6)(a) or a direction under sub-sections (4)(c) or (6)(b).

137 Reassessing and varying reference offers

- (1) The Regulator may, upon request of any person or on its own initiative, reassess an approved reference offer submitted by a licensee if the Regulator reasonably

believes that the approved reference offer is inconsistent with the matters referred to in section 133(4)(b) to (e).

- (2) If the Regulator decides to reassess an approved reference offer under subsection (1), the Regulator and the licensee shall comply with the process under section 136 as if the approved reference offer was a proposed reference offer submitted under section 135.
- (3) A licensee may submit a variation to an approved reference offer submitted by that licensee, in which case:
 - (a) subject to paragraph (b), the Regulator and the licensee shall comply with the process under section 136 as if the variation was a proposed reference offer submitted under section 135; or
 - (b) if the Regulator is satisfied that the variation would have no more than a minor detrimental impact on requesting licensees or other licensees, the Regulator may approve the variation without engaging in consultation under section 136, but shall provide licensees that it considers may be affected with a reasonable opportunity to comment on the proposed variation.

138 Publication and entry into approved reference offers

- (1) A licensee shall:
 - (a) publish all of its approved reference offers on its website; and
 - (b) where a licensee requests a copy of an approved reference offer, provide that licensee with a copy of that approved reference offer within 5 business days of the request.
- (2) Where a requesting licensee notifies a providing licensee that it wishes to enter into an approved reference offer submitted by that licensee, the providing licensee shall:
 - (a) within 10 business days of the receipt of the notice from the requesting licensee enter into an agreement with the requesting licensee in the form of the providing licensee's approved reference offer; and
 - (b) within 10 business days of entry into the agreement referred to in paragraph (a), file that agreement with the Regulator.

SUBDIVISION E – REGISTERS

139 Register of approved reference offers

The Regulator shall maintain a register of all approved reference offers.

140 Register of access agreements

The Regulator shall maintain a register of all access agreements.

141 Register of agreements for the supply of eligible services

- (1) A providing licensee shall file with the Regulator all agreements for the supply of eligible services (other than access agreements) within 10 business days after they are entered into.
- (2) The Regulator shall maintain a register of all agreements referred to in subsection (1) but shall not make the register or those agreements available to the public.

DIVISION 3 - COMMUNICATIONS SECTOR PERFORMANCE MONITORING**142 Regulator to monitor licensees**

The Regulator shall be responsible for monitoring the operational performance and activities of licensees.

143 Reporting to Minister

- (1) The Minister may direct the Regulator by written notice to prepare and submit a report to him on the performance or activities of licensees.
- (2) The Regulator must comply with a written notice under sub-section (1).

144 Contents of report

A report prepared under section 143 may include but shall not be limited to:

- (a) industry development matters in general;
- (b) the activities undertaken by licensees;
- (c) service quality standards; and
- (d) any other matter as may be required by the Minister.

DIVISION 4 - INQUIRIES AND INVESTIGATIONS.**145 Minister may direct Ministry or Regulator to hold inquiry**

The Minister may direct the Ministry or Regulator, by written notice, to hold an inquiry on matters:

- (a) of a general nature which relate to the administration of this Act,
- (b) which relate to a specific issue connected with the administration of this Act; or
- (c) which will otherwise serve the objectives of this Act.

146 Ministry may initiate an inquiry

The Minister may only initiate an inquiry if it is satisfied that the matter is of significant interest to either the public or current or prospective licensees.

147 Minister may make rules of inquiry

The Minister may make rules for the conduct of an inquiry under section 145 and section 146.

DIVISION 5 - APPLICATION OF CONSUMER PROTECTION ACT

148 Consumer Protection Act

- (1) The Consumer Protection Act shall not apply to any conduct to which this Part or Division 1 of Part VI applies, or would apply but for an exception or an authorisation under this Division.
- (2) The Regulator and the Consumer Affairs Division may enter into a binding memorandum of understanding or other arrangement setting out the division of responsibilities between the two bodies and specifying procedures for cooperating, sharing information and for resolving any potential overlap or uncertainty in relation to their respective functions and powers under this Act and any other legislation affecting the communications sector (including the Consumer Protection Act).
- (3) In the event of the enactment of any legislation amending or repealing the Consumer Protection Act in whole or in part, the Regulator shall, with the approval of the Minister, conduct a review of this Division to determine whether any consequential amendments are required to this Division.

PART XI - MISCELLANEOUS

DIVISION 1 - INSTALLATION OF COMMUNICATIONS FACILITIES, ACCESS TO LAND, ETC.

149 Power of entry

A network operator or its agent:

- (a) may enter upon lands for the purpose of erecting, removing, fixing, altering or examining any communications facility and may remain on the land for such reasonable time and do all such works and things as may be expedient for the purpose of this Act;
- (b) may survey and take levels of any such land or any part thereof and also excavate and remove any earth, stone, soil, sand and gravel whatsoever and any trees suitable either for the construction, alteration or repair of any such communications facility or any part thereof or for any other works in connection with any such communications facility;
- (c) may cut and remove for a space not exceeding in any case 20 metres on each side of any proposed or existing communications facility all such trees and underwood as would be likely to interfere with the construction and proper working of any such communications facility;
- (d) for the purpose of obtaining access to any communications facility may enter into an agreement with the owner or occupier of any land traversed by or adjoining any communications facility for the erection of any gate on such land and when any agreement shall be so made may by itself or its agent erect, maintain and use any such gate for the purpose of obtaining access to any such communications facility; and
- (e) may erect, construct and maintain communications facilities along, across, over or under any road, street or highway and for any such purposes may open up any road and alter the position thereunder of any pipe (other than a main for the supply of water or gas).

150 Public traffic not to be interrupted

- (1) Where a network operator erects or constructs any communications facility:
 - (a) across or over any road, the network operator shall place such communications facility at such a height as not to hinder or interfere with the passage of any person or vehicle along the road;
 - (b) over or under any navigable waters, the network operator shall place such communications facility in such a manner as not to interfere with the navigation of such waters.

- (2) Where a network operator alters, repairs or removes any communications facility which has been placed across or over any road or over or under any navigable water, the network operator shall not cause any obstruction to the traffic upon or the use of such road or navigable water.

151 Entry by day and notice to be given

Subject to sections 152 and 153, a network operator or its agents shall not enter upon any lands other than Government lands:

- (a) for the purpose of constructing or removing any communications facility except by day; and
- (b) until after giving 5 business days' notice to such owner, occupier or agent of the intention to construct such communications facilities upon such land.

152 Notice of entry when owner cannot be found

If the owner or occupier of the land proposed to be entered upon for the purposes of establishing or maintaining a communications facility cannot after reasonable inquiry be found it shall be sufficient if a network operator causes to be posted in a conspicuous place on such land a notice in writing stating the network operator's intention to enter on such land at the expiration of 5 business days from the date of the notice. Upon expiry of the time mentioned in the said notice the network operator or its agents may exercise all the powers conferred under this Act as if notice had been served on the owner or occupier of such land or its agent.

153 Entry without notice for inspection and repair

Notwithstanding section 151 a network operator or its agent may, without giving any notice, enter at reasonable times upon lands for the purposes of inspecting, altering or repairing any communications facility.

154 Compensation

- (1) In establishing or maintaining a communications facility, a network operator or its agents shall do as little damage as is reasonable.
- (2) Where any person:
 - (a) having any rights or interest in the lands acquired for the purposes of establishing or maintaining a communications facility; or
 - (b) is injuriously affected or suffers any property damage as a result of the network operator or its agent establishing or maintaining a communications facility,

that person shall be entitled to compensation. Such compensation shall be ascertained by two arbitrators one of whom shall be appointed by the person claiming compensation and the other by the network operator.

- (3) The two arbitrators shall appoint a third arbitrator who shall act as an umpire. If the arbitrators fail to agree on the amount of compensation if any to be awarded, the umpire shall consider the evidence and decide on the matter.
- (4) The decision of the arbitrators or the umpire, as the case may be, shall be final and binding.
- (5) Where an act or thing has been done with the consent of the person claiming compensation, no compensation shall be awarded or payable save and except in the case of gross negligence, wilful default or where compensation has been agreed to in a written agreement.

155 Removal of trees etc. damage to communications facilities

If a network operator is of the opinion that any communications facility is or is likely to be in any manner damaged or obstructed by any tree or shrub whether ornamental or otherwise growing or being on any land adjoining such communications facility or over which such communications facility passes or is carried, the network operator or its agent may remove such tree or shrub or part thereof and no action at law shall be maintainable on account of such removal provided such acts have been effected in such a manner as to cause no unnecessary damage.

156 Accidental damage to communications facilities

Any person who by misconduct or negligence causes any damage or destroys any communications facility or any part of a communications facility or the material or property relating to a communications facility shall on conviction, be liable to a fine not exceeding \$5,000 or in default of payment, to imprisonment for any term not exceeding 3 months.

157 Damage by careless driving

If any damage is caused to any communications facility by any motor vehicle or by any vehicle drawn by a horse or other animal (**animal vehicle**), or by anything loaded on any motor vehicle or animal vehicle, the driver or person in charge of any such motor vehicle or animal vehicle shall *prima facie* be deemed to be guilty of an offence under section 156 without any proof of negligence or misconduct, but such person shall be entitled to rebut such presumption.

158 In addition to penalty any damage to be made good

Every person causing damage to any communications facility shall be liable to make good the damage to the amount to be determined by a Court of competent jurisdiction

even though the person may have been fined or imprisoned under this Act for the said damage.

DIVISION 2 - PENALTY AND OFFENCES

159 General penalty

- (1) Every omission or failure to comply with, and every act done or attempted to be done contrary to this Act or any instrument made under this Act (other than guidelines) shall be deemed to be an offence against this Act.
- (2) For every such offence, where not otherwise specifically provided for, the offender shall be liable upon conviction to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 3 years or both and in addition a Court of competent jurisdiction may order anything seized to be forfeited.
- (3) Prosecutions under this Act may be brought:
 - (a) by or on behalf of the Attorney General; or
 - (b) by or on behalf of the Regulator.
- (4) A person referred to in sub-section (3)(b), whether or not a law practitioner, may lay, institute or conduct any charge, information, complaint or other proceeding arising under this Act, subject to any directions issued by the Attorney General.

160 Civil actions

- (1) The Regulator may institute proceedings for the recovery of a pecuniary penalty imposed on a person under sub-section (2) in a Court of competent jurisdiction.
- (2) A Court of competent jurisdiction may order a person to pay a pecuniary penalty if the Court is satisfied that a person:
 - (a) has contravened a provision of this Act or any instrument made under this Act (other than guidelines); or
 - (b) has:
 - (i) attempted to contravene;
 - (ii) aided or abetted another person to contravene;
 - (iii) induced, or attempted to induce, another person to contravene; or
 - (iv) been a party to, or knowingly concerned in, a contravention by another person of,
a provision of Division 1 of Part IX.
- (3) The standard of proof in a proceeding under sub-section (1) is the standard of proof applying in civil proceedings.

- (4) A proceeding under sub-section (1) shall be commenced within 3 years after the relevant contravention concerned.
- (5) Subject to sub-section (6), a pecuniary penalty under sub-section (2) shall be an amount the Court determines appropriate having regard to all relevant matters including:
 - (a) the nature and extent of the contravention and of any loss or damage suffered as a result of the contravention;
 - (b) the circumstances in which the contravention took place; and
 - (c) whether the person has previously been found by a Court of competent jurisdiction in proceedings under this Act to have engaged in any similar conduct.
- (6) The pecuniary penalty payable under sub-section (5):
 - (a) by an individual, shall not exceed \$5,000 for a first contravention or, for a subsequent contravention, the greater of \$10,000 or 3 times the value of the benefit that the individual has obtained directly or indirectly from the contravention; and
 - (b) by a body corporate, shall not exceed —
 - (i) in the case of a contravention of a term or condition of a licence or the obligations set out in Division 2 of Part IX, the greater of \$20,000 or 3 times the value of the benefit that the body corporate has obtained directly or indirectly from the contravention; or
 - (ii) in any other case, \$10,000 for a first contravention or, for a subsequent contravention, \$20,000.
- (7) Where the conduct involves multiple contraventions of Act, a proceeding may be instituted under this section against a person in relation to each contravention, but the person is not liable to more than one pecuniary penalty under this section in respect of the same conduct.
- (8) Any pecuniary penalties payable under this Act are to be paid into the Universal Service Fund.

161 Other remedies

- (1) Where a Court is satisfied that a person has contravened the Act or any instrument made under this Act (other than guidelines), it may, upon the application of the Regulator:
 - (a) declare any rights;
 - (b) order an account to be taken;
 - (c) rescind any contract;
 - (d) order money to be refunded to any person;
 - (e) order that any profits derived or substantially derived by a contravention of this Act be forfeited to the Universal Service Fund;

- (f) make an order for any mandatory or prohibitive injunction, whether temporary or permanent;
 - (g) where the person has acquired an interest in contravention of section 120, divest them of that interest;
 - (h) order that the person publish, at the person's expense, such information as the Court considers appropriate in an advertisement that is in a form and in a manner specified by the Court;
 - (i) order the person to establish a training or compliance program for the purposes of ensuring that the person and its employees, agents, and other representatives, does not engage in any further contraventions; or
 - (j) make any other non-punitive orders that the Court considers appropriate.
- (2) In determining the appropriateness and the terms of any remedy under this section, the court is to have regard to the general principles associated with such remedies as applied by courts of civil jurisdiction from time to time.

162 Infringement notices

- (1) If the Regulator has reasonable grounds to believe that a person has contravened an infringement notice provision, the Regulator may issue an infringement notice.
- (2) An infringement notice is not effective unless it:
 - (a) is issued in respect of a single alleged contravention of an infringement notice provision;
 - (b) is issued within 12 months of the occurrence of the alleged contravention to which it relates;
 - (c) is the only infringement notice issued in respect of the alleged contravention to which it relates; and
 - (d) contains the information specified in sub-section (3).
- (3) An infringement notice shall contain:
 - (a) details of the alleged contravention of the infringement notice provision, including the date the contravention is alleged to have occurred;
 - (b) information on how to contact the Regulator in relation to the infringement notice;
 - (c) information about:
 - (i) the amount of the penalty that is to be paid by the licensee;
 - (ii) the time in which it shall be paid, which shall not be less than 20 business days (**infringement notice period**); and
 - (iii) the means by which it can be paid; and
 - (d) any such other information as the Minister may require by regulation.

- (4) Within 48 hours of issuing an infringement notice under sub-section (1), the Regulator shall lodge the duplicate notice with the Clerk of the Magistrates' Court for the district.
- (5) If no payment is tendered within the infringement notice period:
 - (a) the Clerk of the Magistrates' Court shall issue a summons to the person for the offence alleged; and
 - (b) the summons shall be heard and determined by a Magistrate.
- (6) If a licensee pays a penalty specified in an infringement notice within the notice period:
 - (a) the licensee is not regarded as having contravened this Act; and
 - (b) no other remedies or proceedings may be brought against the licensee in respect of the conduct that is the subject of the alleged contravention of the infringement notice provision in the infringement notice.
- (7) The Minister may make a declaration specifying:
 - (a) any provisions of this Act that will be infringement notice provisions; and
 - (b) the amount of any penalty that may be payable under an infringement notice in respect of an infringement notice provision.

163 Enforceable undertakings

- (1) The Regulator may accept a written undertaking from a licensee in connection with any conduct to which this Act applies, including but not limited to undertakings that the person will:
 - (a) cease or remedy any specified acts or omissions by such time and subject to such conditions as the Regulator may require;
 - (b) meet with other persons, on such terms as the Regulator may require, in order to resolve any dispute amongst the parties;
 - (c) publish an acknowledgement and apology for specified acts or omissions in a suitable public newspaper in such form and at such times as the Regulator may require; or
 - (d) provide periodic reports to the Regulator to assist the Regulator in monitoring compliance and assessing the impact on communications markets, competitors and end users.
- (2) If a licensee fails to comply with a written undertaking accepted by the Regulator under sub-section (1), the Regulator may apply to a Court for an order in accordance with this section.
- (3) Upon application by a Regulator, if a Court is satisfied that a licensee has failed to comply with a written undertaking accepted by the Regulator under sub-section (1), the Court may make any or all of the following orders:

- (a) an order directing a licensee to comply with the written undertaking accepted by the Regulator under sub-section (1);
- (b) an order to pay an amount equal to the value of any financial benefit obtained by the licensee as a result of its failure to comply with the written undertaking accepted by the Regulator under sub-section (1);
- (c) an order to compensate a person for any loss or damage incurred as a direct result of the failure by the licensee to comply with the written undertaking accepted by the Regulator under sub-section (1); or
- (d) any other order the Court considers appropriate.

164 Desist orders and remedial directions

- (1) Subject to sub-sections (2) and (3), the Regulator may issue a desist order (requiring that a person desist from specified conduct) or a remedial direction (requiring that a person undertake specified action) if the Regulator is satisfied that the person:
 - (a) has contravened, or is acting in contravention of, this Act or any instrument made under this Act (other than guidelines);
 - (b) is using an apparatus that is likely to cause undue interference with any radiocommunication service used for the purposes of any emergency service or for any purpose on which the safety of any person or of any vessel, aircraft or vehicle may depend; or
 - (c) is operating a particular facility or providing a particular service that is likely to cause interference that will endanger health or safety or will compromise network security or integrity.
- (2) Before issuing a desist order or remedial direction to a person, the Regulator shall serve notice on that person:
 - (a) stating the facts constituting the alleged activity and, where appropriate, the name of the person against whom the allegation is made; and
 - (b) specifying a reasonable period within which and a place at which a hearing is to be held to provide the person concerned an opportunity to show good cause why the order shall not be made.
- (3) If at a hearing referred to in sub-section (2)(b):
 - (a) the person concerned fails to show good cause why the desist order or remedial direction shall not be made, the Regulator may issue that order or direction; or
 - (b) the Regulator is satisfied that the person concerned has shown good cause why the desist order or remedial direction shall not be made, the Regulator shall not issue that order or direction.
- (4) An order or direction under sub-section (1) shall:
 - (a) contain a statement of the facts referred to in sub-section (2)(a);

- (b) in the case of a desist order, require the person concerned to desist from the specified conduct;
 - (c) in the case of a remedial direction, require the person to undertake specified action;
 - (d) be accompanied by documents in support of the allegation; and
 - (e) be served on the person who is the subject of the desist order or remedial direction.
- (5) If the Regulator issues a person a desist order or remedial direction under this section, that person shall comply with the desist order or remedial direction.

165 Third party actions

- (1) A person who has sustained loss or damage as a result of the conduct of another person that amounted to a contravention of this Act or any instrument made under this Act (other than guidelines) may, in a Court of competent jurisdiction, recover the amount of loss or damage by action against the person in contravention of the Act or any other person involved in the contravention.
- (2) Proceedings under this section may be commenced by the Regulator, as representative of a class of persons suffering loss or damage.
- (3) The Regulator may, subject to any conditions imposed by the court, intervene in any proceeding instituted under sub-section (1).

166 Offence by body corporate

If a body corporate commits an offence under this Act or its subsidiary legislation, 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 body corporate 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 body corporate or was assisting in such management:

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

167 Liability for acts of employees and agents

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

- (a) by that person's employee in the course of the employee's employment;
- (b) by the agent when acting on behalf of that person; or
- (c) by the employee of the agent in the course of the employee's employment by the agent or otherwise on behalf of the agent acting on behalf of that person, unless, having regard to the nature of the person's function in that capacity and to all circumstances, the person proves:
- (d) that the offence was committed without the person's knowledge, consent or connivance; and
- (e) that he had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.

168 General information gathering power

- (1) The Regulator may from time to time by written notice, for the purposes of performing its functions, exercising its powers or discharging its duties under this Act, order a licensee to (on a once-off or period basis):
 - (a) keep specified records or prepare specified reports (including reports prepared for the purpose of publication); and
 - (b) produce those records or reports to the Regulator.
- (2) The Regulator shall ensure that:
 - (a) a notice under sub-section (1) specifies:
 - (i) a statement that the notice is an order under this section;
 - (ii) the timeframe (or timeframes) by which the licensee shall provide the information; and
 - (iii) the manner and form in which the information shall be provided; and
 - (b) the timeframe (or timeframes) under subsection (2)(a)(ii) provide the licensee a reasonable time to prepare and produce any records or reports required by the notice.
- (3) A licensee in receipt of a notice issued by the Regulator in accordance with sub-section (1) shall ensure that it complies with the requirements of the notice within the specified timeframe.
- (4) Subject to sub-sections (5) and (6), a licensee that:

- (a) contravenes sub-section (3); or
 - (b) wilfully or through gross negligence provides false or misleading information to the Regulator in response to a notice issued by the Regulator in accordance with sub-section (1),
shall have contravened this Act.
- (5) Sub-section (3) does not apply to a licensee that is not capable of complying with a notice issued to it by the Regulator under sub-section (1).
- (6) Nothing in this section requires a licensee to produce a document that would disclose information that is the subject of legal professional privilege.
- (7) The Regulator shall:
 - (a) only use information obtained under this section for the purposes of performing its functions, exercising its powers or discharging its duties under this Act;
 - (b) subject to paragraph (c), keep any information obtained under this section confidential and not disclose that information without the consent of the provider, except:
 - (i) for the purposes of performing its functions, exercising its powers or discharging its duties under this Act;
 - (ii) with the consent of the licensee that provided the information; or
 - (iii) where the Regulator is otherwise permitted by this Act or is required by law to disclose that information; and
 - (c) deal with sensitive information obtained under this section in accordance with section 24.
- (8) A person is not excused from furnishing information or producing a document in pursuance of this section on the ground that the information or document may tend to incriminate the person, but such information or document is not admissible in evidence against the person in criminal proceedings other than proceedings under, or arising out of, this section.

169 Investigatory power

- (1) Where the Regulator has a reasonable belief that a person is capable of providing information, producing documents or giving evidence in relation to a possible contravention of this Act (**possible contravention**), the Regulator may provide the person with a notice requiring it to:
 - (a) produce documents or other written information; or
 - (b) appear before the Regulator to give evidence orally.
- (2) The Regulator shall:
 - (a) ensure that a notice under sub-section (1)(a) specifies:
 - (i) a statement that the notice is an order under this section;

- (ii) the provision of this Act to which the possible contravention relates;
 - (iii) the timeframe (or timeframes) by which the person shall provide the information; and
 - (iv) the manner and form in which the information shall be provided;
 - (b) ensure that a notice under sub-section (1)(b) specifies:
 - (i) the matters referred to in paragraphs (a)(i) and (ii);
 - (ii) a timeframe during which the person shall appear before the Regulator; and
 - (iii) the manner and form in which the information shall be provided;
 - (c) ensure that:
 - (i) any timeframe under subsection (2)(a)(iii) provides the person a reasonable time to produce any documents or written information required by the notice; and
 - (ii) any timeframe under subsection (2)(b) provides the person a reasonable opportunity to prepare evidence, seek legal representation and appear before the Regulator; and
 - (d) allow a law practitioner to appear for or represent any person required to appear before the Regulator to give evidence under subsection (1)(b).
- (3) A person in receipt of a notice issued by the Regulator in accordance with sub-section (1) shall ensure that it complies with the requirements of the notice within the specified timeframe.
- (4) Subject to sub-sections (5) and (6), a person that:
- (a) contravenes sub-section (3); or
 - (b) wilfully or through gross negligence provides false or misleading information to the Regulator in response to a notice issued by the Regulator in accordance with sub-section (1),
- shall have contravened this Act.
- (5) Sub-section (3) does not apply to a person that is not capable of complying with an order issued to it by the Regulator under sub-section (1).
- (6) Nothing in this section requires a person to produce a document that would disclose information that is the subject of legal professional privilege.
- (7) The Regulator shall:
- (a) subject to paragraph (b), keep any information obtained under this section confidential and not use or disclose that information except:
 - (i) for the purpose of:
 - (A) exercising its powers under sections 159, 160, 161, 162, 163 or 164 in relation to the possible contravention; or
 - (B) an investigation into the possible contravention;

- (ii) with the consent of the person who provided the information; or
 - (iii) where the Regulator is otherwise permitted by this Act or required by law to disclose that information; and
- (b) deal with sensitive information obtained under this section in accordance with section 24, except that the Regulator may disclose sensitive information:
 - (i) for the purpose of exercising its powers under sections 159, 160, 161, 162, 163 or 164 of this Act; or
 - (ii) for the purpose of an investigation into the possible contravention, provided that:
 - (A) prior to disclosing the information, the Regulator consults with the person who provided the information; and
 - (B) the Regulator takes reasonable steps to ensure that sensitive information is not disclosed to a competitor of a person to which the sensitive information relates.
- (8) A person is not excused from furnishing information or producing a document in pursuance of this section on the ground that the information or document may tend to incriminate the person.
- (9) A person who without lawful authority discloses:
 - (a) the fact that a notice under this section has been made; or
 - (b) anything done (including the fact that any information has been provided to the Regulator) under a notice under this section, before the earlier of:
 - (c) the commencement of an enforcement action under sections 159, 160, 161, 162, 163 or 164 of this Act in relation to the possible contravention; or
 - (d) receipt of a written notice from the Regulator that the investigation into the possible contravention has ended,commits an offence and shall be liable upon conviction to a fine not exceeding shall, on conviction, be liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 3 years or both.

170 Right of entry for inspection

An authorised officer of the Ministry or Regulator may, under a warrant issued by a Magistrate, enter any premises and may:

- (a) search the premises;
- (b) inspect and take photographs or make sketches;
- (c) inspect any book, record, document, database, or electronic file kept at the premises; or
- (d) remove or make copies of any book, database, or electronic file,

to the extent that it is reasonably necessary to ascertain whether there has been compliance with the provisions of this Act, the Telegraph Act or other applicable laws.

171 Offence related to searches and seizures

Where an authorised officer of the Ministry or Regulator has reasonable grounds for suspecting that there may be on or in any premises a particular thing that may provide evidence regarding an offence under this Act, the Telegraph Act (Cap. 99), the Tonga Communications Corporation Act 2000 or any other law, the authorised officer may, under a warrant issued by a Magistrate, search the premises and seize the thing.

172 Ministry may authorise release of things seized

- (1) The Ministry may authorise any thing seized by an authorised officer of the Ministry under section 171 to be released to the owner, or to the person from whom the thing was seized, either unconditionally or on such conditions as the Ministry thinks fit.
- (2) The Regulator may authorise any thing seized by an authorised officer of the Regulator under section 171 to be released to the owner, or to the person from whom the thing was seized, either unconditionally or on such conditions as the Regulator thinks fit.

DIVISION 3 – SAFE HARBOUR PROTECTIONS

173 Providing access or transmission

- (1) An access service provider is not liable (by either civil or criminal action) for providing access to or transmitting computer data, provided that the access service provider does not:
 - (a) initiate the transmission;
 - (b) select the receiver of the transmission; or
 - (c) select or modify the computer data contained in the transmission.
- (2) For the purposes of sub-section (1), providing access to or transmitting computer data includes the automatic, intermediate and transient storage of computer data for the primary purpose of providing access to or transmitting the computer data provided that the computer data is not stored for any period longer than is reasonably necessary for the provision of access to, or the transmission of, that computer data.

174 Hosting content

- (1) A hosting service provider is not liable (by either civil or criminal action) in relation to computer data stored or transmitted at the request of a user, provided that the hosting service provider:
 - (a) as soon as practicable after receiving an order of a competent Court to remove or disable access to specific computer data, removes or disables access to that computer data;
 - (b) as soon as practicable after becoming aware (other than by order of a competent Court) that it is storing computer data which it has reasonable grounds to believe is unlawful to possess, access, distribute or publish under the laws of the Kingdom, notifies Tonga Police of the existence and location of the computer data (along with the grounds that have led the hosting service provider to notify Tonga Police about this computer data); and
 - (c) as soon as practicable after it gains actual knowledge, or knowledge of facts or circumstances from which it is readily apparent, that it is storing computer data that infringes a person's intellectual property rights, removes or disables access to that computer data.
- (2) Sub-section (1) shall not apply where the relevant user is acting under the authority or control of the hosting service provider.

175 Caching

A caching service provider is not liable (by either civil or criminal action) for the automatic and temporary storage of computer data originating from another person or the transmission of that data to a third person upon that third person's request, provided that:

- (a) the caching service provider does not modify the computer data;
- (b) where the computer data is subject to any access conditions, such as a requirement to pay a fee or enter a password to access the computer data, the caching service provider does not transmit a significant part of that computer data to persons who have not met those access conditions;
- (c) the caching service provider complies with rules about the updating of the computer data specified in a manner widely recognised and used by industry;
- (d) the caching service provider does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the computer data; and
- (e) the caching service provider acts expeditiously to remove or to disable access to the computer data it has stored upon obtaining actual knowledge of the fact that the computer data, at the initial source of transmission, has been removed or access to it has been disabled or that a competent Court has ordered such removal or disablement.

176 Linking

A person who links end users to computer data provided by a third person, including by means of a hyperlink, URL, search results, directory, index or other reference (link provider), is not liable (by either civil or criminal action) for providing that link, provided that the link provider:

- (a) as soon as practicable after receiving an order of a competent Court to remove or disable access to a specific link, removes or disables that link;
- (b) as soon as practicable after becoming aware (other than by an order of a competent Court) that it is providing a link to computer data that it has reasonable grounds to believe is unlawful to possess, access, distribute or publish under the laws of the Kingdom, notifies Tonga Police of the existence and location of that computer data (along with the grounds that have led the link provider to notify Tonga Police about this computer data) and removes or disables that link; and
- (c) as soon as practicable after it gains actual knowledge, or knowledge of facts or circumstances from which it is readily apparent, that it is linking to computer data that infringes a person's intellectual property rights, removes or disables that link.

177 No liability for removing or disabling access

Providers are exempt from all liability to their relevant end users in connection with the removal or disabling of access to computer data in good faith in accordance with this Division or pursuant to an order of a competent Court.

178 No monitoring obligation

Unless otherwise required by law or an order of a competent Court, providers have no general obligation to monitor the computer data they transmit, store on behalf of another, or link to, nor do they have a general obligation to actively seek facts or circumstances indicating illegal activity or activity that infringes a person's intellectual property rights to avoid liability.

179 Definitions

For the purposes of this Division:

- (a) **"access service provider"** means a person (including an internet service provider) who supplies, or proposes to supply, a communication service to the public either by carrying communications provided by or to a user of the communications service or by providing access to a communications network;
- (b) **"caching service provider"** means a person who provides a service that involves the automatic and temporary storage, in the Kingdom, of computer

data originating from another person so that the computer data might be transmitted to a third person upon that third person's request;

- (c) **"intellectual property rights"** means a right given to a person under the sections 6, 7, 22, 33 or 25 of the Copyright Act 2002 and such other rights as the Minister may determine by declaration;
- (d) **"link provider"** has the meaning given in section 176; and
- (e) **"provider"** means an access service provider, a caching service provider, a hosting service provider or a link provider.

DIVISION 4 - REVIEW MECHANISMS

180 Review options

- (1) Subject to sub-section (2), a person directly affected by a reviewable decision may apply:
 - (a) for reconsideration of the decision under section 181;
 - (b) for a review of the decision under section 183; or
 - (c) to a Court for judicial review of the reviewable decision.
- (2) A person may not apply to the Court in respect of a reviewable decision:
 - (a) if the person has not applied for review of the decision under section 183; or
 - (b) if the person has applied for review of the decision under section 183 and the appeals panel has not yet made a decision under section 183(9).
- (3) A reviewable decision is one of the following:
 - (a) a decision to refuse to grant a network operator licence under section 32;
 - (b) a decision to impose a special licence condition under section 34;
 - (c) a decision to suspend or revoke, or amend the special licence conditions of, a network operator licence under section 38;
 - (d) a decision to refuse to register a person as a service provider under section 41;
 - (e) a decision to de-register or suspend the registration of a service provider under section 44;
 - (f) a direction requiring a licensee to supply a requested communications service under section 84;
 - (g) a decision to suspend, revoke or refuse to grant a radio spectrum licence under the radio spectrum rules;
 - (h) a decision not to grant consent for a licensee to acquire a prohibited interest under section 120(5);
 - (i) a decision not to grant an authorisation under section 121(1);

- (j) a decision to direct a licensee to amend an agreement under section 134(1);
 - (k) a decision to approve or reject a proposed reference offer under section 136(4);
 - (l) a decision to determine an approved reference offer or direct a licensee to take specified action under section 136(6);
 - (m) a decision to approve a variation to a reference offer under section 137(3)(b);
 - (n) a decision to issue an infringement notice under section 162;
 - (o) a decision to issue a desist order or remedial direction under section 164; or
 - (p) any other decision specified as a reviewable decision in a declaration made by the Minister.
- (4) A reviewable Ministerial decision is one of the following:
- (a) a decision to approve or reject recommendations of the Regulator under section 73(4) (in relation to number portability); or
 - (b) a decision to accept or reject a declaration recommendation.

181 Reconsideration of decisions by the Regulator

- (1) A person directly affected by a reviewable decision of the Regulator may apply to the Regulator for reconsideration of the decision within 10 business days of the decision of which reconsideration is sought being notified to that person.
- (2) An application under sub-section (1) shall specify:
 - (a) the decision of the Regulator to which the application relates;
 - (b) the reasons for which the reconsideration is sought; and
 - (c) the decision sought on reconsideration.
- (3) The Regulator shall, within 20 business days from receipt of an application under sub-section (1), consider the application and notify the applicant as to whether the decision will be reconsidered.
- (4) If the applicant has not received a response to the application within 20 business days after the filing of an application for reconsideration of a decision, the Regulator shall be deemed to have affirmed the decision in respect of which the application for reconsideration was made.
- (5) If the Regulator decides to reconsider the decision, it shall comply with the same procedures (such as consultation and preparation of a draft decision) required to be complied with when the decision was first made.
- (6) A decision under reconsideration shall continue in force during the reconsideration unless the Regulator elects to suspend the commencement of

the decision by notifying the person who made the application under subsection (1) and any other person directly affected by the decision of that suspension.

182 Appeals panel

- (1) The Ministry shall, upon the recommendation of the Attorney-General and Lord Chief Justice, establish a register of experts who shall be available to act as members of an appeals panel constituted under section 183.
- (2) The Ministry shall ensure the register of experts comprises at all times at least three persons who collectively have commercial, technical, economic and legal expertise in the field of communications.
- (3) The Ministry may only appoint a person to the register of experts if the person:
 - (a) meets the eligibility criteria to be appointed as a Commissioner under the Communications Act;
 - (b) has at least 10 years international experience in the regulation of communications markets; and
 - (c) is not a member, officer, employee, agent, external adviser or consultant of the Regulator, Ministry or a licensee and has not been such a person for at least 12 months.
- (4) The Ministry shall remove a person from the register of experts if the person no longer meets the criteria for appointment under sub-section (3) or if requested by the person.
- (5) The Ministry shall act as the secretariat for the appeals panel and shall publish the membership of the register of experts.

183 Review of a decision by the appeals panel

- (1) Subject to sub-section (2), a person directly affected by a reviewable decision may apply to the secretariat of the appeals panel for review of the decision.
- (2) A person may only apply to the secretariat of the appeals panel for review of a reviewable decision under section 180(3)(a), (d) or (n) if the person has applied to the Regulator for reconsideration of the decision under section 182(1) and the Regulator has either:
 - (a) notified the applicant as to whether the decision will be reconsidered under section 181(3); or
 - (b) the Regulator has been deemed to have affirmed the decision under section 181(4).
- (3) An application under sub-section (1) shall:
 - (a) specify the decision to which the application relates;
 - (b) specify the reasons why the review is sought and the outcome sought from the appeals panel; and

- (c) be submitted to the secretariat within 20 business days of publication of the decision.
- (4) On receipt of a valid application for review under sub-section (1), the secretariat shall refer the application to the Attorney-General, who shall select a panel (**appeals panel**) comprising a member or members from the register of experts having regard to:
 - (a) the suitability of the expert to hear the subject matter of the review; and
 - (b) the availability of the expert.
- (5) If more than one member is appointed to the appeals panel, the Attorney General shall designate one member of the panel as the Chair whose opinion shall determine the review in the event of a tie.
- (6) The appeals panel:
 - (a) shall give a copy of the application for review to the Regulator and any persons directly affected by the decision under review and any other person who made a submission to the Regulator in a consultation relating to the decision;
 - (b) provide persons likely to be affected by the Regulator's decision a reasonable opportunity to make submissions on the matter;
 - (c) may determine an application on the papers or convene a hearing in person or by teleconference or other means that permits all those participating to communicate with each other simultaneously and instantaneously;
 - (d) shall make a decision within 60 business days of being selected under sub-section (4); and
 - (e) in all other matters, may determine their own procedures as they see fit, provided that such procedures do not give one person affected by the decision an advantage over any other person affected by the decision.
- (7) An review shall be by way of rehearing on the evidence before the Regulator. The appeals panel:
 - (a) shall take into account information previously provided to the Regulator and information submitted under sub-section (6)(b) where that updates the information previously provided to the Regulator; and
 - (b) may, in exceptional circumstances, take into account new information submitted by a party to the review.
- (8) The appeals panel may stay the operation of the decision while considering the application.
- (9) The appeals panel may, by written notice, do one of the following:
 - (a) affirm the decision under review;
 - (b) set aside the decision under review and refer the matter back to the Regulator;

- (c) vary the decision under review; or
 - (d) set aside the decision under review and make their own decision, which shall be treated as a decision of the Regulator.
- (10) The appeals panel shall give a copy of its decision and the reasons for the decision to the Regulator and each person directly affected by the decision.
- (11) The Regulator shall publish any decision and the reasons for the decision given to it under sub-section (10) within 5 business days of receiving the decision.
- (12) The costs of the appeals panel in conducting the review (including, but not limited to, any travel or other expenses incurred by or on behalf of the appeals panel in connection with the review) shall be borne by the person making the application for review.
- (13) The appeals panel may make a costs order in exceptional circumstances and, if no such order is made, each party shall bear its own legal costs.
- (14) A decision of the appeals panel is final and binding, subject to section 180(1)(c).

184 Review of reviewable Ministerial decisions

A person directly affected by a reviewable Ministerial decision may apply to the secretariat of the appeals panel for review of the decision in accordance with the procedure set out in section 183, except that:

- (a) references to the Regulator in section 183 will be read as references to the Minister; and
- (b) the appeals panel shall not have the powers under sections 183(9)(c) or (d).

185 Service of notices

Unless otherwise expressly provided in this Act, any document required or authorised by this Act to be provided to or served on any person, may be provided or served on the person concerned by:

- (a) delivering it to the person or to some adult member or employee of that person's family at the person's last known residence;
- (b) leaving it at that person's usual or last known residence or place of business in a cover addressed to the person;
- (c) affixing it to some conspicuous part of that person's last known residence;
- (d) sending it by registered post addressed to that person at that person's usual or last known residence or place of business; or
- (e) where the person is a body corporate:
 - (i) delivering it to the secretary or other similar officer of the body corporate at its registered or principal office; or

- (ii) sending it by registered post addressed to the body corporate at its registered or principal office.

DIVISION 5 - REGULATIONS AND TRANSITIONAL PROVISIONS

186 Regulations

The Minister may, subject to the approval of the Cabinet, make regulations, which are not inconsistent with this Act and other laws, prescribing any or all matters which by this Act are required or permitted to be prescribed for carrying out or giving effect to this Act, or for the conduct of the business of the Ministry or the licensees.

187 Licence transition

- (1) Subject to sub-section (3), a person (**existing licensee**) that, immediately before the commencement of this section, held a licence under Part V (**existing licence**) or was registered as engaging in an activity requiring a class licence under Part V (**existing registration**) shall:
 - (a) be entitled to continue to provide such services as permitted by that existing licence or because of that existing registration in accordance with, and on the terms of, that existing licence or existing registration;
 - (b) in respect of a person that, immediately before the commencement of this section, held an existing licence, be deemed to be a network operator for the purposes of this Act (except for the purposes of section 36 and the definition of "requesting licensee");
 - (c) for a period of 2 years after the commencement of this section be entitled to request a network operator licence or registration as a service provider under Part V such that the person shall be authorised to continue to provide the same communications services as the person provided immediately before the commencement of this section; and
 - (d) where the person requests a network operator licence or registration as a service provider under paragraph (c), be deemed to be financially and technically capable of meeting its legislative and regulatory obligations.
- (2) An existing licence or existing registration that was in effect immediately before the commencement of this section shall be automatically revoked or de-registered (as applicable) if the person granted that licence or that registration either is granted a network operator licence or is registered as a service provider.
- (3) An existing licensee who is not required to hold a network operator licence or register as a service provider under section 26 may surrender their existing licence or withdraw their existing registration (as applicable) by written notice to the Regulator.

- (4) The Minister may, by declaration, extend the period under sub-section (1)(c) for a period of not greater than 2 years.
- (5) Sections 25, 38, 37 and 44 of the Act will remain in force as they existed prior to the commencement of this section until all existing licences have been revoked (or have expired) and all existing registrations have been withdrawn (or have expired).

188 Other transitional arrangements

- (1) The Minister may make regulations under section 186 dealing with transitional arrangements, including but not limited to:
 - (a) the transition of licences and registrations as described under section 187; and
 - (b) funding and administrative arrangements necessary or desirable to ensure transition of the functions of the Regulator from the Ministry to the Communications Commission.
- (2) The Minister may, by declaration, deem a consultation to have been carried out under section 23 on a particular matter where the Minister is satisfied that reasonable consultation on that matter has occurred before the commencement of this section.

189 Repeal

The Communications Act 2000 shall be repealed on the date this Act comes into force.

SCHEDULE 1**STANDARD LICENCE CONDITIONS**

No.	Summary	Standard licence conditions
1.	Licensee shall comply with the provisions of this Act and other instruments made under the Act	The network operator shall comply with: (a) this Act; (b) any subordinate legislation and regulations made under this Act; and (c) any rules, standards, declarations, orders, or any other instrument (other than guidelines) the Regulator or Minister is permitted to make under this Act (including the National Spectrum Plan, numbering plan and universal service regime).
2.	Shall comply with international conventions/agreements	The network operator shall perform and observe the requirements of international conventions and agreements relating to communications facilities, communications services and radio frequency spectrum to which Tonga is a party, except to the extent that the Ministry may, by declaration, exempt the network operator from that compliance.
3.	Licensee shall indemnify the Government	The licensee shall indemnify the Government against any actions, suits, claims or proceedings arising out of or in relation to any breaches or failings on the part of the licensee.
4.	Shall provide free services to the King	The network operator shall ensure that any telephony, internet access services and other communications services provided by the licensee to His Majesty are provided free of charge.

5.	Shall allow connection of customer equipment on terms consistent with Act	The network operator shall allow any person to connect customer equipment to its network facilities on such terms and conditions as the network operator may determine provided that the terms and conditions are consistent with this Act and any subordinate legislation, regulations or instruments made under the Act.
6.	Shall take all proper and adequate safety measures to safeguard life or property	The network operator shall, in respect of all communications facilities, take all proper and adequate safety measures to safeguard the life or property, including exposure to any electrical emission or radiation emanating from the apparatus, equipment or installations so used.

SCHEDULE 2**STANDARD SERVICE PROVIDER CONDITIONS**

No.	Summary	Service provider conditions
1.	Licensee shall comply with the provisions of this Act and other instruments made under the Act	The service provider shall comply with: (a) this Act; (b) any subordinate legislation and regulations made under this Act; and (c) any rules, standards, declarations, orders, or any other instrument (other than guidelines) the Regulator or Minister is permitted to make under this Act (including the National Spectrum Plan, numbering plan and universal service regime).
2.	Shall comply with international conventions/agreements	The service provider shall perform and observe the requirements of international conventions and agreements relating to communications facilities, communications services and radio frequency spectrum to which Tonga is a party, except to the extent that the Ministry may in writing exempt the service provider from such compliance.
3.	Licensee shall indemnify the Government	The service provider indemnifies the Government against any actions, suits, claims or proceedings arising out of or in relation to any breaches or failings on the part of the service provider.
4.	Shall provide free services to the King	The service provider shall ensure that any telephony, internet access services and other communications services provided to His Majesty are provided free of charge.

5.	Shall allow connection of customer equipment on terms consistent with Act	The service provider shall allow any person to connect customer equipment to a network operator's network facilities on such terms and conditions as the network operator may determine provided that the terms and conditions are consistent with this Act and any subordinate legislation, regulations or instruments made under the Act.
6.	Shall take all proper and adequate safety measures to safeguard life or property	The service provider shall, in respect of all network facilities, take all proper and adequate safety measures to safeguard the life or property, including exposure to any electrical emission or radiation emanating from the apparatus, equipment or installations so used.

ENDNOTES

¹ Act 13 of 2015