

Communications Legislation Bill

Government Bill

Explanatory note

General policy statement

This Bill is an omnibus Bill that amends the Telecommunications Act 2001 and the Radiocommunications Act 1989 to improve the regulation of the communications sector. It is proposed to divide the Bill into 2 Bills at the committee of the whole House stage.

The Radiocommunications Act 1989 and the Telecommunications Act 2001 regulate the communications sector by providing for efficient access to its scarce resources and assets, thus promoting competition for the benefit of customers. Improving the regulatory regime is vital for the efficient operation of the communications sector. The Bill's amendments address urgent implementation issues that, unless resolved, will cause significant disruption to the effective regulation of communications.

Part 1 of the Bill amends the Telecommunications Act 2001 by extending by 2 years (to December 2008) the regulation of 10 of the 13 telecommunications services originally regulated under that Act. Regulation of these services will expire in December 2006 unless each is extended by Order in Council on the recommendation of the Minister, made on the basis of a recommendation from the Commerce Commission (the **Commission**) following an investigation into each of the services. The Commission has initiated investigations for the 10 services but has indicated that, given other work being undertaken, it may not complete the investigations in time for decisions about extensions to be made. Continuing the 10 regulated services until the Commission has considered the issues is crucial for the effective and efficient operation of the communications sector.

Part 2 of the Bill amends the Radiocommunications Act 1989 to clarify and update its radio spectrum management regime. A well-functioning regime is crucial for a number of important sectors, including the communications and broadcasting sectors.

The Bill clarifies the requirements for certifying new spectrum licences by providing that inappropriate receivers (to be defined in regulations) are not to be considered by radio engineers and others. This recognises that consideration of inappropriate receivers may limit the utilisation of New Zealand's radio spectrum in accordance with international norms. An example of an inappropriate receiver is a device currently known as a band expander. A band expander is a cheap and simple device that allows a car radio designed to receive the VHF-FM band used in Japan to receive the wider international FM band used in New Zealand. It does this by overlaying portions of the incoming frequency band onto other portions of the band with the potential for degraded reception of 1 or more stations.

The Bill also clarifies that the maximum duration of a radio spectrum management right is 20 years from its commencement date. It includes a limited ability to aggregate management rights in time, in order to simplify the management of the radio spectrum.

The Bill clarifies technical terms, and refines dispute resolution and licensing processes. It aims to foster the efficient recovery of unpaid licence fees and to ensure that the Registrar of Radio Frequencies (the **Registrar**) is kept up to date with changes to the names and addresses of those on the Register of Radio Frequencies (the **Register**). It also includes a number of minor amendments to update the Act and facilitate the adoption of electronic processing of licence transactions.

Clause by clause analysis

Clause 1 gives the Bill its Title.

Clause 2 relates to the commencement of the Bill. The Bill comes into force on the day after the date on which it receives the Royal assent.

Part 1

Amendment to Telecommunications Act 2001

Clause 3 provides that the Telecommunications Act 2001 is the Act being amended in *Part 1*.

Under the Telecommunications Act 2001, 13 designated or specified services would expire 5 years after their coming into force on 20 December 2001 (so that their expiry date is currently 20 December 2006). The Commission has determined that 10 of these warrant an investigation into whether the services should be extended. *Clause 4* extends their current expiry date to 20 December 2008, which enables investigations to be completed and decisions to be made.

Part 2

Amendments to Radiocommunications Act 1989

Clause 5 of the Bill provides that the Radiocommunications Act 1989 (the Act) is the Act being amended in *Part 2* of the Bill.

Clause 6 indicates the Bill's purpose, which is to amend the Act to—

- provide that radio engineers and others considering questions of interference and technical compatibility should not have regard to the reception of radio waves by inappropriate receivers:
- facilitate the allocation of management rights by enabling the aggregation of future rights with existing rights if an existing manager acquires future rights:
- allow parties who both hold radio licences to use the dispute resolution process in Part 12:
- allow radio licences to be allocated other than by competitive tender or auction:
- make miscellaneous amendments to the Act.

Clause 7 amends and adds to the Act's definitions. The terms current management rights and successive management rights have the meanings given to them by *new section 47A*. They are used in relation to the new ability in *new sections 47A and 47B* to aggregate future management rights with current ones. The term record of management rights is amended to reflect this new ability. The definition of infringement offence is amended to include the new infringement offence committed by managers or holders of spectrum or radio licences who breach their new duty (under *new section 24A*) to notify the Registrar of any changes to their names or addresses.

The definition of interference is amended to include a new paragraph clarifying that it “does not include any effect on the reception of

radiocommunications by inappropriate receivers”. The term inappropriate receiver will be defined by regulations made under *new section 134(1B)*.

Clause 8 inserts a *new section 6A* into the Act. *New section 6A* reproduces most of the section 8 that was repealed by the Radiocommunications Amendment Act (No 2) 2005. The *new section 6A* reflects the new environment in which the Registrar no longer uses a seal of office, but which still needs to provide for evidentiary documents to be deemed to be signed or issued by or under the direction of the Registrar.

Clause 9 makes minor changes to section 11B of the Act to clarify that the licences referred to in that section are spectrum licences.

Clause 10 amends section 23 of the Act to reflect the new position under the Radiocommunications Amendment Act (No 2) 2005 that duplicates of instruments are not required.

Clause 11 amends section 24(2) of the Act to clarify that the Registrar may correct the Register of the Registrar’s own motion whether or not there has been a request to correct the Register under section 23. Section 24(4), which requires public notice of corrections, is repealed to reflect the fact that the Register is a public register.

Clause 12 inserts *new section 24A* into the Act to create a duty on managers and holders of spectrum or radio licences to update the Registrar about any changes to their names or addresses. A breach of this duty is an infringement offence.

Clause 13 inserts *new section 25A* into the Act. *New section 25A* reproduces the current section 72A (which this Bill repeals), but with the additional rule that a radio engineer considering whether to issue a certificate under section 25 must not have regard to the reception of radio waves by inappropriate receivers.

Clause 14(4) amends section 34(g)(i) of the Act so that management rights can be registered before their commencement date and still last for 20 years from their commencement date.

Clause 14(1), (3), and (5), along with *clauses 15, 16, 17, 18, 21, and 22*, consequentially amend the Act to cater for the new ability in *new sections 47A and 47B* (inserted by *clause 23*) to aggregate management rights.

Clause 19 removes a reference in section 44 of the Act to duplicate copies of an instrument, reflecting the new policy that duplicates are no longer required.

Clause 20 makes a minor typographical amendment to section 45(2)(b) of the Act.

Clause 23 inserts *new sections 47A and 47B* into the Act. *New sections 47A and 47B* allow for the aggregation of successive management rights (that commence in the future) with current management rights if both are owned by the same manager and both relate to the same frequencies. Both the current management rights and the successive management rights must have the same power floors, protection limits, adjacent frequencies emission limits, and conditions applying to spectrum licences over the same range of frequencies. If the various criteria are met, the Registrar must, on request, create a new aggregated record of management rights for the relevant frequencies.

Clause 24 inserts *new section 57E*, which performs the same function as *new section 25A* inserted by *clause 13*. As with *new section 25A*, *new section 57E* reproduces the current section 72A, but with the additional rule that a radio engineer considering whether to issue a certificate under section 57D must not have regard to the reception of radio waves by inappropriate receivers.

Section 72A of the Act is repealed by *clause 25*. Matters covered by section 72A will now be dealt with in *new sections 25A, 57E*, and also in *new section 109A(1)*.

Clause 26 makes a minor amendment to section 89 of the Act to clarify that “licence” refers to a spectrum licence.

Clause 27 amends the dispute resolution process set out in Part 12 of the Act so that a claimant who holds a radio licence and alleges a harmful interference by a respondent who also holds a radio licence may request the Secretary to refer the matter to arbitration if certain requirements are fulfilled.

Clause 28 makes a minor amendment to section 109 of the Act to reflect the changes in *clause 27*.

Clause 29 changes section 109A of the Act by adding a rule similar to the rule in *new sections 25A and 57E* so that an arbitrator considering disputes under Part 12 must not have regard to the reception of radio waves by inappropriate receivers.

Sections 116 and 134 of the Act, which empower regulations, are amended by *clauses 30 and 32* respectively. The amendments provide for regulations—

- about the granting of radio licences and general user radio licences:

- to allocate radio licences by any means (not just by competitive tender or auction):
- to authorise the Secretary to authorise examiners, certificate issuers, and the content and conduct of examinations:
- to declare receivers of any kind to be inappropriate receivers for the purposes of the Act.

Clause 31 amends section 128A of the Act to remove a mistaken reference to section 128.

Clause 33 inserts *new section 134AA* into the Act, which empowers the Secretary to prescribe any forms that are not prescribed by regulations.

Clause 34 inserts *new section 136(3), (4), and (5)* into the Act, providing that if the holder of a spectrum licence has not paid a fee, the manager of the relevant management rights is jointly and severally liable for the unpaid fees, and may cancel the spectrum licence. A manager who cancels the licence must do so by applying to the Registrar, and must provide a statutory declaration that the holder of the spectrum licence has been served with a copy of the cancellation notice.

Clause 35 consequentially amends regulation 8(3) of the Radiocommunications Regulations 2001 to require applicants for a radio licence to supply their address as well as their name. Addresses are currently required for managers and holders of spectrum licences under sections 34(a) and 49(1)(a) of the Act.

Hon David Cunliffe

Communications Legislation Bill

Government Bill

Contents

		Page
1	Title	2
2	Commencement	2
Part 1		
Amendment to Telecommunications Act 2001		
3	Principal Act amended	3
4	Expiry of designated services and specified services	3
Part 2		
Amendments to Radiocommunications Act 1989		
5	Principal Act amended	3
6	Purpose	3
7	Interpretation	4
8	New section 6A inserted	5
	6A Documents to be received in evidence	5
9	Variation of conditions in record of management rights	5
10	Application for correction of Register	5
11	Correction of Register	6
12	New section 24A inserted	6
	24A Duty to notify change of name or address	6
13	New section 25A inserted	6
	25A Matters relevant to radio engineer's certificate under section 25	6
14	Content of record of management rights	7
15	Power floors applying after creation of records of management rights under section 45(1) or 47(1)	8
16	Protection limit applying after creation of records of management rights under section 45(1) or section 47(1)	8
17	Adjacent frequencies emission limits applying after creation of records of management rights under section 45(1) or section 47(1)	9
18	Heading to Part 5 amended	9

19	New section 44 substituted	9
	44 Record of management rights to be cancelled on transfer of part of range of frequencies	9
20	New records of management rights to be created for portion transferred and for balance	10
21	Aggregation of management rights	10
22	New record of management rights to be created for all rights to which request relates	10
23	New sections 47A and 47B inserted	10
	47A Aggregation of current and successive management rights	10
	47B New record of management rights to be created for all rights to which request under section 47A relates	11
24	New section 57E inserted	11
	57E Matters relevant to radio engineer's certificate under section 57D	11
25	Section 72A repealed	12
26	Caveat against dealing with radio frequencies	12
27	Notice of harmful interference	12
28	Reference to arbitration by Secretary	12
29	Matters relevant to arbitration	13
30	Regulations	13
31	Commission of infringement offence	14
32	Regulations	14
33	New section 134AA inserted	15
	134AA Secretary may prescribe forms	15
34	Recovery of fees	15
	<i>Consequential amendment</i>	
35	Grant of radio licence	16

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Communications Legislation Act **2006**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

Part 1

Amendment to Telecommunications Act 2001

- 3 Principal Act amended**
This **Part** amends the Telecommunications Act 2001.
- 4 Expiry of designated services and specified services** 5
Section 65 is amended by inserting the following subsection after subsection (1):
- “(1A) In subsection (1)(a), 5 years must be read as 7 years for the following designated services and specified services described in Parts 2 and 3 respectively of Schedule 1: 10
- “(a) interconnection with Telecom’s fixed PSTN:
- “(b) interconnection with fixed PSTN other than Telecom’s:
- “(c) retail services offered by means of Telecom’s fixed telecommunications network:
- “(d) residential local access and calling service offered by means of Telecom’s fixed telecommunications network: 15
- “(e) bundle of retail services offered by means of Telecom’s fixed telecommunications network:
- “(f) retail services offered by means of Telecom’s fixed telecommunications network as part of a bundle of retail services: 20
- “(g) local telephone number portability service:
- “(h) cellular telephone number portability service:
- “(i) national roaming: 25
- “(j) co-location on cellular mobile transmission sites.”

Part 2

Amendments to Radiocommunications Act 1989

- 5 Principal Act amended** 30
This **Part** amends the Radiocommunications Act 1989.
- 6 Purpose**
- The purpose of this **Part** is to amend the principal Act to—
- (a) provide that radio engineers and others considering questions of interference and technical compatibility should not have regard to the reception of radio waves by inappropriate receivers: 35

- (b) facilitate the allocation of management rights by enabling the aggregation of future rights with existing rights if an existing manager acquires future rights:
- (c) allow parties who both hold radio licences to use the dispute resolution process in Part 12: 5
- (d) allow radio licences to be allocated other than by competitive tender or auction:
- (e) make miscellaneous amendments.
- 7 Interpretation**
- (1) Section 2(1) is amended by inserting the following definition after the definition of **Court Registrar**: 10
“current management rights has the meaning given to it by **section 47A(1)**”.
- (2) Section 2(1) is amended by inserting the following definition after the definition of **harmful interference**: 15
“inappropriate receiver means a receiver prescribed as an inappropriate receiver by regulations made under **section 134(1B)**”.
- (3) Section 2(1) is amended by repealing the definition of **infringement offence** and substituting the following definition: 20
“infringement offence means—
 “(a) an offence under **section 24A**:
 “(b) an offence prescribed as an infringement offence in regulations made under section 134(1)(ja)”.
- (4) Section 2(1) is amended by repealing the definition of **interference** and substituting the following definition: 25
“interference—
 “(a) means the effect of radio waves owing to 1 or more emissions, radiations, or inductions, or any combination of 1 or more of those things, on the reception of radiocommunications; but 30
 “(b) does not include any effect on the reception of radiocommunications by inappropriate receivers”.
- (5) Section 2(1) is amended by repealing the definition of **record of management rights** and substituting the following definition: 35
“record of management rights—

- “(a) means a record of management rights constituted under section 10(2); and
“(b) includes a record of management rights created under section 45, 47, or **47B**”.
- (6) Section 2(1) is amended by repealing the definition of **Secretary** and substituting the following definition: 5
“Secretary means the chief executive of the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act”.
- (7) Section 2(1) is amended by inserting the following definition after the definition of **spectrum licence**: 10
“successive management rights has the meaning given to it by **section 47A(1)**”.
- 8 New section 6A inserted** 15
The following section is inserted after section 6:
- “6A Documents to be received in evidence**
Every document purporting to be signed or issued by the Registrar, or by an employee employed to assist the Registrar in the exercise of the Registrar’s functions under this Act, must be received in evidence, and must, in the absence of proof to the contrary, be deemed to be signed or issued by or under the direction of the Registrar.” 20
- 9 Variation of conditions in record of management rights**
- (1) Section 11B(1) is amended by inserting “spectrum” after “that apply to”. 25
- (2) Section 11B(4) is amended by inserting “spectrum” after “applies to a”.
- 10 Application for correction of Register**
Section 23 is amended by repealing subsection (1) and substituting the following subsection: 30
- “(1) Every person who presents an instrument for registration under section 16 may, after receiving the certificate issued under section 17(b), request that the Registrar correct the record on the Register of the particulars set out in the instrument on the grounds that the Register does not record accurately those particulars or is for any other reason incorrect.” 35

11 Correction of Register

(1) Section 24 is amended by repealing subsection (2) and substituting the following subsections:

- “(2) The Registrar may, of the Registrar’s own motion, correct the Register (recording on the Register the nature of the correction and the time at which the correction was made) if the Registrar is satisfied that the Register—
- “(a) does not record accurately the particulars set out in an instrument to which an entry in the Register relates; or
 - “(b) requires updating because a rightholder or manager or holder of a radio licence has changed that person’s name or address, or because a name or address is wrongly entered in the Register; or
 - “(c) is incorrect for any other reason.
- “(2A) **Subsection (2)** applies whether or not a person has requested that the Registrar correct the Register under section 23.”
- (2) Section 24(4) is repealed.

12 New section 24A inserted

The following section is inserted after section 24:

- “24A Duty to notify change of name or address**
- (1) If a rightholder or manager or holder of a radio licence changes that person’s name or address, that person must, within 1 month after the change, notify the Registrar of the person’s new name or address.
- (2) A breach of **subsection (1)** is an infringement offence.”

13 New section 25A inserted

The following section is inserted after section 25:

- “25A Matters relevant to radio engineer’s certificate under section 25**
- A radio engineer issuing a certificate under section 25—
- “(a) must, before issuing the certificate, have regard to—
 - “(i) the nature and characteristics of the rights described in the spectrum licence; and
 - “(ii) the International Radio Regulations; and
 - “(iii) the ITU-R reports and recommendations; and
 - “(iv) Annex 10 to the Convention on International Civil Aviation; and

- “(v) the International Convention for the Safety of Life at Sea; and
- “(vi) the nature of the service proposed to be operated under the spectrum licence; and
- “(vii) any relevant reference standards issued by the Secretary; but 5
- “(b) must not, in considering whether to issue the certificate, have regard to the reception of radio waves by inappropriate receivers.”
- 14 Content of record of management rights 10**
- (1) Section 34(e) is amended by repealing subparagraph (iii) and substituting the following subparagraphs:
- “(iii) in the case of a record of management rights that is created under section 47(1) on the cancellation of 2 or more records of management rights under section 46, any conditions specified on the cancelled records of management rights; or 15
- “(iv) in the case of a record of management rights that is created under **section 47B(1)** on the cancellation of 2 records of management rights under **section 47A**, any conditions specified on the cancelled records of management rights; and”. 20
- (2) Section 34(ea) is amended by inserting “spectrum” after “applies to the”.
- (3) Section 34(f) is amended by repealing subparagraph (iii) and substituting the following subparagraphs: 25
- “(iii) in the case of a record of management rights that is created under section 47(1) on the cancellation of 2 or more records of management rights under section 46, the date on which the Registrar creates that new record of management rights; or 30
- “(iv) in the case of a record of management rights that is created under **section 47B(1)** on the cancellation of 2 records of management rights under **section 47A**, the date on which the Registrar creates that new record of management rights; and”. 35
- (4) Section 34(g)(i) is amended by omitting “20 years commencing on the date on which the record of management rights is so recorded” and substituting “20 years from the commencement date of the record of management rights”. 40

- (5) Section 34(g) is amended by repealing subparagraph (iii) and substituting the following subparagraphs:
- “(iii) in the case of a record of management rights that is created under section 47(1) on the cancellation of 2 or more records of management rights under section 46, the expiry date specified on the cancelled records of management rights; or 5
- “(iv) in the case of a record of management rights that is created under **section 47B(1)** on the cancellation of 2 records of management rights under **section 47A**, the expiry date specified on the record of management rights for the successive management rights; and”.
- 15 Power floors applying after creation of records of management rights under section 45(1) or 47(1)** 15
- (1) The heading to section 34C is amended by omitting “**section 45(1) or 47(1)**” and substituting “**section 45(1), 47(1), or 47B(1)**”.
- (2) Section 34C is amended by repealing subsection (2) and substituting the following subsection: 20
- “(2) If, under section 46(1) or **section 47A(3)**, the Registrar cancels any records of management rights and, under section 47(1) or **section 47B(1)**, creates a new record of management rights in relation to the frequencies to which the cancelled records of management rights relate, the power floor for each frequency specified in the cancelled records of management rights continues to apply to those frequencies.” 25
- 16 Protection limit applying after creation of records of management rights under section 45(1) or section 47(1)**
- (1) The heading to section 37 is amended by omitting “**section 45(1) or section 47(1)**” and substituting “**section 45(1), 47(1), or 47B(1)**”. 30
- (2) Section 37 is amended by repealing subsection (2) and substituting the following subsection:
- “(2) If, under section 46(1) or **section 47A(3)**, the Registrar cancels any records of management rights and, under section 47(1) or **section 47B(1)**, creates a new record of management rights in relation to the ranges of frequencies to which the cancelled 35

records of management rights relate, the protection limits specified in the cancelled records of management rights continue to apply to those ranges of frequencies.”

- 17 Adjacent frequencies emission limits applying after creation of records of management rights under section 45(1) or section 47(1)** 5
- (1) The heading to section 41 is amended by omitting “**section 45(1) or section 47(1)**” and substituting “**section 45(1), 47(1), or 47B(1)**”.
- (2) Section 41 is amended by repealing subsection (2) and substituting the following subsection: 10
- “(2) If, under section 46(1) or **section 47A(3)**, the Registrar cancels any records of management rights and, under section 47(1) or **section 47B(1)**, creates a new record of management rights in relation to the ranges of frequencies to which the cancelled records of management rights relate, the adjacent frequencies emission limits applying to the frequencies adjacent to the boundaries of the range of frequencies to which the new record of management rights relates are the adjacent frequencies emission limits specified in the cancelled records of management rights as relating to those frequencies.” 15 20
- 18 Heading to Part 5 amended**
- The heading to Part 5 is amended by inserting “**and aggregations**” after “**Transfers**”.
- 19 New section 44 substituted** 25
- Section 44 is repealed and the following section substituted:
- “44 Record of management rights to be cancelled on transfer of part of range of frequencies**
- “(1) If a notice of transfer purports to transfer the management rights in respect of part only of the range of frequencies specified in a record of management rights, the Registrar must record on the record of management rights that the record of management rights is cancelled. 30
- “(2) The recording of the cancellation under **subsection (1)** has the effect of cancelling the record of management rights.” 35

- 20 New records of management rights to be created for portion transferred and for balance**
Section 45(2)(b) is amended by omitting “with” and substituting “within”.
- 21 Aggregation of management rights** 5
The heading to section 46 is amended by adding “with common boundary”.
- 22 New record of management rights to be created for all rights to which request relates**
The heading to section 47 is amended by inserting “under section 46” after “request”. 10
- 23 New sections 47A and 47B inserted**
The following sections are inserted after section 47:
- “47A Aggregation of current and successive management rights** 15
- “(1) This section applies to a manager if—
- “(a) the manager has management rights that expire in less than 5 years’ time (the **current management rights**); and
- “(b) the manager is also the manager of subsequent management rights created in relation to the same range of frequencies as the current management rights (the **successive management rights**); and 20
- “(c) the records of management rights of both the current management rights and the successive management rights have— 25
- “(i) the same power floors; and
- “(ii) the same protection limits; and
- “(iii) the same adjacent frequencies emission limits; and 30
- “(iv) spectrum licences relating to the same range of frequencies, with the same conditions applying to those spectrum licences; and
- “(d) the commencement date of the record of management rights relating to the successive management rights is no more than 1 day after the expiry date applying to the record of management rights relating to the current management rights. 35

- “(2) A manager to whom this section applies may request that the Registrar cancel the records of management rights of both the current management rights and the successive management rights, and create 1 record of management rights relating to the range of frequencies concerned. 5
- “(3) If, upon receipt of a request under **subsection (2)**, the Registrar is satisfied that **subsection (1)** applies, the Registrar must record on the records of management rights to which the request relates that the records of management rights are cancelled, and that recording of the cancellation has the effect of cancelling the records of management rights. 10

“47B New record of management rights to be created for all rights to which request under section 47A relates

- “(1) The Registrar, upon cancelling any records of management rights under **section 47A**, must create a record of management rights in respect of the radio frequencies to which the cancelled records of management rights relate. 15
- “(2) The Registrar must record on every record of management rights created under **subsection (1)** the reference number of every spectrum licence that was recorded on the cancelled records of management rights.” 20

24 New section 57E inserted

The following section is inserted after section 57D:

“57E Matters relevant to radio engineer’s certificate under section 57D 25

A radio engineer issuing a certificate under section 57D—

- “(a) must, before issuing the certificate, have regard to—
 - “(i) the nature and characteristics of the rights described in the spectrum licence; and
 - “(ii) the International Radio Regulations; and 30
 - “(iii) the ITU-R reports and recommendations; and
 - “(iv) Annex 10 to the Convention on International Civil Aviation; and
 - “(v) the International Convention for the Safety of Life at Sea; and 35
 - “(vi) the nature of the service proposed to be operated under the spectrum licence; and
 - “(vii) any relevant reference standards issued by the Secretary; but

“(b) must not, in considering whether to issue the certificate, have regard to the reception of radio waves by inappropriate receivers.”

- 25 Section 72A repealed**
Section 72A is repealed. 5
- 26 Caveat against dealing with radio frequencies**
Section 89(1)(b)(ii) is amended by inserting “spectrum” before “licence”.
- 27 Notice of harmful interference**
- (1) Section 108(2)(a) is amended by omitting “subsections (3) to (7)” and substituting “subsections (5) to (7)”. 10
- (2) Section 108 is amended by inserting the following subsections after subsection (2):
- “(2A) The claimant may, after the expiry of 10 working days from the date when the matter was referred to the Secretary under subsection (2), by notice in the prescribed form to the Secretary, request that the Secretary refer the matter to arbitration under section 109 if, within that 10-working-day period,— 15
- “(a) the action specified in the notice given under subsection (1) has not been taken; and 20
- “(b) the claimant continues to believe that the respondent’s transmissions have caused or contributed to, or are causing or contributing to, harmful interference in the protection area of the claimant, and that the action that is specified in the notice is justified; and 25
- “(c) the claimant, the respondent, and the Secretary have not agreed on a method of reaching an agreement to deal with the harmful interference or to refer the matter to arbitration.
- “(2B) Despite subsection (2)(a), if a claimant has made a request under **subsection (2A)**, sections 109 to 109C apply.” 30
- 28 Reference to arbitration by Secretary**
Section 109(1) is amended by omitting “section 108(6) or (7)” and substituting “**section 108(2A)**, (6), or (7)”.

29 Matters relevant to arbitration

Section 109A is amended by repealing subsection (1) and substituting the following subsections:

- “(1) Article 28(4) of Schedule 1 of the Arbitration Act 1996 does not apply to matters referred to arbitration under section 108(5)(d) or section 109; instead, the arbitral tribunal’s decision must seek to balance the reasonable expectations, rights, and duties of the claimant and the respondent or other persons, without compromising public safety, and having regard to—
- “(a) the costs and effects of possible alternative solutions; and
 - “(b) the technical compatibility between the claimant’s receiver and the respondent’s transmitter as determined by—
 - “(i) the nature and characteristics of the rights described in the licences concerned; and
 - “(ii) the International Radio Regulations; and
 - “(iii) the ITU-R reports and recommendations; and
 - “(iv) Annex 10 to the Convention on International Civil Aviation; and
 - “(v) the International Convention for the Safety of Life at Sea; and
 - “(vi) the nature of the service operated or proposed to be operated under any licences concerned; and
 - “(vii) any relevant reference standards issued by the Secretary; and
 - “(c) which of the licences held by the parties to the dispute was registered or granted first; and
 - “(d) the desirability of minimising disruption to existing services; and
 - “(e) the terms of the licences concerned; and
 - “(f) any other matters prescribed by regulations made under this Act or that the arbitral tribunal considers relevant.
- “(1A) The arbitral tribunal must not have regard to the reception of radio waves by inappropriate receivers.”

30 Regulations

- (1) Section 116(1) is amended by repealing paragraphs (a) and (b) and substituting the following paragraphs:

- “(a) providing for the making of applications for, and the granting of, radio licences granting to holders the right

- to transmit radio waves on specified frequencies; and providing for the terms and conditions subject to which radio licences may be granted, amended, transferred, suspended, or revoked (including the amending of those terms and conditions): 5
- “(b) providing for the making of applications for, and the granting of, general user radio licences granting to every person the right to transmit radio waves on any frequency specified in the licence; and providing for the terms and conditions subject to which general user radio licences may be granted, amended, transferred, suspended, or revoked (including the amending of those terms and conditions):”. 10
- (2) Section 116(1) is amended by repealing paragraphs (e) and (f) and substituting the following paragraphs: 15
- “(e) providing for the allocation of radio licences by competitive tender, auction, or by any other means, and for the payment of consideration to the Crown for the allocation:
- “(f) providing for the making of applications for, and the granting of, radio licences, providing for the protection from harmful interference from co-channel emissions; and providing for the terms and conditions subject to which radio licences may be granted, amended, transferred, suspended, or revoked (including the amending of those terms and conditions):”. 20 25
- 31 Commission of infringement offence**
Section 128A(a) is amended by omitting “section 128 of”.
- 32 Regulations**
- (1) Section 134(1) is amended by repealing paragraph (e) and substituting the following paragraph: 30
- “(e) providing for examinations to determine the competence of persons wishing to operate radio apparatus and prescribing fees in respect of those examinations; and providing for the issue, revocation, or suspension of certificates of competency in respect of any operations, and for the authorisation by the Secretary of— 35
- “(i) persons to conduct the examinations; and
- “(ii) persons to issue certificates; and

- “(iii) the content of the examinations; and
 - “(iv) the conduct of the examinations.”
- (2) Section 134(1) is amended by repealing paragraph (jb) and substituting the following paragraph:
 - “(jb) prescribing the infringement fee (not exceeding \$2,000) for each infringement offence.” 5
- (3) Section 134 is amended by inserting the following subsections after subsection (1):
 - “(1A) Different fees and different forms may be prescribed for different infringement offences. 10
 - “(1B) The Governor-General may, by Order in Council, in accordance with a recommendation of the Minister, make regulations declaring receivers of any kind to be inappropriate receivers for the purposes of this Act.”
- 33 New section 134AA inserted 15**

The following section is inserted after section 134:

“134AA Secretary may prescribe forms

 - “(1) The Secretary by notice in the *Gazette* may prescribe any forms (including infringement and reminder notices) that are not otherwise specifically prescribed. 20
 - “(2) Different forms may be prescribed for different infringement offences.”
- 34 Recovery of fees**

Section 136 is amended by adding the following subsections:

 - “(3) If a rightholder does not pay any fee relating to a spectrum licence in accordance with regulations made under this Act in full within 6 months of the date the fee is due,—
 - “(a) the manager of the management rights to which the spectrum licence relates is jointly and severally liable with the rightholder for payment of the unpaid fees; and 30
 - “(b) regardless of whether or not the spectrum licence may be cancelled by the manager alone, and independently of any right of the manager to cancel the licence in accordance with section 57A or 57B, the manager may cancel the licence to which the unpaid fees relate by presenting to the Registrar for the purposes of registration a notice in the prescribed form. 35

“(4) Every notice presented under **subsection (3)** must be accompanied by a statutory declaration from or on behalf of the manager that the rightholder has been served with a copy of the notice in relation to the spectrum licence.

5

“(5) The notice must specify—

“(a) that the spectrum licence is cancelled; and

“(b) the date from which the cancellation is to apply.”

Consequential amendment

35 Grant of radio licence

10

Regulation 8(3) of the Radiocommunications Regulations 2001 is amended by revoking paragraph (a) and substituting the following paragraph:

“(a) the name and address of the licensee; and”.