

# **RADIOCOMMUNICATIONS AMENDMENT BILL**

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AS REPORTED FROM THE COMMERCE COMMITTEE

## **COMMENTARY**

### **Recommendation**

The Commerce Committee has examined the Radiocommunications Amendment Bill and recommends that it be passed with the amendments shown in the bill.

### **Conduct of the examination**

The Radiocommunications Amendment Bill was referred to the Commerce Committee on 4 December 1997. The closing date for submissions was 20 February 1998. The committee received and considered 17 submissions from broadcasters, radio associations, telecommunications organisations and other interested groups and individuals. Eleven submissions were heard orally. Three and a half hours were spent on the hearing of evidence and consideration took five hours.

We were due to report back on 9 June 1998 but sought an extension until 7 September 1998.

Advice was received from the Ministry of Commerce. The Regulations Review Committee reported to the committee on the powers contained in the bill.

This commentary sets out the details of the committee's consideration of the bill and the major issues addressed by the committee.

### **Background to the Radiocommunications Act 1989**

The Radiocommunications Act 1989 (the Act) was the first legislation in the world to associate radio spectrum management with the concept of tradeable access rights. The Act provides for the creation and registration of:

- a tradeable *management right* over any defined frequency band, nationwide, for up to twenty years; and
- a tradeable *spectrum licence* by the owner of a management right for frequencies within the frequency band of the management right; and

- a non-tradeable, administrative *radio licence* by the Secretary of Commerce for frequencies not subject to a management right.

### **Background to the bill**

The key amendments proposed:

- remove the present 20-year restriction on the duration of spectrum access rights, allowing management rights and spectrum licences to be created for any defined term;
- allow for a succeeding management right to be created and allocated prior to the expiry of an existing right;
- provide flexibility in the technical description of spectrum access rights and administrative radio licences;
- strengthen the technical certification framework by integrating the registers of administrative radio licences and spectrum access rights and providing improved public access; and
- allow for disputes over harmful interference to be determined by arbitration.

### **Role of the Government**

While there was continued support for the market-driven spectrum allocation process, there was a clear view by some submitters that the Government should have an ongoing role in the utility of spectrum under privately-owned management rights. Submitters expressed concern that spectrum may not be well utilised or that spectrum may be obtained for the sole purpose of blocking a competitor from using that spectrum.

The view was held by some submitters that the Government should be actively facilitating the development of new technology, for example, digital television. We note that the Secretary of Commerce (the Secretary) has recently published a consultative framework and timetable for spectrum allocation. We believe that it is appropriate for the role of Government in the management of various spectrum bands to be determined through that process.

### **Role of manager**

A number of broadcasters and land mobile users had a strong preference for the Government to remain as the manager of radio spectrum. There was concern that if the management rights currently held by the Government were sold at auction, and purchased by one of the major service providers, there would be potential for anti-competitive behaviour; the so-called "hostile landlord" scenario. A number of submissions suggested that there be some legislative provision to ensure all managers act in the best interests of spectrum efficiency, fairness and reasonableness in facilitating the use of spectrum by other persons, including their competitors.

Some members expressed doubt that the Commerce Act 1986 is sufficient to prevent or remedy the "hostile landlord" situation or other anti-competitive behaviour that arises as a result of this bill.

A review of the Commerce Act 1986 is being conducted by the ministry and will be concluded soon. Members of the committee are hopeful that any strengthening of the penalties and enforcement provisions in the Act will prevent or remedy any anti-competitive behaviour that could arise in relation to the radio spectrum.

## **Term of management rights**

A number of submissions related to the removal of the 20-year limit on the term of a management right.

An increased term was supported by some submitters. They maintained that a market investment is adversely affected by a shorter term and the accompanying uncertainty over renewal rights. Whilst arguing for long-term rights, some accept that a re-allocation process with five years of expiry might be acceptable.

Some submissions considered that the abolition of the 20-year limit resulted in the effective “perpetual alienation” of parts of the spectrum. This could lead to technical regression, with little motivation for managers to change or innovate. Others believe some managers may forestall new technologies and services by denying access to their spectrum in order to ensure the managers’ own service infrastructure is protected from competition.

The bill provides for new management rights to be created and allocated in advance of the expiry of existing rights. This was widely endorsed by submitters, with re-allocation generally supported about five years ahead of expiry. This, coupled with the recent move away from a sealed-bid tender to an open auction system, may reduce the uncertainty related to the expiration of a management right after 20 years.

To this end we recommend that the clause abolishing the 20-year limit be omitted. This means that a management right, and licences under that right, can be leased for a *maximum* term of 20 years. A shorter term is possible, to be determined by the Crown before auction. When a management right expires the Crown will have the option of creating and auctioning a succeeding right, for up to 20 years, or allowing the spectrum concerned to revert to administrative licensing.

We believe that retaining the 20-year limit meets most of our concerns of providing certainty for business whilst reducing the possibility of technical regression from perpetual alienation. We note that it is unlikely, with the current rate of technological development, that any spectrum-based business plan would not show a full return of investment within twenty years.

We therefore recommend that the clause 15 of the bill relating to section 34(g)(i) of the Act be omitted.

## **Incumbency and tenure**

Submitters were concerned, and even confused, about the uncertainty that currently existed regarding existing management rights and what arrangements would apply on their expiry.

Several submitters suggested that where existing users suffer economic disadvantage as a result of a policy decision, some form of compensation should be provided.

Overall, it was felt by submitters that greater certainty was necessary in relation to existing management rights and/or licences where a right has been issued for a specified term. With existing users having potentially significant financial commitments in equipment and services infrastructure, submitters felt that an existing right-holder should have either a right of renewal or first right of refusal for re-purchase.

Again, we note that when a management right expires the Crown will have the option of creating and auctioning a succeeding right, for up to 20 years, or allowing the spectrum concerned to revert to administrative licensing.

We believe the submitters concerns are met by the provisions of the bill that allow for re-allocation decisions to be made, and new rights allocated, ahead of the expiry of existing rights.

### **Māori development**

The concern was expressed that, except in relation to AM/FM radio broadcasting and UHF television broadcasting, the Government had not sought consultation with Māori on spectrum matters. A submitter expressed a view that radio spectrum should be subject to partnership management in the spirit of the Treaty of Waitangi.

In this context, concern was expressed at the potential for spectrum to be alienated, essentially in perpetuity, by the removal of the 20-year limit on the term of a management right. Our recommendation that clause 15 of the bill relating to section 34(g)(i) of the Act be omitted, will help to resolve this concern.

### **Electromagnetic compatibility**

Electromagnetic compatibility (EMC) is an umbrella term that describes the ability of electrical and electronic equipment to operate satisfactorily—

- without causing interference to radio reception. This is known as electromagnetic interference (EMI); and
- without being susceptible to malfunction in the presence of radio transmissions. This is known as electromagnetic susceptibility (EMS).

The use of microprocessor control systems in homes, vehicles and machinery, and the expanding use of mobile radio transmitters (e.g., cellphones) is increasing. Without adequate immunity to radio transmissions these control systems are susceptible to malfunction and this raises public safety concerns. The ability to mandate EMS compliance standards, along with deterrent provisions such as infringement notices, is considered an appropriate safeguard in the public interest.

New Zealand has mandated compliance with international EMI standards for some time. Spectrum management groups within the Ministry of Commerce and the Australian Communications Authority have worked together to harmonize technical standards, compliance requirements and penalties. It is proposed to adopt a common EMI labelling requirement for products, along with mutual recognition of such labels under the respective Australian and New Zealand regulations.

Most of the elements of the harmonised regime can be implemented within the existing provisions of the Act. However, two aspects require amendments to the principal legislation. These are:

- a regulation-making power for EMS; and
- clauses enabling the enactment of infringement notices for minor offences.

To this end we recommend clauses 2 and 44 be amended and clause 40A be added to effect EMC compliance.

### **Lawful interference**

The primary reason for licensing radio transmissions is to manage interactions between co-sited and/or co-frequency services. Despite the best preventive measures, lawful interference may still occur. Such interactions may disrupt communications to the extent that public safety or business is put at risk, thus, the interference prevention (certification) and resolution provisions of the Act are of interest to all spectrum users. The bill aims to strengthen these provisions. This

will be done primarily through the introduction of an arbitration process based on a test of reasonable expectations within a framework of established international standards and practices.

We recommend amendments to clauses 2, 9, 24, and 33, and the insertion of a new clause 24A, to further enhance the provisions for interference prevention and resolution.

### **Licences for co-channel interference protection**

Some submitters noted that the provisions of clauses 35 and 39 appeared to remove the ability of the Secretary to grant radio licences to provide protection from harmful interference caused by co-channel transmissions. This was not intended and we recommend amendments to clauses 35 and 39 to remedy this.

### **Presumption of section 114 of the Act to be amended**

A number of submissions drew attention to the existing provisions of section 114 of the Act where, for the purposes of section 113, the occupier of any premises on which an unlicensed radio transmitter is situated is presumed to be in possession of that transmitter. Although no changes to the section were proposed in the bill, there was a strong view by some submitters that the presumption of guilt by physical proximity was unfair.

We recommend that clause 38 be amended so that the presumption of section 114(1) relates to possession of an unlicensed transmitter and not the physical proximity of a person to that transmitter.

### **Expiry of certification**

There was wide agreement that spectrum licences should not be allowed to remain unregistered indefinitely. However, the majority of submissions supported the expiration of the engineering certification rather than invalidation of the licence itself. This would have substantially the same effect, but it might still be possible for a spectrum licence with expired certification to be re-certified but this would depend on technical compatibility with any other licences registered in the interim. This is a risk that would have to be borne by the licence-holder if that person failed to register a licence.

We recommend clause 53 (1) be omitted from the bill.

### **Privacy**

The Privacy Commissioner highlighted that neither the Register of Radio Frequencies nor the National Frequency Register is proposed to be listed as “public register provisions” under the Privacy Act 1993.

We recommend new clause 57A be added to the bill to include the Register of Radio Frequencies in the Second Schedule of Privacy Act 1993.

The New Zealand Association of Radio Transmitters (NZART) sought a provision to allow compilation, sorting and publishing of the details of the Register of Radio Frequencies. Particularly, it wishes to publish the addresses of amateur radio operators, the publication of which is currently constrained by the Privacy Act 1993.

We agree that this ought to be permitted. We believe clause 11 already allows for call-signs to be used to search the Register and permits addresses being published once disclosure has been authorised by the licensee. Thus, we recommend no change to the clause.

## **Technical amendments recommended**

Clarifications of various definitions are recommended. The definitions affected are:

- susceptible equipment (clause 2);
- interference (clause 2);
- claimant (clause 33);
- respondent (clause 33); and
- protection area (clause 33).

The amendments to the clause 2 definitions of “International Radio Regulations”, “ITU-R reports and recommendations” and “Convention on International Civil Aviation” are required to reflect the current status of the International Telecommunications Union (ITU) and the International Civil Aviation Organisation (ICAO).

## **Navigational and safety services**

We recommend amendments to strengthen the degree of protection to navigational and safety services from interference. To this end, we recommend clarifying amendments to clause 9 and clauses 9, 24, and 33, and the insertion of new clause 24A.

## **Quality of receivers**

A number of submissions sought revision of the proposed amendment to clarify the quality of receivers. Submitters expressed a need to have clearly defined technical standards for receivers. We recommend amendments to clause 33 to achieve this.

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KEY TO SYMBOLS USED IN REPRINTED BILL  
AS REPORTED FROM A SELECT COMMITTEE

*Struck Out (Unanimous)*

Subject to this Act,

Text struck out unanimously

*New (Unanimous)*

Subject to this Act,

Text inserted unanimously

~~(Subject to this Act,)~~

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

## RADIOCOMMUNICATIONS AMENDMENT

### ANALYSIS

Title	
1. Short Title and commencement	21. New records of management rights to be created for portion transferred and for balance
2. Interpretation	22. New sections substituted
3. Register of Radio Frequencies	48. Creation of spectrum licence by manager
4. Form of Register	49. Contents of spectrum licence
5. Registration of management rights for radio frequencies	23. Repeal of sections relating to modification of unwanted emission limits
6. Creation of successive records of management rights	24. New sections inserted
7. Repeal of section 12	55. Transmissions by persons with agreement of rightholder
8. Fees in relation to defective applications	55A. Transmissions in accordance with general user spectrum licences
9. Registrar's duties in relation to registration of spectrum licences	56. Transfer of spectrum licence
10. Registration of spectrum licences and modifications where management rights mortgaged	57. Modification or cancellation of spectrum licence by rightholder alone
11. Register to be open for search	57A. Modification or cancellation of spectrum licence by manager alone
12. Registrar to issue search copies	57B. Modification or cancellation of spectrum licence by rightholder and manager
13. Certified copies of Register to be evidence	57C. Modification of spectrum licence where 2 or more managers
14. Expiry of registration	57D. Registrar's duties in relation to registration of modification or cancellation of spectrum licence
15. Content of record of management rights	24A. Matters relevant to radio engineer's certificate
16. New heading and sections inserted	25. Discharge of mortgage
	26. Rights conferred on rightholder by spectrum licence
<i>Power Floors</i>	27. Repeal of provisions relating to rights of holders of certain licences
34A. Power floors applying when radio frequencies registered under Act	28. Requirements to be complied with in exercise of rights
34B. Modification of power floors	29. Compliance with unwanted emission limits
34C. Power floors applying after creation of records of management rights under section 45 (1) or 47 (1)	30. Transmission other than in accordance with spectrum licence
	31. Transmission pursuant to radio licence not affected
<i>Management Rights Ceiling</i>	
34D. Ceiling for management rights	
17. Protection limit applying when radio frequencies registered under Act	
18. Adjacent frequencies emission limits applying when radio frequencies registered under Act	
19. Modification of adjacent frequencies emission limits	
20. Transfer by manager	



<p>32. Interference to receivers</p> <p>33. New sections substituted</p> <p style="padding-left: 20px;">106. Definitions for sections 107 to 109B</p> <p style="padding-left: 20px;">106A. Sections 106 to 109B apply where transmissions not commenced</p> <p style="padding-left: 20px;">107. Notice of harmful interference</p> <p style="padding-left: 20px;">108. Reference to arbitration by Secretary</p> <p style="padding-left: 20px;">109. Matters relevant to arbitration</p> <p style="padding-left: 20px;">109A. Offence to transmit in breach of Secretary's direction</p> <p style="padding-left: 20px;">109B. Powers when deciding disputes</p> <p>34. New heading and section inserted</p> <p style="text-align: center;">PART XIII</p> <p style="text-align: center;">RADIO LICENCES</p> <p style="padding-left: 20px;">110. Part to apply to frequencies where no record of management rights registered</p> <p>35. Granting of radio licences</p> <p>36. Secretary to have regard to Government policy</p> <p>37. Offences</p> <p>38. Presumptions</p> <p>39. Regulations</p> <p>40. Repeal of section 119</p> <p>41. Penalties</p> <p>41A. New sections inserted</p> <p style="padding-left: 20px;">128A. Commission of infringement offence</p> <p style="padding-left: 20px;">128B. Infringement notices</p> <p>42. Approval of radio engineers</p> <p>43. Offence to disclose contents of radio-communications</p> <p>44. Regulations</p> <p>45. Regulations prescribing fees</p> <p>46. Recovery of fees</p>	<p>47. Application of Commerce Act 1986 to acquisition or disposition of management rights or licence in relation to radio frequencies</p> <p>48. Transitional rights in relation to frequencies in Sixth Schedule</p> <p>49. Bodies specified in Seventh Schedule entitled to licence</p> <p>50. Amendment of advertising restrictions, etc</p> <p>51. Amendments to principal Act</p> <p>52. New schedule of principal Act</p> <p>53. Provisions relating to unregistered spectrum licences</p> <p>54. Interference caused by lawful exercise of rights</p> <p>55. Transitional provisions relating to power floors</p> <p>56. Spectrum licences registered in accordance with Part III of principal Act</p> <p>57. Licences granted under Part XIII of principal Act</p> <p>57A. Addition to Second Schedule of Privacy Act 1993</p> <p>58. Transitional rights in relation to frequencies in Sixth Schedule</p> <p>59. Transitional provisions in relation to frequencies in Seventh Schedule</p> <p>60. Revocation of notices</p> <p style="text-align: center;">—————</p> <p style="text-align: center;">SCHEDULES</p> <p style="text-align: center;">Schedule 1</p> <p style="text-align: center;">Amendments to Principal Act Consequential on Amendments Made by Section 9</p> <p style="text-align: center;">Schedule 2</p> <p style="text-align: center;">New First Schedule of Principal Act Substituted</p>
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## A BILL INTITULED

### An Act to amend the Radiocommunications Act 1989

BE IT ENACTED by the Parliament of New Zealand as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Radiocommunications Amendment Act 1997, and is part of the Radiocommunications Act 1989\* (“the principal Act”).

(2) This Act comes into force on a date to be fixed by the Governor-General by Order in Council.

\*1989, No. 148

Amendments: 1990, Nos. 22, 104; 1994, No. 57; 1995, No. 38; 1996, No. 76

**2. Interpretation**—Section 2 of the principal Act is amended by repealing subsection (1) and substituting the following subsection:

“(1) In this Act, unless the context otherwise requires,—

“ ‘Adjacent frequencies emission limit’, in relation to a record of management rights, means a limit specifying the maximum power of emissions permitted on a range of frequencies, being—

5 (a) Frequencies other than frequencies within the range of frequencies to which the record relates; and

(b) Frequencies within a range that has as its upper or lower limit a frequency that constitutes a boundary of the range of frequencies to which the record of management rights relates:

10 “ ‘Adjacent manager’, in relation to any adjacent frequencies emission limit or any proposed adjacent frequencies emission limit, means a manager whose record of management rights relates to a range of frequencies that include frequencies to which the adjacent frequencies emission limit or proposed adjacent frequencies emission limit applies or is proposed to apply:

20 “ ‘Advertising programme’ has the meaning given to that term by section 2 of the Broadcasting Act 1989:

“ ‘Approved radio engineer’ means a person for the time being approved by the Secretary pursuant to section 130:

25 “ ‘Auditor’ means a person who is qualified for appointment as auditor of a company under the Companies Act 1993:

30 “ ‘Boundary’, in relation to the range of frequencies to which a record of management rights relates, means a frequency specified in that record of management rights as the upper or lower limit of that range:

“ ‘Broadcast’ has the meaning given to that term by section 2 of the Broadcasting Act 1989:

35 “ ‘Co-channel emissions’ means emissions produced by 2 or more radio transmitters transmitting, in part or in whole, on frequencies in the same frequency band:

*Struck Out (Unanimous)*

40 “ ‘Convention on International Civil Aviation’ means the Convention on International Civil Aviation signed on behalf of the Government of New Zealand in Chicago on 7 December 1944:

*New (Unanimous)*

- “ ‘Convention on International Civil Aviation’ means the Convention on International Civil Aviation signed on behalf of the Government of New Zealand in Chicago on 7 December 1944; and includes— 5
- “(a) Any amendment to the Convention which has entered into force under Article 94 (a) of the Convention and has been ratified by New Zealand; and
- “(b) Any Annex or amendment to the Convention accepted under Article 90 of the Convention to the extent adopted by New Zealand; and 10
- “(c) The international standards and recommended practices from time to time accepted and amended by the International Civil Aviation organisation pursuant to Article 37 of the Convention, to the extent adopted by New Zealand: 15
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- “ ‘Court Registrar’ means the Registrar of a Court; and includes any Deputy Registrar of a Court:
- “ ‘E.i.r.p.’ means equivalent isotropically radiated power, being the power supplied to an antenna by a radio transmitter multiplied by the antenna gain of the antenna in a given direction relative to an isotropic antenna: 20
- “ ‘Emission’ means radiation produced, or the production of radiation, by a radio transmitter: 25
- “ ‘Financial year’ means the period of 12 months ending on 30 June:
- “ ‘Harmful interference’ means interference which endangers the functioning of a radionavigation service, or of other safety services, or seriously degrades, obstructs, or repeatedly interrupts radiocommunications: 30
- “ ‘Induction’ means the process by which 1 electrical conductor having electrical or magnetic properties causes like properties in another electrical conductor, either with or without direct conduct with that other electrical conductor: 35

*New (Unanimous)*

5 “‘Infringement fee’, in relation to an infringement offence, means the amount fixed by regulations made under **section 134 (1) (jb)** as the infringement fee for the offence:

“‘Infringement offence’ means an offence prescribed as an infringement offence in regulations made under **section 134 (1) (ja)**:

10 “‘Instrument’ means an instrument in any of the forms prescribed by regulations made under this Act for the purposes of any of the provisions of Parts II to X of this Act:

15 “‘Interference’ means the effect of (*unwanted*) 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:

20 “‘Interfering equipment’ means any electrical conductor, electrical or electronic apparatus or equipment of any kind that is reasonably likely to cause or causes interference to radiocommunications; and includes any radio transmitter other than a radio transmitter operating in accordance with a spectrum licence or a radio licence issued under this Act, or in accordance with regulations made under this Act exempting radio transmitters from the need to obtain a radio licence:

25 “‘International Convention for the Safety of Life at Sea’ means the International Convention for the Safety of Life at Sea, done at London on 1 November 1974; and includes—

- 30 (a) The Annex to that Convention; and  
(b) All amendments of that Convention; and  
(c) All protocols to that Convention:

*Struck Out (Unanimous)*

35 “‘International Radio Regulations’ means the Radio Regulations annexed to the International Telecommunications Convention, done at Nairobi in 1982, and includes any revisions of, or any

*Struck Out (Unanimous)*

regulations made in amendment to, or substitution for, such regulations:

*New (Unanimous)*

“ ‘International Radio Regulations’ means the Radio Regulations annexed to the International Telecommunications Convention, done at Geneva in 1992; and includes any revisions of, or any regulations made in amendment to, or substitution for, such regulations: ”

*Struck Out (Unanimous)*

“ ‘ITU-R reports and recommendations’ means the reports and recommendations of the Radiocommunication Sector of the International Telecommunication Union, being the reports and recommendations adopted at the XVIIIth Plenary Assembly at Geneva in 1995; and includes, from the date of ratification by New Zealand,—

(a) Any amendments or additions to any such reports or recommendations; and

(b) Any reports or recommendations adopted in substitution for any such reports or recommendations: ”

*New (Unanimous)*

“ ‘ITU-R reports and recommendations’ means the reports and recommendations of the Radiocommunication Sector of the International Telecommunication Union as adopted from time to time by the study groups or assemblies of the Sector; and includes, to the extent adopted by New Zealand,—

“(a) Any amendments or additions to any such reports or recommendations; and

*New (Unanimous)*

“(b) Any reports or recommendations adopted in substitution for any such reports or recommendations:

- 5           “ ‘Manager’—  
          (a) Means a person named in a record of management rights as the manager of the range of frequencies to which the record of management rights relates; and  
10           (b) Includes,—  
          (i) In relation to the transfer of management rights, a mortgagee who, in right of a mortgage of management rights, is entitled to exercise the power referred to  
15           in section 78 (a);  
          (ii) In relation to the granting of spectrum licences under section 48, a mortgagee who, in right of a mortgage of management rights, is entitled to exercise the power referred to in section 78 (b):  
20           “ ‘Minister’ means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act:  
25           “ ‘Power floor’ means the minimum level of emissions, expressed in terms of e.i.r.p. specified in a record of management rights:  
          “ ‘Programme’ has the meaning given to that term by section 2 of the Broadcasting Act 1989:  
30           “ ‘Protection area’ means the area or location described in a radio licence or a spectrum licence where the rightholder or holder of a radio licence has the right to have no harmful interference:  
          “ ‘Protection limit’, in relation to a record of management rights, means the limit specified in that record of management rights as the limit that no adjacent frequencies emission limit on any other record of management rights may exceed in relation to any frequency within the range of frequencies to which  
35           the first-mentioned record of management rights relates:  
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- “ ‘Radiation’ means the outward flow of radio waves from any source:
- “ ‘Radio apparatus’ means any apparatus intended for the purpose of radiocommunications, being a radio transmitter or a radio receiver, or any combination of them: 5
- “ ‘Radiocommunications’ means any transmission or reception of signs, signals, writing, images, sounds, or intelligence of any nature by radio waves:
- “ ‘Radio licence’ means a licence granted or deemed to have been granted under Part XIII: 10
- “ ‘Radio New Zealand’ means the public radio company within the meaning of section 2 of the Radio New Zealand Act 1995 and to be known as Radio New Zealand Limited; and includes any subsidiary of that company within the meaning of sections 158 and 158A of the Companies Act 1955 or sections 5 and 6 of the Companies Act 1993, as the case may be: 15
- “ ‘Radio receiver’ means apparatus designed to receive radio waves for the purpose of radiocommunications: 20
- “ ‘Radio transmitter’ means apparatus designed to produce radio waves for the purpose of radiocommunications:
- “ ‘Radio waves’ means electromagnetic waves of frequencies lower than 3000 gigahertz, propagated in space without artificial guide: 25
- “ ‘Record of management rights’ means a record of management rights constituted under section 10 (2); and includes a record of management rights created under section 45 or section 47: 30
- “ ‘Reference standard’ means a standard or specification issued pursuant to section 133:
- “ ‘Register’,—
- (a) When used as a noun, means the Register of Radio Frequencies established under **section 5**: 35
- (b) When used as a verb, means to record on the Register:
- “ ‘Registrar’ means the Registrar of Radio Frequencies appointed pursuant to section 4 of this Act; and includes the Deputy Registrar of Radio Frequencies appointed pursuant to that section: 40
- “ ‘Rightholder’—
- (a) Means the holder for the time being of a spectrum licence; and

(b) Includes a mortgagee who, in right of a mortgage of a spectrum licence, is entitled to enjoy or exercise the rights of the rightholder:

“ ‘Secretary’ means the Secretary of Commerce:

5 “ ‘Spectrum licence’ means a licence created under Part VI of this Act:

“ ‘Supply’ means supply in the course of business; and includes supply (or resupply) by way of sale, exchange, lease, hire, or hire purchase:

10 *New (Unanimous)*

15 “ ‘Susceptible equipment’ means any electrical conductor, electrical or electronic apparatus, or equipment of any kind that is reasonably likely to malfunction in the presence of radio waves owing to 1 or more emissions, radiations, or inductions, or any combinations of 1 or more of those things:

20 “ ‘Unwanted emission’, in relation to a spectrum licence, means an emission outside the frequency band specified in the spectrum licence:

25 “ ‘Unwanted emission limit’, in relation to a spectrum licence, means a limit specified in the spectrum licence as the maximum power of emissions permitted on frequencies, being—

(a) Frequencies that are within a range of frequencies—

(i) Specified in the record of management rights to which a spectrum licence relates; or

(ii) Subject to the adjacent frequencies emission limit specified in the record of management rights to which the spectrum licence relates; and

(b) Frequencies that are not within the frequency band specified in the spectrum licence.”

35 **3. Register of Radio Frequencies**—The principal Act is amended by repealing section 5, and substituting the following section:

“5. The Registrar must establish and maintain a Register for the purpose of maintaining records of interests or uses relating to radio frequencies.”



**4. Form of Register**—Section 6 (3) of the principal Act is amended by inserting, after paragraph (c), the following paragraph:

“(ca) Particulars of all radio licences granted by the Secretary under Part XIII; and”.

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**5. Registration of management rights for radio frequencies**—(1) Section 10 of the principal Act is amended by inserting, after subsection (1), the following subsection:

“(1A) The Secretary may make applications for successive management rights in respect of a radio frequency, but the commencement date specified in each successive application must not be earlier than the day after the expiry date of the preceding management right.”

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(2) Section 10 (2) of the principal Act is amended by omitting the words “subsection (1) of”.

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**6. Creation of successive records of management rights**—The principal Act is amended by inserting, after section 11, the following section:

“11A. A record of management rights may be created at any time and from time to time, but where more than 1 record of management rights is created for a frequency, the commencement date for the subsequent record of management rights must not be earlier than the day after the date on which the previous management rights expire.”

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**7. Repeal of section 12**—Section 12 of the principal Act is repealed.

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**8. Fees in relation to defective applications**—Section 20 of the principal Act is amended by repealing subsection (3), and substituting the following subsection:

“(3) Nothing in this section applies in respect of any spectrum licence that is returned pursuant to **section 25 (1)** or to any modification of a spectrum licence that is returned pursuant to **section 57c**.”

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**9. Registrar’s duties in relation to registration of spectrum licences**—The principal Act is amended by repealing section 25, and substituting the following section:

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“25. (1) Where an instrument received by the Registrar for registration under section 16 (1) is a spectrum licence in a form prescribed for the purposes of **section 48**, and any frequency within the frequency band specified in the spectrum licence is

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not within the range of frequencies on the record of management rights to which the spectrum licence relates, the Registrar must decline to register the particulars set out in the spectrum licence and return the spectrum licence in accordance with section 18 (a).

5 “(2) The Registrar must not register any spectrum licence unless an instrument received by the Registrar for registration under section 16 (1) is a spectrum licence in a form prescribed for the purposes of **section 48**.

10 “(3) The Registrar must not register any spectrum licence where that spectrum licence specifies unwanted emission limits applying to that spectrum licence, and the maximum power of emissions on any frequency to which the unwanted emissions limit applies exceeds any adjacent frequencies emission limit on the management right to which the spectrum licence relates.

15 “(4) The Registrar must not register any spectrum licence unless the Registrar receives from or on behalf of the applicant for registration, a certificate from an approved radio engineer dated not more than 3 months before the receipt of that certificate by the Registrar.

*Struck Out (Unanimous)*

“(5) The radio engineer’s certificate must certify that, in the opinion of that engineer and having regard to—

- 25 “(a) The International Radio Regulations; and  
“(b) The ITU-R reports and recommendations; and  
“(c) Annex 10 to the Convention on International Civil Aviation; and  
“(d) The International Convention for the Safety of Life at Sea; and  
30 “(e) The nature of the service proposed to be operated pursuant to the spectrum licence; and  
“(f) Any relevant reference standards issued by the Secretary,—

35 the exercise of rights to which the spectrum licence relates will not cause harmful interference to registered spectrum licences or radio licences, will be technically compatible with registered spectrum licences and radio licences, and will sufficiently define the protection area and the nature and characteristics of proposed transmissions to enable subsequent spectrum licences and radio licences to be co-ordinated for the purpose of  
40 avoiding harmful interference with registered spectrum licences and radio licences.

*New (Unanimous)*

“(5) The radio engineer’s certificate must certify that, in the opinion of that engineer, the exercise of rights to which the spectrum licence relates—

- “(a) Will not endanger the functioning of any radio navigation service; and 5
- “(b) Will not endanger the functioning of any radio service essential to the protection of life and property; and
- “(c) Will not cause harmful interference to rights conferred by registered spectrum or radio licences; and 10
- “(d) Is technically compatible with services authorised to be operated pursuant to existing spectrum licences and radio licences; and
- “(e) Will sufficiently define the protection area and the nature and characteristics of the proposed transmissions to enable subsequent spectrum licences and radio licences to be co-ordinated with the exercise of rights to which the spectrum licence relates for the purpose of avoiding harmful interference. 15 20

“(6) Where an instrument received by the Registrar for registration under section 16 (1) is a spectrum licence in a form prescribed for the purposes of **section 48**,—

- “(a) The Registrar may require the Secretary to provide to the Registrar a certificate stating whether or not the exercise of the rights to which the spectrum licence relates will cause harmful interference to the exercise of any rights conferred by any spectrum licence or radio licence that is not available for search by virtue of **section 28**; and 25 30
- “(b) If any such certificate states that harmful interference will, or is likely to, occur, the Registrar must decline to register the spectrum licence, and must return the spectrum licence in accordance with section 18 (a). 35

“(7) Except as provided in **subsections (1) to (6)**, it is not the duty of the Registrar to determine whether or not the exercise of any or all of the rights to which a spectrum licence received for registration under section 16 (1) relates is technically compatible with the exercise of any rights by any other person under a spectrum licence or radio licence.” 40

**10. Registration of spectrum licences and modifications where management rights mortgaged—**

5 Section 26 (1) of the principal Act (as inserted by section 3 of the Radiocommunications Amendment Act 1990) is amended—

- (a) By inserting, before the word “licence” wherever it appears, the word “spectrum”;
- (b) By omitting the expression “section 54A”, and substituting the expression “sections 57, 57A, 57B, or 57C”.

10 **11. Register to be open for search—**The principal Act is amended by repealing section 28, and substituting the following section:

15 “28. (1) Any person may, upon payment of the prescribed fee, have access to the Register for the purpose of determining whether or not any radio frequency is subject to a record of management rights, a spectrum licence, or a radio licence and determining the identity of the owner of a management right, a rightholder, or the holder of a radio licence.

20 “(2) The Register must be so arranged that it may be searched by—

- “(a) Reference number; or
- “(b) Frequency band or frequency within a frequency band; or
- 25 “(c) Any other search reference specified in regulations made under this Act.

“(3) The Registrar must not disclose, otherwise than in accordance with this section,—

30 “(a) Without the authority of the manager, rightholder, or holder of a radio licence any information that will identify, or assist a person to identify, the residential address of any manager, rightholder, or holder of a radio licence where that manager, rightholder, or holder of a radio licence is a natural person; or

35 “(b) Any record where the Secretary has advised the Registrar in writing that the record contains information that would be likely to prejudice the security or defence of New Zealand.

40 “(4) Information protected in accordance with this section may be disclosed to the persons or class of persons prescribed in regulations made under this Act for the purposes prescribed in those regulations.”

**12. Registrar to issue search copies**—Section 29 (2) of the principal Act is amended by omitting the expression “28 (2)”, and substituting the expression “**28 (3)**”.

**13. Certified copies of Register to be evidence**—  
Section 30 of the principal Act is amended— 5

(a) By omitting from subsection (3) the expression “28 (2)”,  
and substituting the expression “**28 (3)**”:

(b) By adding the following subsection:

“(4) This section does not apply to records of  
radio licences.” 10

**14. Expiry of registration**—The principal Act is amended  
by repealing section 33, and substituting the following section:

“33. At the close of the day specified in a record of  
management rights as the expiry date of the record of  
management rights,— 15

“(a) All rights conferred by this Act on the manager in  
relation to the frequencies in the management right,  
every right holder in relation to those frequencies,  
and every other person recorded on the Register as  
having an interest in those frequencies, expire; and 20

“(b) The management rights expire and the provisions of  
Part XIII apply to each frequency until a further  
record of management rights is created for that  
frequency.”

**15. Content of record of management rights**— 25  
(1) Section 34 of the principal Act is amended—

(a) By omitting paragraph (a), and substituting the following  
paragraph:

“(a) The name and address of the manager; and”:

(b) By inserting, after paragraph (d), the following paragraph: 30

“(da) The power floor applying to the frequencies  
to which the record of management rights  
relates; and”:

(c) By inserting in paragraph (e), before the word “licence”,  
the word “spectrum”. 35

*Struck Out (Unanimous)*

(2) Section 34 (g) of the principal Act is amended by  
repealing subparagraph (i), and substituting the following  
subparagraph:

*Struck Out (Unanimous)*

5 “(i) In the case of a record of management rights constituted under section 10 (2), the expiry date specified on the application pursuant to which the record of management rights was recorded on the Register; or”.

(3) Section 34 (h) of the principal Act is amended by inserting, before the word “licence” wherever it appears, the word “spectrum”.

10

*New (Unanimous)*

(2) Section 34 of the principal Act is amended by repealing paragraph (h), and substituting the following paragraph:

15 “(h) The reference number of every spectrum licence, where any of the frequencies within the frequency band to which that spectrum licence relates is within the range of frequencies to which the management right relates.”

20 **16. New heading and sections inserted**—The principal Act is amended by inserting, after section 34, the following heading and sections:

*“Power Floors*

25 **“34A. Power floors applying when radio frequencies registered under Act**—(1) Unless **section 34B or section 34C** apply, the power floor relating to each frequency to which each record of management rights relates is the power floor specified on the application pursuant to which the record of management rights is recorded on the register.

30 “(2) Where no power floor is specified in an application for management rights for a frequency, the power floor is –50dBW.

35 **“34B. Modification of power floors**—Where the Secretary and any manager agree to modify the power floor applying to any 1 or more frequencies to which the manager’s record of management rights relates, they may present to the Registrar for the purposes of registration a notice in the prescribed form specifying—

“(a) The power floor that is to apply, pursuant to the agreement, to any 1 or more frequencies to which that record of management rights relates; and

“(b) The date from which the modified power floor or floors apply.”

5

**“34C. Power floors applying after creation of records of management rights under section 45 (1) or 47 (1)—**

(1) Where, pursuant to section 44 (1), the Registrar cancels a record of management rights and, pursuant to section 45 (1), creates new records of management rights in relation to the frequencies to which the cancelled record of management rights relates, the power floor applying to each frequency in each record of management rights so created is the power floor for that frequency specified in the cancelled record of management rights.

10

15

“(2) Where, pursuant to section 46 (1), the Registrar cancels any records of management rights and, pursuant to section 47 (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.”

20

*“Management Rights Ceiling*

**“34D. Ceiling for management rights—**Nothing in Parts III to XII or XVI apply to any emissions transmitted from any point that is more than 50 kilometres above the surface of the earth.”

25

**17. Protection limit applying when radio frequencies registered under Act—**Section 35 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

30

“(2) The Registrar must not register a protection limit in relation to a record of management rights where the protection limit is lower than the power floor specified for any frequency within the range of frequencies to which the record relates.”

35

*Struck Out (Unanimous)*

**18. Adjacent frequencies emission limits applying when radio frequencies registered under Act**—Section 39 of the principal Act is amended by repealing subsection (2), and substituting the following subsections:

“(2) The Registrar must not register any radio frequency under section 10 (2) unless the Registrar receives, in relation to the application, a certificate from an approved radio engineer dated not more than 3 months before the receipt of that certificate by the Registrar.

“(3) The radio engineer’s certificate must certify that, in the opinion of that engineer and having regard to—

“(a) The International Radio Regulations; and

“(b) The ITU-R reports and recommendations; and

“(c) Annex 10 to the convention on International Civil Aviation; and

“(d) The International Convention for the Safety of Life at Sea; and

“(e) The nature of the service proposed to be operated pursuant to the spectrum licence; and

“(f) Any relevant reference standards issued by the Secretary,—

the application of the adjacent frequencies emission limits specified in the application will not cause harmful interference to registered spectrum licences and radio licences and will be technically compatible with registered spectrum licences and radio licences.”

*New (Unanimous)*

**18. Adjacent frequencies emission limits applying when radio frequencies registered under Act**—Section 39 (2) of the principal Act is repealed.

**19. Modification of adjacent frequencies emission limits**—(1) Section 40 (2) of the principal Act is amended by inserting, before the word “licence”, the word “spectrum”.



*Struck Out (Unanimous)*

(2) Section 40 of the principal Act is amended by repealing subsection (3), and substituting the following subsections:

“(3) The Registrar must not register any notice presented under subsection (1) unless the Registrar receives, in relation to the notice, a certificate from an approved radio engineer dated not more than 3 months before the receipt of that certificate by the Registrar. 5

“(4) The radio engineer’s certificate must certify that, in the opinion of that engineer and having regard to— 10

“(a) The International Radio Regulations; and

“(b) The ITU-R reports and recommendations; and

“(c) Annex 10 to the Convention on International Civil Aviation; and

“(d) The International Convention for the Safety of Life at Sea; and 15

“(e) The nature of the service proposed to be operated pursuant to the spectrum licence; and

“(f) Any relevant reference standards issued by the Secretary,— 20

the application of the adjacent frequencies emission limits specified in the application will not cause harmful interference to registered spectrum licences and radio licences and will be technically compatible with registered spectrum licences and radio licences.” 25

*New (Unanimous)*

(2) Section 40 (3) of the principal Act is repealed.

**20. Transfer by manager**—Section 42 of the principal Act is amended by adding, as subsection (2), the following subsection: 30

“(2) The manager must obtain the consent of the rightholder to a transfer of management rights proposed in accordance with this section, if—

“(a) A spectrum licence is in force at the time of the transfer; and 35

“(b) That spectrum licence provides that the spectrum licence may be modified by the rightholder alone; and

5 “(c) That spectrum licence applies to a frequency band of which some of the frequencies are in the part of the management right proposed to be transferred and some of the frequencies are in the part of the management right proposed to be retained by the manager.”

*Struck Out (Unanimous)*

10 **21. New records of management rights to be created for portion transferred and for balance**—Section 45 of the principal Act is amended by adding the following subsection:

15 “(3) 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 record of management rights where any frequencies within the frequency band to which that spectrum licence relates is within the range of frequencies to which the record of management rights relates.”

*New (Unanimous)*

20 **21. New records of management rights to be created for portion transferred and for balance**—Section 45 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

25 “(2) The registrar must record on every record of management rights created under subsection (1)—

30 “(a) The reference number of every spectrum licence that was recorded on the cancelled record of management rights, where any frequency within the frequency band to which that spectrum licence relates is within the range of frequencies to which the record of management rights relates:

35 “(b) Any conditions recorded on the cancelled record of management rights, where those conditions applied to the whole of the cancelled management right or to any frequency with the frequency band to which the record of management rights created under subsection (1) relates.”

**22. New sections substituted**—The principal Act is amended by repealing sections 48, 49 (as substituted by section 5 of the Radiocommunications Amendment Act 1990), 50, and 51, and substituting the following sections:

**“48. Creation of spectrum licence by manager—** 5

(1) Where a manager intends to reserve to himself or herself or to grant to any other person—

“(a) The right to transmit on a frequency band, and the right to have no harmful interference from co-channel emissions in the protection area, on the frequency band within the range of frequencies specified in the manager’s record of management rights; or 10

“(b) The right to transmit on a frequency band within the range of frequencies specified in the manager’s record of management rights; or 15

“(c) The right to have no harmful interference from co-channel emissions in the protection area on a frequency band within the range of frequencies specified in the manager’s record of management rights,— 20

that manager may execute for the purposes of registration a spectrum licence in a form prescribed for spectrum licences granted or reserved under this section.

“(2) A spectrum licence is not valid until that licence is registered. 25

“(3) Any spectrum licence created under **section 48 (1) (b)** may be specified as a general user spectrum licence for the purposes of **section 55A**.

**“49. Contents of spectrum licence—**(1) Every spectrum licence must specify— 30

“(a) The name and address of the rightholder; and

“(b) The frequency band within which radio waves may be transmitted; and

“(c) Except for licences granted or reserved under **section 48 (1) (b)**, the protection area; and 35

“(d) Except for licences granted or reserved under **section 48 (1) (c)**, any unwanted emission limits applying to emissions from a radio transmitter or transmitters; and

“(e) The commencement date of the spectrum licence, being a date not earlier than the commencement date of the record of management rights to which the spectrum licence relates; and 40

- “(f) The expiry date of the spectrum licence, being a date not later than the expiry date of the record of management rights to which the spectrum licence relates; and
- 5 “(g) Whether the spectrum licence may be transferred to another person by the rightholder with or without the consent of the manager; and
- “(h) Whether the spectrum licence may be cancelled by 1 or more of the rightholder, the manager, or the
- 10 rightholder and manager together; and
- “(i) Whether the spectrum licence may be modified by 1 or more of the rightholder, the manager, or the rightholder and manager together; and
- 15 “(j) Any conditions on the exercise of the right to transmit radio waves or the right to have no harmful interference under the spectrum licence, being conditions that do not contravene the conditions specified in the record of management rights to which the spectrum licence relates; and
- 20 “(k) Any other matters that may be specified by regulations made under this Act.
- “(2) A spectrum licence may specify that the spectrum licence is a general user spectrum licence for the purposes of **section 55A.**”

25 **23. Repeal of sections relating to modification of unwanted emission limits**—Sections 53, 54, and 54A of the principal Act are repealed.

30 **24. New sections inserted**—The principal Act is amended by repealing sections 55 to 57, and substituting the following sections:

“**55. Transmissions by persons with agreement of rightholder**—(1) The rightholder in relation to a spectrum licence may enter into agreements with persons wishing to transmit on the frequency specified in the spectrum licence.

35 “(2) The terms of every agreement are deemed to include a condition that the person who has entered into the agreement with the rightholder will transmit only in accordance with—

“(a) The rightholder’s spectrum licence:

40 “(b) Conditions in the record of management rights in relation to which the rightholder’s spectrum licence is registered:

“(c) The provisions of section 102 as applied to the rightholder’s spectrum licence:

“(d) The First Schedule.

“(3) Every transmission by a person who—

“(a) Has entered into an agreement with a rightholder under this section; and

“(b) Is transmitting in accordance with that agreement— 5  
is a transmission by the rightholder.

“55A. **Transmissions in accordance with general user spectrum licences**—(1) This section applies to every spectrum licence created under **section 48 (1) (b)** that is specified as a general user spectrum licence in accordance with **section 48 (3)**. 10

“(2) A general user spectrum licence grants to every person permission to transmit radio waves on the frequency band specified in the general user spectrum licence if that person complies with—

“(a) Any conditions specified in the record of management rights in relation to which the general user spectrum licence is registered; and 15

“(b) Any conditions specified in the spectrum licence under **section 49 (1) (j)**; and

“(c) The First Schedule. 20

“(3) No person transmitting radio waves in accordance with a general user spectrum licence may transmit unwanted emissions on any frequency within the range of frequencies to which the unwanted emission limit specified in the general user spectrum licence applies, at a level greater than is specified in that general user spectrum licence as the unwanted emission limit applying to that frequency. 25

“(4) No person transmitting radio waves in accordance with a general user spectrum licence may transmit unwanted emissions on any frequency that is not within the frequency band or the range of frequencies to which any unwanted emission limit specified in the general user spectrum licence applies, at a level greater than the power floor applying to that frequency in accordance with the record of management rights relating to that frequency at the time the general user spectrum licence was registered. 30 35

“(5) Every person who transmits radio waves on a frequency specified in a general user spectrum licence and who fails to comply with **subsection (2)**, **subsection (3)**, or **subsection (4)** commits an offence against this Act. 40

“(6) A person transmitting in accordance with a general user spectrum licence is not a rightholder and that person does not, by transmitting in accordance with a general user spectrum

licence, acquire rights or obligations under **sections 99**, 101, or 102.

5 “**56. Transfer of spectrum licence**—(1) If a rightholder intends to transfer the rightholder’s spectrum licence, the rightholder may, for the purpose of registration, execute a notice of transfer in the prescribed form.

“(2) If a spectrum licence provides that the spectrum licence cannot be transferred without the consent of the manager, the Registrar must not register a transfer of that spectrum licence unless the Registrar receives written consent from the manager to the transfer of that spectrum licence.

10 “(3) If a part of the management rights to which a frequency band in a spectrum licence relates has been transferred to another person and the spectrum licence provides that the spectrum licence cannot be transferred without the consent of the manager, the Registrar must not register a transfer of that spectrum licence unless the Registrar receives written consent from all managers holding management rights to which the frequency band in that spectrum licence relates.

15 “(4) The transfer of a spectrum licence is not valid until the transfer is registered.

20 “**57. Modification or cancellation of spectrum licence by rightholder alone**—(1) Where a spectrum licence provides that the spectrum licence may be modified or cancelled by the rightholder alone and the rightholder wishes to modify any matter specified on the rightholder’s spectrum licence or cancel the rightholder’s spectrum licence, the rightholder may present to the Registrar for the purposes of registration a notice in the prescribed form.

25 “(2) Every notice presented under **subsection (1)** must be accompanied by a statutory declaration from or on behalf of the rightholder that the manager who has the management rights in relation to the frequency band or frequency bands within which it is permitted to transmit under the spectrum licence has been served with a copy of the notice.

“(3) The notice must specify—

“(a) The modification to the spectrum licence; and

“(b) The date from which the modification or cancellation is to apply.

30 “**57A. Modification or cancellation of spectrum licence by manager alone**—(1) If a spectrum licence provides that the spectrum licence may be modified or cancelled by the manager alone and the manager in relation to that spectrum licence wishes to modify any matter specified on the spectrum licence

or cancel the rightholder's spectrum licence, the manager may present to the Registrar for the purposes of registration a notice in the prescribed form.

“(2) Every notice presented under **subsection (1)** must be accompanied by a statutory declaration from or on behalf of the manager that the rightholder in relation to that spectrum licence has been served with a copy of the notice. 5

“(3) The notice must specify—

“(a) The modification to the licence; and

“(b) The date from which the modification or cancellation is to apply. 10

“**57B. Modification or cancellation of spectrum licence by rightholder and manager**—(1) If a spectrum licence provides that the spectrum licence may be modified or cancelled by the manager and the rightholder together and the manager and the rightholder in relation to that spectrum licence agree to modify any matter specified on the spectrum licence or to cancel the spectrum licence, the manager or the rightholder may present to the Registrar for the purposes of registration a notice in the prescribed form. 15 20

“(2) Every notice presented under **subsection (1)** must be signed by both the manager and the rightholder.

“(3) The notice must specify—

“(a) The modification to the licence; and

“(b) The date from which the modification or cancellation is to apply. 25

“**57C. Modification of spectrum licence where 2 or more managers**—If the reference number of a spectrum licence is recorded in accordance with **section 45 (3)** on more than 1 record of management rights, then, despite any provision to the contrary in that spectrum licence, the spectrum licence may be modified only with the consent of all the managers who hold a record of management rights relating to a frequency within the frequency band specified in the spectrum licence. 30 35

“**57D. Registrar's duties in relation to registration of modification or cancellation of spectrum licence**—(1) Where an instrument received by the Registrar for registration under section 16 (1) is a modification to a spectrum licence or the cancellation of a spectrum licence, the Registrar must not register that modification or cancellation unless that modification or cancellation is in the prescribed form. 40

5 “(2) Where an instrument is a modification to the spectrum licence that proposes to modify the frequency band specified in the spectrum licence by including any frequency not within the range of frequencies on the record of management rights to which the spectrum licence relates, the Registrar must decline to register that modification to the spectrum licence and must return the modification to the spectrum licence in accordance with section 18 (a).

“(3) Where—

10 “(a) An instrument is a modification to the spectrum licence that proposes to modify the unwanted emission limits specified in the spectrum licence or include unwanted emission limits in the spectrum licence; and

15 “(b) Any frequency to which the unwanted emission limits specified in the modification to the spectrum licence apply is a frequency subject to the adjacent frequencies emission limit specified in the record of management rights to which the spectrum licence relates; and

20 “(c) The maximum power of emissions specified as being permitted on that frequency exceeds the adjacent frequencies emission limit for that frequency in the record of management rights,—

25 the Registrar must decline to register that modification to the spectrum licence and must return the modification to the spectrum licence in accordance with section 18 (a).

30 “(4) The Registrar must not register any modification to a spectrum licence, other than a modification to any of the matters referred to in paragraphs (a), (g), (h), or (i) of section 49 (1), unless the Registrar receives, from or on behalf of the applicant for registration, a certificate from an approved radio engineer dated not more than 3 months before the receipt of that certificate by the Registrar.

35 *Struck Out (Unanimous)*

“(5) The radio engineer’s certificate must certify that, in the opinion of that engineer and having regard to—

“(a) The International Radio Regulations; and

“(b) The ITU-R reports and recommendations; and

40 “(c) Annex 10 to the Convention on International Civil Aviation; and



*Struck Out (Unanimous)*

- “(d) The International Convention for the Safety of Life at Sea; and
- “(e) The nature of the service proposed to be operated pursuant to the spectrum licence; and 5
- “(f) Any relevant reference standards issued by the Secretary,—
- the exercise of rights to which the spectrum licence, as modified, relates, will not cause harmful interference to registered spectrum licences or radio licences, will be technically compatible with registered spectrum licences and radio licences, and will sufficiently define the protection area and the nature and characteristics of proposed transmissions to enable subsequent spectrum licences and radio licences to be co-ordinated for the purpose of avoiding harmful interference with registered spectrum licences and radio licences. 10 15

*New (Unanimous)*

- “(5) The radio engineer’s certificate must certify that, in the opinion of that engineer, the exercise of rights to which the spectrum licence, as modified, relates— 20
- “(a) Will not endanger the functioning of any radionavigation service; and
- “(b) Will not endanger the functioning of any radio service essential to the protection of life and property; and
- “(c) Will not cause harmful interference to rights conferred by registered spectrum or radio licences; and 25
- “(d) Is technically compatible with services authorised to be operated pursuant to existing spectrum licences and radio licences; and
- “(e) Will sufficiently define the protection area and the nature and characteristics of the proposed transmissions to enable subsequent spectrum licences and radio licences to be co-ordinated with the exercise of rights to which the spectrum licence relates for the purpose of avoiding harmful interference. 30 35

“(6) Where a modification to a spectrum licence is received by the Registrar,—

- 5 “(a) The Registrar may require the Secretary to provide to the Registrar a certificate stating whether or not the exercise of the rights to which the spectrum licence, as modified, relates will cause harmful interference to the exercise of any rights conferred by any spectrum licence or radio licence that is not available for search under **section 28 (3)**; and
- 10 “(b) If any such certificate states that harmful interference will, or is likely to, occur, the Registrar must decline to register the modification to the spectrum licence, and must return the modification to the spectrum licence in accordance with section 18 (a).
- 15 “(7) The Registrar must not register a modification to a spectrum licence that purports to alter a provision of that spectrum licence relating to the cancellation of that licence.
- 20 “(8) Except as provided in **subsections (1) to (7)**, it is not the duty of the Registrar to determine whether or not the effect of any modification to a spectrum licence received for registration under section 16 (1) is to make the exercise of all or any of the rights conferred by that spectrum licence technically compatible with the exercise of any rights by any person under any spectrum licence or any radio licence.”

*New (Unanimous)*

- 25 **24A. Matters relevant to radio engineer’s certificate—**  
The principal Act is amended by inserting, after section 72, the following section:
- “72A. Before issuing a certificate under **section 25 or section 57D**, a radio engineer must have regard to—
- 30 “(a) The International Radio Regulations; and  
“(b) The ITU-R reports and recommendations; and  
“(c) Annex 10 to the Convention on International Civil Aviation; and  
“(d) The International Convention for the Safety of Life at Sea; and  
35 “(e) The nature of the service proposed to be operated pursuant to the spectrum licence; and  
“(f) Any relevant reference standards issued by the Secretary.”

- 40 **25. Discharge of mortgage—**(1) Section 86 of the principal Act is amended by omitting the words “endorse on the mortgage”, and substituting the word “complete”.

(2) Section 86 (2) of the principal Act is amended by inserting, before the word “licence”, the word “spectrum”.

**26. Rights conferred on rightholder by spectrum licence**—The principal Act is amended by repealing section 99, and substituting the following section: 5

“99. (1) Every rightholder who has a spectrum licence to transmit radio waves and to receive no harmful interference from co-channel emissions in a protection area has the right to transmit radio waves and to receive no harmful interference from co-channel emissions in that protection area in accordance with that licence while the rightholder’s spectrum licence is in force and the rightholder is complying with the requirements in section 101. 10

“(2) Every rightholder who has a spectrum licence to transmit radio waves has the right to transmit radio waves in accordance with that spectrum licence while the rightholder’s spectrum licence is in force and the rightholder is complying with the requirements in section 101. 15

“(3) Every rightholder who has a spectrum licence containing the right to receive no harmful interference from co-channel emissions in a protection area has the right to receive no harmful interference from co-channel emissions in the protection area in accordance with that spectrum licence while the rightholder’s spectrum licence is in force and the rightholder is complying with the requirements in section 101. 20 25

“(4) If the rightholder complies with section 102, the right to transmit radio waves includes the right to transmit unwanted emissions.”

**27. Repeal of provisions relating to rights of holders of certain licences**—Section 100 of the principal Act is repealed. 30

**28. Requirements to be complied with in exercise of rights**—Section 101 (1) of the principal Act is amended—

- (a) By inserting in paragraph (a), before the word “licence”, the word “spectrum”;
- (b) By inserting in paragraph (b), before the word “licence”, the word “spectrum”; 35
- (c) By omitting from paragraph (b) the words “49 (d) (iii) or section 50 (c) (iii) of this Act”, and substituting the expression “**49 (1) (i)**”.

**29. Compliance with unwanted emission limits—**

(1) Section 102 (1) of the principal Act is amended by inserting, before the word “licence” wherever it appears, the word “spectrum”.

5 (2) Section 102 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

“(2) No rightholder, in exercising rights under **section 99**, may transmit unwanted emissions on any frequency that is not within the frequency band or the range of frequencies to which any unwanted emission limit specified in the spectrum licence applies, at a level greater than the power floor applying to that frequency in accordance with the record of management rights relating to that frequency at the time the spectrum licence was registered.”

15 **30. Transmission other than in accordance with spectrum licence—**(1) Section 103 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

20 “(1) Subject to **subsection (3)**, every transmission of radio waves by any person on any frequency in respect of which a management right is registered under this Act is prohibited, except—

“(a) A transmission of radio waves by a rightholder acting in accordance with a rightholder’s spectrum licence; or  
25 “(b) A transmission by a person acting in accordance with a general user spectrum licence.”

(2) Section 103 (3) of the principal Act is amended by inserting, before the word “licence”, the word “spectrum”.

30 **31. Transmission pursuant to radio licence not affected—**The principal Act is amended by repealing section 104, and substituting the following section:

“104. Nothing in section 103 prevents any person from transmitting radio waves in accordance with,—

“(a) A radio licence; or  
35 “(b) An exemption exempting that transmission of radio waves from any requirement to be licensed, being an exemption granted by or under any regulations made under **section 116 (1) (c)**.”

40 **32. Interference to receivers—**The principal Act is amended by repealing section 105, and substituting the following section:

“105. For the purposes of any action in tort, it is declared that where a receiver is tuned to receive emissions from a transmitter operated by a rightholder in accordance with the rightholder’s spectrum licence or by the holder of a radio licence in accordance with that radio licence, and that receiver is situated on land within the protection area of that licence, any harmful interference to the reception, by that receiver, of radio waves constitutes an interference with the enjoyment of land on which the receiver is situated.” 5

**33. New sections substituted**—The principal Act is amended by repealing sections 106 to 109, and substituting the following sections: 10

*Struck Out (Unanimous)*

“106. **Definitions for purposes of sections 107 to 109A**— For the purposes of **sections 107 to 109A**,— 15

“ ‘Arbitral tribunal’ has the same meaning as in the Arbitration Act 1996:

“ ‘Claimant’ means the rightholder or holder of a radio licence claiming harmful interference in the protection area of the claimant’s licence: 20

“ ‘Respondent’ means the person whose lawful transmission of radio waves is alleged to be causing harmful interference in the claimant’s protection area. 20

*New (Unanimous)*

“106. **Definitions for sections 107 to 109B**—(1) For the purposes of **sections 107 to 109B**,— 25

“ ‘Arbitral tribunal’ has the same meaning as in the Arbitration Act 1996:

“ ‘Claimant’ means— 30

“ (a) The rightholder or holder of a radio licence claiming harmful interference in the protection area of the claimant’s licence; or

“ (b) The owner of a radionavigation receiver or a safety receiver claiming that harmful interference with reception by that receiver would endanger the functioning of a radionavigation service or other safety service: 35

*New (Unanimous)*

5 “Respondent” means the person whose lawful transmission of radio waves is alleged to be causing harmful interference in the claimant’s protection area.

10 “(2) Where a person holds a radio licence that does not specify an area as a protection area, that person may proceed as a claimant if there is harmful interference in the area that the person considers would be the protection area of the licence and that area is the protection area for that radio licence until such time as the arbitral tribunal determines otherwise in accordance with **section 109 (2)**.

15 “(3) Despite the lack of a radio licence or the lack of a protection area specified in that radio licence, where that radio licence is for a radionavigation or safety service, the owner of the radionavigation receiver or a safety receiver may proceed as a claimant if there is harmful interference with reception by that receiver that endangers the functioning of that radionavigation service or safety service.

20 “**106A. Sections 106 to 109B apply where transmissions not commenced**—Where a radio licence or a spectrum licence has been granted and registered but lawful transmissions have not commenced, and a rightholder or holder of a radio licence believes that lawful transmissions  
25 made in accordance with that licence are very likely to cause harmful interference in the protection area of that licence, the provisions of **sections 106 to 109B** apply as though the lawful transmissions had commenced.

30 “**107. Notice of harmful interference**—(1) Where a (*claimant*) respondent is lawfully transmitting radio waves under a registered spectrum licence or radio licence, and those transmissions cause or contribute to harmful interference in the protection area of another registered spectrum licence or radio licence, the claimant may serve on the respondent a notice  
35 concerning that interference.

*New (Unanimous)*

“(1A) Where both the claimant and the respondent are holders of radio licences and the provisions of **subsections (2) to (6) and sections 108 to 109B** do not apply, the matter may be referred to the Secretary by the claimant or the respondent, and the Secretary may take such action as the Secretary thinks fit. 5

“(2) Where the harmful interference which is the subject of the notice under **subsection (1)** endangers the functioning of the claimant’s radionavigation service or other safety service, the claimant may also serve a copy of the notice on the Secretary and the Secretary may, in his or her discretion, direct the claimant or the respondent, or both, to take action forthwith, including ceasing transmissions, until the matter is resolved in accordance with **sections (107 to 109) 107 to 109 and 109B**. 10

“(3) A notice given under **subsection (1)** must state— 15

“(a) The nature of the harmful interference experienced; and

“(b) The alleged cause of the harmful interference and the manner in which the respondent is believed to have caused or contributed to the harmful interference; and 20

“(c) What action the claimant desires to be taken by the respondent to remedy the harmful interference; and

“(d) That the respondent has ~~(20)~~ 10 working days following the receipt of the notice within which to take 1 of the actions referred to in **subsection (4)**, and that, if the action the claimant wishes to be taken to remedy the harmful interference is not taken within ~~(20)~~ 10 working days following the receipt of the notice, the matter may be referred to arbitration under this section. 25 30

“(4) Every respondent who receives a notice properly given under **subsection (1)** must, within ~~(20)~~ 10 working days of receiving that notice,—

“(a) Take the action to remedy the harmful interference specified in the notice; or 35

“(b) Notify the claimant that in the respondent’s opinion the respondent’s transmissions have not caused or contributed to, or are not causing or contributing to, harmful interference to the claimant or that the action specified in the notice which the claimant wishes to be taken to remedy the harmful interference is not justified; or 40

“(c) Agree with the claimant on a method of reaching an agreement to deal with the harmful interference; or

5 “(d) Agree with the claimant to refer the matter to arbitration to be determined in accordance with the Arbitration Act 1996.

“(5) If, within ~~(20)~~ 10 working days of a notice being properly given under **subsection (1)**,—

“(a) The action specified in the notice has not been taken; and

10 “(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 which is specified in the notice is justified; and

15 “(c) The claimant and the respondent have not agreed on a method of reaching an agreement to deal with the harmful interference or to refer the matter to arbitration,—

20 the claimant may, following the expiry of that ~~(20)~~ 10 working day period, by notice in the prescribed form to the Secretary, request the Secretary to refer the matter to arbitration under **section 108**.

25 “(6) Where the claimant and the respondent agree on a method of reaching an agreement to deal with the harmful interference under **subsection (4) (c)**, but no agreement is reached within ~~(40)~~ 20 working days of a notice properly given under **subsection (1)**, the claimant may, following the expiry of that ~~(40)~~ 20 working day period, by notice in the prescribed form to the Secretary, request the Secretary to refer the matter to  
30 arbitration under **section 108**.

“**108. Reference to arbitration by Secretary**—(1) Where the Secretary receives a request under **section 107 (5)** or **(6)**, and the Secretary is satisfied that—

35 “(a) The alleged harmful interference is being caused in the protection area of a registered spectrum licence or radio licence; and

40 “(b) The transmissions allegedly causing or contributing to the harmful interference are being lawfully made under a registered spectrum licence or radio licence; and

“(c) There is prima facie evidence of harmful interference and that the harmful interference is being caused or contributed to by the respondent; and



“(d) A notice was properly given under **section 107 (1)** concerning that harmful interference; and

“(e) The time limits specified in **section 107** have expired; and

“(f) The respondent has not taken the action specified in that notice,—

5

the Secretary may refer the matter to arbitration and, except as provided in (**section 109**) **sections 109 and 109a**, the provisions of the Arbitration Act 1996 apply as though the claimant and the respondent had agreed to refer the matter to arbitration.

*New (Unanimous)*

10

“(2) The reference by the Secretary may specify the matters that would otherwise be included in an arbitration agreement and that reference is an arbitration agreement for the purposes of the Arbitration Act 1996.

*Struck Out (Unanimous)*

15

“109. **Matters relevant to arbitration**—Clause 28 (4) of the First Schedule of the Arbitration Act 1996 does not apply to matters referred to arbitration under **section 107 (4) (d)** or **section 108** of this Act; instead, the arbitral tribunal’s decision must seek to balance the expectations, rights, and duties of the claimant and the respondent, without compromising public safety, and having regard to—

20

“(a) The costs and effects of possible solutions; and

“(b) Any relevant international requirements or standards; and

25

“(c) Which of the spectrum licences or radio licences held by the parties to the dispute was registered first; and

“(d) The desirability of minimising disruption to existing services; and

“(e) The terms of the spectrum licences; and

30

“(f) Any other matters prescribed by regulations made under this Act or that the arbitral tribunal considers relevant.

*New (Unanimous)*

- 5 “109. **Matters relevant to arbitration**—(1) Clause 28 (4) of the First Schedule of the Arbitration Act 1996 does not apply to matters referred to arbitration under **section 107 (4) (d) or section 108** of this Act; 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—
- 10 “(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—
- 15 “(i) The nature and characteristics of the rights described in the claimant’s licence and the respondent’s licence; and
- “(ii) The International Radio Regulations; and
- “(iii) The ITU-R reports and recommendations; and
- 20 “(iv) Annex 10 to the Convention on International Civil Aviation; and
- “(v) The International Convention for the Safety of Life at Sea; and
- 25 “(vi) Any relevant reference standards issued by the Secretary; and
- “(c) Which of the spectrum licences held by the parties to the dispute was registered first; and
- “(d) The desirability of minimising disruption to existing services; and
- 30 “(e) The terms of the spectrum licences; and
- “(f) Any other matters prescribed by regulations made under this Act or that the arbitral tribunal considers relevant.
- 35 “(2) Unless a person proceeds as a claimant in accordance with **section 106 (3)**, where the claimant is the holder of a radio licence that does not specify an area as a protection area, the arbitrator must determine, from the technical details on the licence, whether the area considered by the claimant as the protection area for that licence is the protection area.

**“109A. Offence to transmit in breach of Secretary’s direction**—Every person who contravenes a direction given by the Secretary under **section 107 (2)** commits an offence against this Act.

*New (Unanimous)*

5

**“109B. Powers when deciding disputes**—(1) In addition to the powers given to the arbitral tribunal by section 12 of the Arbitration Act 1996, the arbitral tribunal has the power to determine the cause of the harmful interference and has the power to direct the parties to the dispute or the Secretary, to take action to reduce or eliminate harmful interference.

“(2) Where the arbitral tribunal directs that a spectrum licence or radio licence be modified or amended then, despite any provision to the contrary in this Act or any spectrum licence, the manager or rightholder in the case of a spectrum licence, or the Secretary in the case of a radio licence, must modify or amend the licence as directed by the arbitral tribunal.”

**34. New heading and section inserted**—The principal Act is amended by repealing section 110, and substituting the following heading and section:

“PART XIII

“RADIO LICENCES

**“110. Part to apply to frequencies where no record of management rights registered**—(1) This Part applies to every radio frequency unless a record of management rights is registered under Part II in respect of that radio frequency.

“(2) Where a record of management rights is registered under Part II in respect of that radio frequency, this Part of the Act continues to apply to emissions on any frequency—

“(a) Below the power floor specified for that record of management rights; or

“(b) If no power floor is specified in the record of management rights, below  $-50\text{dBW}$ .

“(3) This Part does not apply to—

“(a) A transmission of radio waves by a rightholder acting in accordance with a rightholder’s spectrum licence; or

“(b) A transmission by a person in accordance with a general user spectrum licence.”

**35. Granting of radio licences**—The principal Act is amended by repealing section 111, and substituting the following section:

5 “111. (1) For the purposes of this section, the term ‘New Zealand ship’ includes—

“(a) Any New Zealand ship within the meaning of the Crimes Act 1961; and

“(b) Any vessel for the time being registered in New Zealand as a ship under the Ship Registration Act 1992.

10 “(2) The Secretary may, in accordance with regulations made under this Part, grant radio licences authorising the transmission of radio waves on the frequencies specified in the radio licence within the territorial limits of New Zealand, or from any New Zealand ship, or from any aircraft registered in  
15 New Zealand or providing protection from harmful interference from co-channel emissions.

“(3) In addition to the requirements of the regulations, every radio licence must be in such form and for such period, and contain such terms, conditions, and restrictions, as the  
20 Secretary thinks fit.

“(4) Every licence issued in accordance with regulations made under this Part includes a requirement that any person transmitting under that radio licence must comply with the First Schedule.”

25 **36. Secretary to have regard to Government policy**—  
(1) Section 112 (1) of the principal Act is amended by omitting the expression “116 (1) (c)”, and substituting the expression  
“116 (1) (a)”.

(2) Section 112 of the principal Act is amended by omitting  
30 the words “of Communications” wherever they appear.

(3) Section 112 of the principal Act is amended by inserting, before the word “licence” wherever it appears, the word  
“radio”.

35 **37. Offences**—The principal Act is amended by repealing section 113, and substituting the following section:

“113. Every person commits an offence under this Act who transmits radio waves, otherwise than—

40 “(a) Pursuant to, or in conformity with, the terms and conditions of a radio licence issued under **section 111**; or

“(b) In accordance with regulations made under **section 116 (1) (c)** exempting the transmission of radio waves from the need to obtain a radio licence.”

*Struck Out (Unanimous)*

**38. Presumptions**—The principal Act is amended by repealing section 114, and substituting the following section:

“114. For the purposes of **section 113**,—

“(a) The occupier of any premises on which is situated any radio apparatus capable of transmitting radiocommunications is presumed to have used the radio apparatus to transmit radio waves unless and until the contrary is proved: 5

“(b) Any radio apparatus is deemed to be, and to remain, capable of transmitting radiocommunications, notwithstanding that, without having been completely dismantled, or rendered inoperative to the satisfaction of the Secretary, it may be temporarily incapable of doing so.” 10 15

*New (Unanimous)*

**38. Presumptions**—The principal Act is amended by repealing section 114, and substituting the following section:

“114. (1) For the purposes of **section 113**, any person who erects, constructs, establishes, maintains, or is in possession of any radio transmitter is presumed to have used the radio transmitter unless and until the contrary is proved. 20

“(2) Where a radio transmitter is temporarily inoperative or has been partially dismantled, that radio transmitter is deemed to be, and to remain, capable of transmitting radiocommunications unless the Secretary is satisfied that the transmitter has been rendered inoperative.” 25

**39. Regulations**—Section 116 of the principal Act (as amended by section 8 of the Radiocommunications Amendment Act 1990, and section 3 of the Radiocommunications Amendment Act 1995) is amended by repealing subsection (1), and substituting the following subsection: 30

“(1) The Governor-General may from time to time, by Order in Council, make regulations— 35

“(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 for the terms and conditions subject to which any radio licences may be granted, transferred, suspended, or revoked:

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 on any frequency specified in the licence; and providing for the terms and conditions subject to which general user radio licences may be granted, transferred, suspended, or

10 revoked:  
“(c) Authorising the Secretary to grant exemptions from the requirement for a radio licence in respect of the transmission of radio waves using certain radio apparatus, where the Secretary is satisfied that a licence is not required for the efficient and effective management of the radio frequency spectrum:

15 “(d) Requiring, as a condition of a radio licence or a condition of an exemption from the requirement to obtain a radio licence, that every transmission comply with the First Schedule:

20 “(e) Providing for the allocation of radio licences by competitive tender or auction, and for the payment of consideration to the Crown pursuant to any tender or auction:

25 *Struck Out (Unanimous)*

30 “(f) Prescribing fees payable, and providing for the method of payment of fees to the Secretary in respect of any application made or radio licence issued under the regulations, or in respect of any matter relating to the transmission of radio waves using radio apparatus for which, in the opinion of the Governor-General, fees should be payable:

“(g) Providing for the waiver of fees by the Secretary and the grounds upon which a waiver may be granted:

35 *New (Unanimous)*

“(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 specifying the terms and

*New (Unanimous)*

conditions subject to which any radio licences may be granted, transferred, suspended, or revoked:

“(h) Prescribing offences in respect of contraventions of any regulations made under this section.”

5

**40. Repeal of section 119**—Section 119 of the principal Act is repealed.

**41. Penalties**—Section 128 of the principal Act is amended by adding, as subsection (2), the following subsection:

“(2) Where an offence is a continuing offence, a further fine of an amount not exceeding \$1,000 for every day or part of a day during which the offence has continued may be imposed.”

10

*New (Unanimous)*

**41A. New sections inserted**—The principal Act is amended by inserting, after section 128, the following sections:

15

“128A. **Commission of infringement offence**—Where any person is alleged to have committed an infringement offence, that person may either—

“(a) Be proceeded against for an alleged offence against section 128 of this Act under the Summary Proceedings Act 1957; or

20

“(b) Be served with an infringement notice as provided for in section 128B.

“128B. **Infringement notices**—(1) Where the Secretary or any person duly authorised by the Secretary observes a person committing an infringement offence or has reasonable cause to believe such an offence is being or has been committed by that person, an infringement notice in respect of that offence may be issued to that person by the Secretary or the authorised person.

25

30

“(2) An infringement notice may be served—

“(a) By attaching an infringement notice, or a copy of an infringement notice, to the equipment to which the notice relates; or

“(b) By delivering it personally to the person who appears to have committed the infringement offence; or

35

*New (Unanimous)*

- “(c) By sending it by post addressed to that person at that person’s last known place of residence or business.
- 5 “(3) For the purposes of the Summary Proceedings Act 1957, an infringement notice sent to a person by post under **subsection (2) (c)** is deemed to have been served on the person when it would have been delivered in the ordinary course of post.
- 10 “(4) Every infringement notice must be in the prescribed form and must contain the following particulars:
- “(a) Such details of the alleged infringement offence as are sufficient fairly to inform a person of the time, place, and nature of the alleged offence:
- “(b) The amount of the infringement fee for that offence:
- 15 “(c) The address at which the infringement fee may be paid:
- “(d) The time within which the infringement fee must be paid:
- “(e) A summary of the provisions of section 21 (10) of the Summary Proceedings Act 1957:
- 20 “(f) A statement that the person served with the notice has the right to request a hearing:
- “(g) A statement of the consequences if the person served with the notice does not pay the infringement fee and does not make a request for a hearing:
- 25 “(h) Such other particulars as are prescribed in regulations made under this Act.
- “(5) Where an infringement notice has been issued under this section, proceedings in respect of the offence to which the notice relates may be commenced in accordance with
- 30 section 21 of the Summary Proceedings Act 1957.”

**42. Approval of radio engineers**—Section 130 of the principal Act is amended—

- 35 (a) By omitting from subsection (1) the expression “25 (2), 39 (2), 40 (3), 53 (2), and 54 (3) of this Act”, and substituting the expression “**25, 39, 40, and 57b**”:
- (b) By omitting from subsection (2) the expression “25 (2), 39 (2), 40 (3), 53 (2), and 54 (3) of this Act”, and substituting the expression “**25, 39, 40, and 57b**”.



**43. Offence to disclose contents of radiocommunications**—The principal Act is amended by inserting, after section 133, the following section:

- “133A. (1) Every person commits an offence against this Act who receives a radiocommunication and who, knowing that the radiocommunication was not intended for that person,—
- 5 “(a) Makes use of the radiocommunication or any information derived from that radiocommunication; or
- “ (b) Reproduces or causes or permits to be reproduced the radiocommunication or information derived from that radiocommunication; or 10
- “ (c) Discloses the existence of the radiocommunication.
- “(2) **Subsection (1)** does not apply to any radiocommunications intercepted— 15
- “ (a) By the Secretary for the purpose of ensuring compliance with this Act; or
- “ (b) By a member of the Police, a Customs officer, or any other class of law enforcement official listed in regulations made under this Act for the purpose of avoiding prejudice to the maintenance of the law, including the detection, prevention, investigation, prosecution, and punishment of offences; or 20
- “ (c) By an officer or employee of—
- “ (i) The New Zealand Security Intelligence Service, for the purpose of obtaining intelligence relevant to security; or 25
- “ (ii) The Government Communications Security Bureau, for the purposes of obtaining foreign intelligence; or 30
- “ (d) By a member of the New Zealand Defence Force, in connection with any of the purposes specified in section 5 (a) to (d) of the Defence Act 1990; or
- “ (e) By a person acting pursuant to, and in accordance with, any authority conferred on him or her by or under— 35
- “ (i) Part I of the Telecommunications Act 1987; or
- “ (ii) The New Zealand Security Intelligence Service Act 1969; or
- “ (iii) The Misuse of Drugs Amendment Act 1978; 40
- or
- “ (iv) The International Terrorism (Emergency Powers) Act 1987.
- “(3) For the purposes of this section,—

“ ‘Security’ has the same meaning as in section 2 of the New Zealand Security Intelligence Service Act 1969:

“ ‘Foreign intelligence’ means information relating to the capabilities, intentions, or activities of—

5 “(a) Any foreign state or group of foreign states; or

“(b) Any foreign organisation; or

“(c) Any foreign person:

“ ‘Foreign organisation’ means—

10 “(a) Any company or body corporate that is incorporated outside New Zealand; or

15 “(b) Any company within the meaning of the Companies Act 1955 or the Companies Act 1993, as the case may be, that is, for the purposes of the Companies Act 1955 or the Companies Act 1993, a subsidiary of any company or body corporate incorporated outside New Zealand; or

20 “(c) Any unincorporated body of persons that carries on activities outside New Zealand (not being an unincorporated body of persons that is a New Zealand person under paragraph (a)(iii) of the definition of the term ‘New Zealand person’ in section 2(1) of the Inspector-General of Intelligence and Security Act 1996);

25 “ ‘Foreign person’ means a natural person who is neither—

“ (a) A New Zealand citizen; nor

“ (b) A person ordinarily resident in New Zealand:

“ ‘Ordinarily resident in New Zealand’ has the meaning given to it by section 4 of the Crimes Act 1961.

30 “(4) **Subsection (2)** does not authorise the interception of any private communications within the meaning of section 216A of the Crimes Act 1961 without an interception warrant and in accordance with section 216A of the Crimes Act 1961.”

#### 44. Regulations—

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*Struck Out (Unanimous)*

(1) Section 134 (1) of the principal Act is amended—

(a) By inserting in paragraph (b), before the word “licence” wherever it appears, the word “radio”:

40 (b) By inserting in paragraph (c), before the word “licences” wherever it appears, the word “radio”.

(2) Section 134 (1) of the principal Act is amended by repealing paragraph (d).

*Struck Out (Unanimous)*

(3) Section 134 (1) of the principal Act is amended by repealing paragraph (g), and substituting the following paragraphs: 5

“(g) Providing for the prohibition or control of the installation, use, sale, distribution, or manufacture of interfering equipment and for the compulsory recall by a supplier of such equipment of any equipment that does not comply with regulations made under this Act: 10

“(ga) Prescribing search references for access to the Register:

“(gb) Prescribing the persons or class of persons to whom information on the Register may be disclosed and the purposes for which the information may be disclosed: 15

“(gc) Prescribing the matters to which an arbitral tribunal must have regard under **section 109**:

“(gd) Prescribing the classes of persons who may intercept radiocommunications under **section 133A**.”. 20

(3) Section 134 (1) of the principal Act is amended by repealing paragraph (j), and substituting the following paragraph:

“(j) Prescribing offences in respect of the contravention of, or non-compliance with, any regulations made under this section.”. 25

*New (Unanimous)*

(3) Section 134 (1) of the principal Act is amended by repealing paragraph (g), and substituting the following paragraphs: 30

“(g) Providing for the prohibition or control of the installation, use, sale, distribution, or manufacture of interfering equipment or susceptible equipment, and for the compulsory recall by a supplier of such equipment or any equipment that does not comply with regulations made under this Act: 35

“(ga) Prescribing search references for access to the Register:

*New (Unanimous)*

5 “(gb) Prescribing the persons or class of persons to whom information on the Register may be disclosed and the purposes for which the information may be disclosed:

“(gc) Prescribing the matters to which an arbitral tribunal must have regard under **section 109**:

“(gd) Prescribing the classes of persons who may intercept radiocommunications under **section 133A**.”

10 (4) Section 134 (1) of the principal Act is amended by repealing paragraph (j), and substituting the following paragraphs:

15 “(j) Prescribing offences in respect of the contravention of, or non-compliance with, any regulations made under this section:

“(ja) Prescribing those breaches of regulations made under **section 134 (1)(g)** of this Act that constitute infringement offences against this Act:

20 “(jb) Prescribing forms of infringement notices, and any other particulars to be contained in infringement notices, and prescribing the infringement fee (not exceeding \$2,000) for each infringement offence, and different forms and different fees may be prescribed for different offences.”

25 **45. Regulations prescribing fees**—Section 135 (1) of the principal Act (as amended by section 8 (2) of the Radiocommunications Amendment Act 1990) is amended by inserting, after the words “providing for”, the words “the method of payment of, or”.

30 **46. Recovery of fees**—(1) Section 136 (1) of the principal Act is amended by inserting, after the words “made under this Act”, the words “, until paid in full, constitutes a debt to the Crown, and”.

*New (Unanimous)*

35 (2) Section 136 of the principal Act is amended—

*New (Unanimous)*

- |   |   |
|---|---|
| <p>(a) By inserting in subsection (1), after the word “Secretary”, the words “ or the Registrar”:</p> <p>(b) By inserting in subsection (2), after the word “Secretary” in both places where it appears, the words “ or the Registrar”.</p> | 5 |
|---|---|

**47. Application of Commerce Act 1986 to acquisition or disposition of management rights or licence in relation to radio frequencies**—(1) Section 138 (1) of the principal Act is amended by inserting, before the word “licence”, the word “spectrum”. 10

(2) Section 138 (2) of the principal Act is amended by repealing paragraph (b).

(3) Section 138 (3) of the principal Act is amended by inserting, before the word “licence” on both occasions it appears, the word “spectrum”. 15

**48. Transitional rights in relation to frequencies in Sixth Schedule**—Section 162 of the principal Act is amended by inserting, after subsection (1), the following subsection:

“(1A) For the purposes of this section and section 168, ‘channel’ means a pair of frequencies that are designated to be used together for the purposes of a service of the type known as Land Mobile.” 20

**49. Bodies specified in Seventh Schedule entitled to licence**—Section 170 (4) of the principal Act is amended by omitting the words “of Broadcasting”. 25

**50. Amendment of advertising restrictions, etc**—Section 172 of the principal Act is amended by omitting the words “of Broadcasting”.

**51. Amendments to principal Act**—The principal Act is consequentially amended in the manner indicated in Schedule 1. 30

**52. New schedule of principal Act**—The principal Act is amended by repealing the First Schedule, and substituting the First Schedule set out in Schedule 2 of this Act.

5 **53. Provisions relating to unregistered spectrum licences**—

*Struck Out (Unanimous)*

10 (1) If, at the commencement of this Act,—  
(a) A licence has been executed but not registered; or  
(b) A transfer of a licence has been executed but not registered,—  
that licence or that transfer expires unless it is registered within 3 months after the date of commencement of this Act.

15 (2) If, at the commencement of this Act, a radio engineer's certificate has been executed, that certificate expires 3 months after the date of commencement of this Act.

20 **54. Interference caused by lawful exercise of rights**—If, before the commencement of this Act, a rightholder has given notice in accordance with section 107 or section 109 of the principal Act (as in force before the coming into force of this Act), those sections continue to apply as if they had not been repealed.

25 **55. Transitional provisions relating to power floors**—  
(1) Where a record of management rights registered in accordance with the principal Act was in force immediately before the commencement of this Act, the power floor applying to each frequency in that record of management rights is, unless modified in accordance with **section 34B** of the principal Act (as inserted by **section 16** of this Act),  $-50\text{dBW}$ .

30 (2) Every reference in the principal Act (as amended by this Act) to a power floor for those records of management rights to which **subsection (1)** applies must, unless modified in accordance with **section 34B** of the principal Act (as inserted by **section 16** of this Act), be read as a reference to  $-50\text{dBW}$ .

35 (3) Every application for a management right made before the commencement of this Act is deemed to include a power floor of  $-50\text{dBW}$ .

**56. Spectrum licences registered in accordance with Part III of principal Act—**(1) Where any licence was registered in accordance with Part III of the principal Act and was in force immediately before the commencement of this Act, that licence is deemed to be a spectrum licence granted in accordance with Part III of the principal Act as amended by this Act. 5

(2) Nothing in this Act authorises any manager to create any further spectrum licence in relation to any frequency within a record of management rights if the spectrum licence would contravene provisions relating to maximum permitted interfering signals or receive coverage location in a licence granted in accordance with Part III of the principal Act in force immediately before the commencement of this Act. 10

(3) Where a licence granted in accordance with Part III of the principal Act and in force immediately before the commencement of this Act refers to a maximum bandwidth, that maximum bandwidth, together with the frequency, must be read as a reference to a frequency band. 15

(4) A licence to which subsection (1) applies may be modified or cancelled only in accordance with section 57b or section 57c of the principal Act (as substituted by section 24 of this Act) as if the licence provided that it could be modified or cancelled only by the rightholder and manager together. 20

(5) If maximum permitted interfering signals specified in a licence granted in accordance with Part III of the principal Act and in force immediately before the commencement of this Act are exceeded by any emissions, those emissions are deemed to cause harmful interference for the purpose of sections 106 to 109 of the principal Act. 25 30

**57. Licences granted under Part XIII of principal Act—**(1) Where any licence has been granted for the installation, operation, or use of radio apparatus in accordance with Part XIII of the principal Act before the commencement of this Act, or was deemed to be a licence granted under that Part by section (149) 140 of the principal Act, and was in force immediately before the commencement of this Act, that licence is deemed to be a radio licence and the following modifications apply to the licence: 35

(a) The licence is deemed to include a requirement that persons transmitting in accordance with the licence comply with the First Schedule of the principal Act (as substituted by section 50 of this Act): 40

(b) The frequencies in the licence used to describe the radio apparatus are the frequencies on which the transmission of radio waves are authorised by the licence.

- 5 (2) If a licence to which **subsection (1)** applies does not describe the radio apparatus by referring to radio frequencies, the holder of the licence must return the licence to the Secretary who must amend the licence to include the frequencies upon which transmissions can be made in accordance with the  
10 licence.

*New (Unanimous)*

- 57A. Addition to Second Schedule of Privacy Act 1993**—Part I of the Second Schedule of the Privacy Act 1993 is amended by inserting, after the item relating to the Motor  
15 Vehicle Securities Act 1989, the item “Radiocommunications Act 1989 Sections 5, 6, and 28”.

- 58. Transitional rights in relation to frequencies in Sixth Schedule**—Section 162(2) of the principal Act is amended by omitting the expression “48 (b)”, and substituting  
20 the expression “48”.

**59. Transitional provisions in relation to frequencies in Seventh Schedule**—Section 170 of the principal Act is amended by omitting the expression “48 (b)” wherever it appears, and substituting the expression “48”.

- 25 **60. Revocation of notices**—The following notices are revoked:
- (a) The Radio Interference Notice 1958 (S.R. 1958/109):
  - (b) The Radio (Television) Interference Notice 1961 (S.R. 1961/29):
  - 30 (c) The Radio Interference Notice 1985 (S.R. 1985/140):
  - (d) The Radio Interference Notice 1988, published in the *Gazette* on 31 March 1988, at pages 1377 to 1379:
  - (e) The Exemptions of Radio Apparatus from Licensing  
35 Notice 1992, published in the *Gazette* on 20 February 1992, at pages 403 to 405.



**SCHEDULES****Section 51****SCHEDULE 1****AMENDMENTS TO PRINCIPAL ACT CONSEQUENTIAL ON AMENDMENTS MADE BY  
SECTION 9**

Provision of Principal Act	Amendment
Section 6	By inserting in subsection 3 (c), before the word "licences", the word "spectrum".
Section 27	By inserting in subsection (1) (b), before the word "licence", the word "spectrum". By inserting in subsection (2), before the word "licence", the word "spectrum".
Section 31	By inserting, before the word "licence", the word "spectrum".
Section 45	By inserting in subsection (2), before the word "licence" on both occasions it appears, the word "spectrum".
Section 47	By inserting in subsection (2), before the word "licence", the word "spectrum".
Section 52	By inserting, before the word "licence" on both occasions it appears, the word "spectrum".
Section 58	By inserting in subsection (2), before the word "licence", the word "spectrum". By inserting in subsection (3), before the word "licence" on both occasions it appears, the word "spectrum".
Section 59	By inserting, before the word "licence", the word "spectrum".
Section 60	By inserting in subsection (1), before the word "licence" wherever it appears, the word "spectrum". By inserting in subsection (2), before the word "licence" wherever it appears, the word "spectrum".
Section 61	By inserting, in paragraph (b) before the word "licence" wherever it appears, the word "spectrum".
Section 62	By inserting in subsection (1), before the word "licence" on both occasions it appears in the definition of the term "search copy", the word "spectrum". By inserting in subsection (1), before the word "licence" on both occasions it appears in the definition of the term "transaction to which this section applies", the word "spectrum". By inserting in subsection (3), before the word "licence" on both occasions it appears, the word "spectrum".

SCHEDULE 1—*continued*

AMENDMENTS TO PRINCIPAL ACT CONSEQUENTIAL ON AMENDMENTS MADE BY  
SECTION 9—*continued*

Provision of Principal Act	Amendment
Section 64	By inserting in subsection (1), before the word “licence”, the word “spectrum”.
Section 73	By inserting, before the word “licence”, the word “spectrum”.
Section 74	By inserting, before the word “licence”, the word “spectrum”.
Section 76	By inserting, before the word “licence” on both occasions it appears, the word “spectrum”.
Section 77	By inserting in subsection (1), before the word “licence”, the word “spectrum”.
Section 78	By inserting, before the word “licences”, the word “spectrum”.
Section 79	By inserting in subsection (1), before the word “licence” wherever it appears, the word “spectrum”.
Section 80	By inserting in subsection (1), before the word “licence”, the word “spectrum”.
Section 81	By inserting in subsection (1), before the word “licence”, the word “spectrum”.
Section 82	By inserting, before the word “licence” on both occasions it appears, the word “spectrum”.
Section 84	By inserting, before the word “licence”, the word “spectrum”.
Section 85	By inserting, before the word “licence” on both occasions it appears, the word “spectrum”.
Section 89	By inserting in subsection (1) (a) (iii), before the word “licence”, the word “spectrum”.
Section 91	By inserting in subsection (1) (a), before the word “licence”, the word “spectrum”. By inserting in subsection (1) (b), before the word “licence”, the word “spectrum”. By inserting in subsection (3), before the word “licence” on both occasions it appears, the word “spectrum”.
Section 92	By inserting in paragraph (b), before the word “licence”, the word “spectrum”.
Section 93	By inserting in subsection (1), before the word “licence” on both occasions it appears, the word “spectrum”.
Section 94	By inserting, before the word “licence” wherever it appears, the word “spectrum”.

SCHEDULE 1—*continued*AMENDMENTS TO PRINCIPAL ACT CONSEQUENTIAL ON AMENDMENTS MADE BY  
SECTION 9—*continued*

Provision of Principal Act	Amendment
Section 96	By inserting in subsection (1), before the word "licence", the word "spectrum".
Section 97	By inserting, before the word "licence", the word "spectrum".
Section 98	By inserting, before the word "licence", the word "spectrum". By inserting, before the word "licences", the word "spectrum".

*New (Unanimous)*

Section 140	By omitting the word "apparatus".
Section 144	By inserting in paragraph (a) (i) of the definition of the term "gross income" in subsection (1), before the word "licence" on the second occasion it appears, the word "spectrum". By inserting in subsection (2), before the word "licence" on the second occasion it appears, the word "spectrum". By inserting in subsection (3) (a), before the word "licence" on the second occasion it appears, the word "spectrum". By omitting the word "apparatus" on each occasion it appears.
Section 145	By inserting in subsection (2), before the word "licence", the word "spectrum". By inserting in subsection (3), before the word "licence" on the first occasion it appears, the word "spectrum". By inserting in subsection (4), before the word "licence", the word "spectrum". By omitting the word "apparatus" on each occasion it appears.
Section 146	By omitting the word "apparatus" on each occasion it appears.
Section 147	By inserting, before the word "licence" on the first occasion it appears, the word "spectrum". By omitting the word "apparatus" on each occasion it appears.
Section 148	By inserting, before the word "licence" wherever it appears, the word "spectrum".

SCHEDULE 1—*continued*AMENDMENTS TO PRINCIPAL ACT CONSEQUENTIAL ON AMENDMENTS MADE BY  
SECTION 9—*continued*

Provision of Principal Act	Amendment
<i>New (Unanimous)</i>	
Section 149	By inserting, before the word “licence” wherever it appears, the word “spectrum”.
Section 150	By inserting, before the word “licence” wherever it appears, the word “spectrum”.
Section 151	By inserting, before the word “licence” wherever it appears, the word “spectrum”.
Section 153	By inserting, before the word “licence” wherever it appears the word “spectrum”.
Section 154	By omitting the word “apparatus” on each occasion it appears.
Section 158	By inserting, before the word “licence” wherever it appears, the word “spectrum”.
Section 159	By inserting, before the word “licence” wherever it appears, the word “spectrum”.
Section 162	By inserting, before the word “licence” on the third, fourth, and sixth occasions it appears, the word “spectrum”. By omitting the word “apparatus” on each occasion it appears.
Section 163	By inserting, before the word “licence” wherever it appears, the word “spectrum”.
Section 164	By inserting, before the word “licence” wherever it appears, the word “spectrum”.
Section 165	By inserting, before the word “licence” wherever it appears, the word “spectrum”.
Section 166	By inserting, before the word “licence” wherever it appears, the word “spectrum”.
Section 167	By inserting, before the word “licence” wherever it appears, the word “spectrum”.

SCHEDULE 1—*continued*AMENDMENTS TO PRINCIPAL ACT CONSEQUENTIAL ON AMENDMENTS MADE BY  
SECTION 9—*continued*

Provision of Principal Act	Amendment
<i>New (Unanimous)</i>	
Section 169	By omitting the word “apparatus” on each occasion it appears.
Section 170	By inserting in subsections (1) and (2), before the word “licence”, the word “spectrum”. By inserting in subsection (3), before the word “licence” on the first 2 occasions it appears, the word “spectrum”. By inserting in subsections (4) and (5), before the word “licence”, the word “spectrum”. By omitting the word “apparatus” on each occasion it appears.
Section 171	By omitting the word “apparatus” on each occasion it appears.
Section 172	By inserting, before the word “licence” on the second occasion it appears, the word “spectrum”.
Section 173	By omitting the word “apparatus”. By inserting, before the word “licence” on the third and all subsequent occasions it appears, the word “spectrum”. By omitting the word “apparatus” on each occasion it appears.
Section 174	By inserting, before the word “licence” on each occasion it appears, the word “spectrum”.
Section 175	By inserting in subsection (1)(c), before the word “licence”, the word “spectrum”. By omitting the word “apparatus” on each occasion it appears.
Section 176	By omitting the word “apparatus” on each occasion it appears.
Section 177	By inserting, before the word “licence” wherever it appears, the word “spectrum”.
Section 178	By inserting, before the word “licence” wherever it appears, the word “spectrum”.

SCHEDULE 1—*continued*

AMENDMENTS TO PRINCIPAL ACT CONSEQUENTIAL ON AMENDMENTS MADE BY  
SECTION 9—*continued*

Provision of Principal Act	Amendment
<i>New (Unanimous)</i>	
Section 180	By inserting in subsection (1) (c), before the word “licence”, the word “spectrum”. By omitting the word “apparatus” on each occasion it appears.

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**Section 52**

## SCHEDULE 2

NEW FIRST SCHEDULE OF PRINCIPAL ACT SUBSTITUTED

**Sections 101, 111**

## “FIRST SCHEDULE

“REQUIREMENTS IN RELATION TO RADIO LICENCES AND SPECTRUM LICENCES

**1. Compliance with International Radio Regulations**—Every person transmitting radio waves must comply with the International Radio Regulations.

**2. False or misleading communication**—No person may—

- (a) Cause or permit the transmission, under any spectrum licence, radio licence, or exemption by regulations made under this Act from the requirement to obtain a radio licence or spectrum licence, of any radiocommunications of a false, fictitious, or misleading character; or
- (b) Cause or permit to be transmitted any false or deceptive distress signal or distress call.

**3. Breach of other enactment**—No person may transmit radio waves under a radio licence, a spectrum licence, or an exemption by regulations made under this Act from the requirement to obtain a radio licence or spectrum licence, in breach of any other enactment.”