

AN ACT

To provide for telecommunications services within to and from the Republic; to establish a corporation by the name of RONTTEL and provide for its powers and functions; and for related purposes.

(Certified: 19/06/2002)

Be it enacted by the Parliament of Nauru as follows:

PART I – PRELIMINARY

SHORT TITLE AND COMMENCEMENT

1. This Act may be cited as the Telecommunications Act 2002 and shall come into operation on a date to be notified by the Cabinet in the Gazette.

GENERAL OBJECTIVES OF ACT

2. The general objectives of the Act are to provide for the establishment, maintenance, operation and regulation of telecommunications services in, to and from Nauru --

(a) so as to enhance and increase growth in the social and economic sectors of the Republic; and

(b) as a profitable, customer-oriented, market-driven business, accessible to the public at an affordable cost; and

(c) so as to achieve optimal rates of expansion and moderation for the telecommunications infrastructure and services; and

(d) in accordance with the guidelines set down by the International Telecommunications Union and with any treaty, convention or agreement with another country or countries or with any international, regional or sub-regional bodies, for the establishment, management, operation and control of telecommunications.

INTERPRETATION

3. In this Act, unless the context otherwise requires --

"authorised provider" means a person authorised under section 34 to provide an authorised service;

"authorised service" means a service authorised under section 34,

"Board" means the Board of Directors established by section 10(1);

"broadcasting" means a transmission service in which transmissions (whether sound transmission, television transmission or other transmission) are intended for direct reception by the public;

"Cabinet" means the Cabinet of the Republic established under Article 17;

"carry" includes transmit, emit, switch and receive;

"Chairman" means the Chairman appointed under section 11 (1);

"communications" includes any communication --

(a) whether between persons and persons, things and things or persons and things; and

(b) whether in the form of sounds, signs, signals, data, text, visual images (animated or otherwise) or any other form, or any combination of them; and

(c) whether or not the communication has been subjected to rearrangement, computation or other process by any means in the course of its transmission, emission or reception;

"connection" includes a link, and connection otherwise than by means of physical contact; "construct" includes erect, install, lay down and place;

"Director" means a Director of the Board appointed under section 10;

"document" includes information which is wholly or partially electronically stored, transmitted and reproduced;

"equipment" includes any equipment capable of effecting telecommunications, whether by transmission or reception or both;

"facility" means any line, equipment, tower, mast, dish, antenna, tunnel, duct, hole, pit, pole or other structure or thing used, or intended for use, in connection with a telecommunications system, or any part of the infrastructure of a telecommunications system;

"foreign aircraft" means an aircraft other than an aircraft which is registered in Nauru in accordance with the Air Navigation Act 1971;

"foreign vessel" means a vessel other than a vessel registered in Nauru in accordance with the Registration of Shipping Act 1968;

"illegal connection" means a connection made to --

- (a) the national telephone service otherwise than in accordance with section 30; or
- (b) an authorised service otherwise than in accordance with an agreement made with the service provider;

"illegal equipment" means illegal equipment under section 35(6), section 36, section 37(3), section 38 or section 39(3);

"illegal service" means an illegal service under section 29(2);

"illegal system" means a system other than --

- (a) a system authorised by RONTTEL to be connected to the national telephone service;
- or
- (b) a system licensed under section 32;

Inspector means -

- (a) a police officer; or
- (b) an officer of RONTTEL appointed under section 40;

"intercept", in relation to a communication passing over a system, means listening to or recording the communication, by any means, in its passage over the system without the knowledge of the person making the communication, but does not include the reception of a broadcasting transmission;

"interference", in relation to telecommunications, means interference to, or with, telecommunications that is attributable, whether wholly or partly and whether directly or indirectly, to an emission of electromagnetic energy by any equipment;

"licensed system" means a system licensed under section 32;

"line" means a wire, cable, optical fibre, tube, conduit, waveguide or other physical medium used, or intended for use, as a continuous artificial guide for or in connection with carrying communications by means of guided electromagnetic energy.

"Chief Executive Officer" means the CEO appointed under section 16;

"national telephone service" means the national telephone service provided by RONTTEL under section 30;

"officer", in relation to RONTTEL, includes the Chief Executive Officer;

"provide", in relation to a system or service, includes construct, operate and maintain;

"the public" means the people, or a part of the people, of Nauru;

"RONTTEL" means the corporation established by section 7;

"service" means a telecommunications service provided, or to be provided, for use by the public;

"service provider" means a provider of a telecommunications service to the public;

"subscriber" means an end-user who is for the time being connected to the national telephone service;

"subscriber equipment" means equipment or a system of equipment which is used or intended for private use in telecommunications;

"subscriber system" means a system which is used by a subscriber and connected to the national telephone service in accordance with section 30(1);

"system" means all or any part of the infrastructure or facilities of a service;

"telecommunications" means the carriage of communications by means of guided or unguided electromagnetic energy or both;

"use", in relation to equipment and systems, includes provide or connect;

"Vice Chairman" means the Vice-Chairman appointed under section 11.

(2) A reference to a system or service includes a reference to a part only of that system or service.

(3) A reference to use of equipment includes a reference to the connection of the equipment to a system.

(4) Equipment may be connected to a system whether or not the equipment is comprised in, or is in physical contact with any part of, the system.

(5) Except where the context otherwise requires, references in this Act to Nauru, a foreign country, a place or any waters include references to the space (including the atmosphere and outer space) above.

(6) Any determination as to the nature or classification, for the purposes of this Act, of any service, system, equipment or other thing connected with telecommunications shall be made by RONTEL.

ACT BINDS THE REPUBLIC

4. This Act binds the Republic, but not so as to make the Republic liable to a pecuniary penalty or to be prosecuted for an offence.

- (2) The protection in subsection (1) does not apply to
 - (a) a public officer or other person employed by the Republic;
 - (b) a statutory authority of the Republic or persons employed by it.

APPLICATION

5. (1) This Act applies both inside and outside the Republic.

(2) Subject to the provision of any agreement, treaty or convention between the Republic and any other country that makes provision in relation to radio emission, this Act does not apply to -

(a) satellites; or

(b) equipment on board a foreign vessel or foreign aircraft that is travelling, or is in transit, (whether in or outside Nauru) on a voyage --

(c) from a point outside Nauru to Nauru; or

(d) from Nauru to a point outside Nauru; or

(e) from a point outside Nauru to another point outside Nauru.

EFFECT ON OTHER LAWS

6. The powers and duties imposed by this Act do not affect any powers and duties imposed by the Post and Telegraph Act 1901-1950 of the Commonwealth of Australia as adopted by the Post and Telegraph Ordinance 1952-1963 in relation to postal matters, but where those powers and duties are imposed in relation to telecommunications matters, then the provisions of this Act, to the extent that they are in conflict, prevail.

PART II --THE ESTABLISHMENT OF RONTEL

ESTABLISHMENT OF RONTEL

7. (1) A corporation by the name of RONTEL is established.

(2) RONTEL --

(a) is a body corporate with perpetual succession; and

(b) has a common seal; and

(c) is capable of acquiring, holding and disposing of real and personal property; and

(d) may sue and be sued in its corporate name.

(3) All courts, judges and persons acting judicially shall take judicial notice of the seal of RONTEL affixed to a document, and shall presume that it was duly affixed.

MANAGEMENT OF TELECOMMUNICATIONS

8. (1) RONTEL has the exclusive right to --

(a) provide, control and use telecommunications systems and services within, to and from the Republic;
~~and~~

(2) The rights, powers and functions of RONTEL shall be exercised and performed
~~on behalf~~ of the Republic.

FUNCTIONS OF RONTEL

9. (1) The functions of RONTEL are --

(a) to provide such facilities and systems as are necessary or desirable for enabling provision and use of telecommunications systems and services in Nauru; and

(b) to provide the national telephone service; and

(c) to authorise, monitor and control the provision by other persons of telecommunications systems and services for use in Nauru; and

(d) to monitor the use of telecommunications services on any ship or aircraft; and

and

(e) to establish and monitor rates and charges paid by subscribers; and

(f) to act as the duly appointed representative of the Republic at all international bodies or authorities which have the purpose of designating international technical standards; and

(g) to carry out and give effect to any policy directions of the Minister and the Cabinet regarding the establishment, maintenance and operation of telecommunications systems and services; and

(h) to advise the Minister on matters connected with its functions, including the operation of this Act and of any other law relating to its functions; and

(i) to administer and enforce this Act and any other law relating to telecommunications, to the extent required or permitted by that law, and in accordance with any policy approved by the Cabinet; and

(j) to carry out such other functions as are necessary to achieve its objects or as are given to it under this Act or any other law.

(2) In the development of technical and performance standards under subsection (1)(f), RONTEL shall have regard to the best international practice performance indicators available to it

BOARD OF DIRECTORS

10. (1) There shall be a Board of Directors of RONTEL which shall carry out the functions, exercise the powers and manage the business of RONTEL.

(2) The Board shall consist of-

(a) the Chief Executive Officer ; and

- (b) a person appointed by Cabinet to represent Non Governmental Organisations; and
- (c) a Government representative to be appointed by cabinet ; and
- (d) a person appointed by the Cabinet to represent consumers; and
- (e) a person appointed by the Cabinet to represent business and commerce interests.

(3) A Director appointed under subsection (2)(d) or (e) --

- (a) shall be appointed for a term not exceeding three years; and
- (b) is eligible for reappointment; and
- (c) subject to this section, shall be appointed on such terms and conditions as are approved by the Cabinet; and
- (d) may be granted leave of absence by the Minister upon such terms and conditions as the Minister determines; and
- (e) shall be paid for service as a Director such reasonable fees and allowances as are determined by the Cabinet.

CHAIRMAN AND VICE CHAIRMAN

11. (1) The Cabinet shall appoint a Director, other than the Chief Executive Officer, to be Chairman, and another Director to be Vice-Chairman, of the Board.

(2) The Chairman shall exercise such powers and perform such functions as are determined by the Board.

(3) Where --

- (a) the office of the Chairman is vacant; or
 - (b) the Chairman is for any reason unable to exercise those powers or perform those functions,
- the powers and functions of the Chairman shall be exercised and performed by the ViceChairman.

VACATION OF OFFICE

12. (1) Where a Director --

- (a) becomes bankrupt, or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment for their benefit; or
 - (b) dies; or
 - (c) resigns his office in writing signed by him and delivered to the Minister; or
 - (d) is absent, except on leave granted by the Minister, from three consecutive meetings of the Board; or
 - (e) fails to comply with the obligations under section 15; or
 - (f) fails in the opinion of the Cabinet to comply with his obligations under section 55(1); or (g) is convicted of-
 - (i) an offence involving fraud or dishonesty punishable on conviction with imprisonment;
- or

(ii) an offence punishable on conviction with imprisonment for one year or longer; or (iii) an offence under section 43(2),

the Cabinet shall terminate his appointment.

(2) The Cabinet may terminate the appointment of a Director, other than the Managing Director, for inability, inefficiency, incapacity or misbehaviour.

(3) A termination of appointment under this section shall be notified in the Gazette.

MEETINGS OF THE BOARD

13. (1) The Board shall meet as often as is necessary for the efficient conduct of its business, and at such times and places as the Board determines, or as the Chairman, or in his absence the Vice-Chairman, directs, but in any event shall meet at least once in every two months.

(2) For the purposes of subsection (1), the Chairman or Vice-Chairman shall give to every Director at least seven days' notice in writing of the meeting.

(3) Where the Chairman receives a direction from the Minister or a written request signed by not less than two Directors, he shall call a meeting of the Board within seven days.

(4) At a meeting of the Board --

(a) three Directors, one of whom is the Chairman or Vice-Chairman, shall constitute a quorum; and

(b) the Chairman, or in his absence the Vice-Chairman, shall preside; and

(c) matters arising shall be decided by a majority of the votes of the members present and voting; and

(d) the person presiding has a deliberative, and in the event of an equality of votes on any matter, also a casting vote.

(5) The Board may invite any person to attend a meeting of the Board, and that person may take part in any discussion at the meeting but shall not have any voting rights.

(6) Subject to this Act, the Board may determine its own procedures.

DELEGATION OF POWERS

14. (1) The Board may by instrument delegate to the Chief Executive Officer all or any powers, duties or functions of the Board other than --

(a) this power of delegation; or

(b) the power to approve any expenditure not contained in a budget approved by the Board.

(2) A delegation under this section is revocable and does not prevent the exercise of any power, duty or function by the Board.

(3) The Chief Executive Officer shall keep a register of delegations under this section.

DISCLOSURE OF INTEREST

15. (1) A Director who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by RQNTTEL shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of the interest --

(a) at a meeting of the Board; or

(b) by giving prior notice in writing to the Board.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the Board and the Director-

(a) ~~unless~~ the Board otherwise determines, shall not attend the meeting of the Board in respect of the matter and take part in discussions; and

(b) ~~shall~~ not vote in any decision on the matter or be taken into account for the purposes of constituting a ~~quorum~~ of the Board for that meeting or decision.

CHIEF EXECUTIVE OFFICER

16. (1) The Board shall, after consultation with the Minister, appoint a person to be the Chief Executive Officer of RONTEL.

(2) The Chief Executive Officer-

(a) is the head of the staff of RONTEL, and is responsible to the Board for the efficient carrying out of the functions of RONTEL; and

(b) has any other powers and functions given to him by or under any law.

(3) The Chief Executive Officer shall not, except with the approval of the Board --

(a) engage in any remunerative employment; or

(b) engage in business, whether as a principal or agent; or

(c) carry on the private practice of any profession, occupation or trade,

during his hours of duty, other than in connection with his duties as Chief Executive Officer.

(4) Subsection (3) does not prevent the Chief Executive Officer from becoming a member or shareholder of an incorporated company or of a company or society of persons, but an officer shall not, during his hours of duty, take part in the conduct of the business of the company or society otherwise than in the exercise of his rights as a member or shareholder of the company or society.

DELEGATION OF POWERS OF CHIEF EXECUTIVE OFFICER.

17. (1) The Chief executive Officer may by written instrument of delegation delegate to an officer any power, duty or function of his office other than this power of delegation.

(2) A delegation under this section is revocable and does not prevent the exercise of a power, duty or function by the Chief executive Officer.

STAFF OF RONTEL

18. (1) The Chief Executive Officer may appoint to be officers of RONTEL such persons as he considers necessary or appropriate for the efficient conduct of the business of RONTEL.

(2) The Chief Executive Officer may appoint such temporary and casual employees as he considers necessary or appropriate.

(3) The Chief Executive Officer, the officers appointed under subsection (1) and the employees appointed under subsection (2) constitute the staff of RONTEL.

(4) Subject to subsection (3), The Board may determine the general terms and conditions of employment for the staff of RONTEL.

(5) Until a determination has been made under subsection (4), the terms and conditions of employment of the staff of RONTEL shall resemble, as nearly as may be, the terms and conditions of employment at an equivalent level in the public service.

(6) Where a person appointed as an officer of RONTEL was a public officer immediately before being appointed, any benefits, entitlements and rights accrued as a public officer shall be recognised and applied in the employment with RONTEL.

(7) An officer of RONTEL other than the Chief Executive Officer shall not, except with the express permission in writing of the Chief Executive Officer-

(d) engage in any remunerative employment; or

(e) engage in business, whether as a principal or agent; or

(f) carry on the private practice of any profession, occupation or trade,

during his hours of duty, other than in connection with his duties as an officer.

(8) Subsection (7) does not prevent an officer from becoming a member or shareholder of an incorporated company or of a company or society of persons, but an officer shall not, during his hours of duty, take part in the conduct of the business of the company or society otherwise than in the exercise of his rights as a member or shareholder of the company or society.

(9) Subject to subsections (4) and (5), the Chief Executive Officer may suspend and dismiss officers and employees of the staff of RONTEL.

POWERS OF RONTEL

19. (1) RONTEL has, in addition to the powers conferred on it by this Act and any other law, full powers to do all things that are necessary or convenient to be done, whether in Nauru or elsewhere, for or in connection with the performance of its functions and the attainment of its objects,

(2) Without limiting the generality of subsection (1), but subject to section 20, the powers of RONTEL include the power –

(a) to purchase, lease, hire or otherwise acquire any land, buildings, plant, machinery and other capital assets; and

(b) to sell or otherwise dispose of any land, buildings, plant, machinery and other capital assets of RONTEL; and

(c) to purchase or otherwise acquire goods and services connected with its objects, whether for its own use or for resale or redistribution; and

(d) to sell or otherwise provide goods and services connected with telecommunications to persons in Nauru, in such manner and on such terms as the Board thinks fit; and

(e) to exercise any powers conferred on it by this or any other Act; and

(f) to do anything incidental to any of its objects.

LIMITATIONS ON POWERS OF RONTEL

20. (1) Notwithstanding section 19, RONTEL shall not-

(a) purchase or acquire by way of lease or hire arrangement or otherwise, or sell or dispose of by way of lease or hire arrangement or otherwise, any asset having a price, value or annual rental cost exceeding five thousand dollars, but not exceeding twenty thousand dollars, or such other price, value or annual rental cost as may be prescribed, except with the approval of the Board; or

(b) purchase or acquire by way of lease or hire arrangement or otherwise, or sell or dispose of by way of lease or hire arrangement or otherwise, any asset having a price, value or annual rental cost exceeding twenty thousand dollars, but not exceeding one hundred thousand dollars, or such other price, value or annual rental cost as may be prescribed, except with the approval of the Minister; or

(c) purchase or acquire by way of lease or hire arrangement or otherwise, or sell or dispose of by way of lease or hire arrangement or otherwise, any asset having a price, value or annual rental cost exceeding one hundred thousand dollars, or such other price, value or annual rental cost as may be prescribed, except with the approval of the Cabinet.

(2) If more than one asset is purchased, acquired, sold or disposed of in a single transaction or as part of a series of related transactions, the dollar limitations prescribed in subsection (1) shall apply to that purchase, acquisition, sale or disposal of those assets as if those assets constituted one asset.

(3) An approval for a sale under subsection (1) may include a direction that the sale shall be by way of public auction or by public tender.

(4) RONTEL shall not, except with the approval of the Cabinet --

(a) lend moneys; or

(b) invest moneys, except in an interest-bearing bank account in accordance with section 25(2); or

(c) act as guarantor for other persons.

FUNDS OF RONTEL.

26. (1) The revenues of RONTEL consist of --

(a) moneys appropriated by Act from time to time for the purposes of RONTEL; and

(b) moneys received by RONTEL for goods or services provided by RONTEL; and

(c) revenues and other moneys payable to the Republic by any other state, any international, regional or sub-regional organisation or body, or any other person in respect of the establishment, maintenance and operation of telecommunications services; and

(d) grants, bequests, gifts or other similar subscriptions made payable to RONTEL or the Republic in respect of the establishment, maintenance and operation of telecommunications services; and

(e) interest earned on loans or investments made by RONTEL; and

(f) moneys derived from the disposal of, or dealing with, real or personal property vested in or acquired by RONTEL, in accordance with this Act or any other law; and

(g) moneys borrowed by RONTEL; and

(h) any other moneys received by or made payable to RONTEL under any law and in the exercise and performance of its powers and functions.

(2) Any revenues and other moneys raised or received by RONTEL shall be paid into and form a fund of RONTEL.

BORROWINGS BY RONTEL

22. (1) Subject to this section, RONTEL may borrow money on such terms and conditions, and in such amounts, as the Board, with the approval of the Cabinet, determines.

(2) RONTEL shall not charge, pledge or grant a lien over any of its assets, or acquire any asset subject to a charge, pledge or lien, except with the approval of the Cabinet or except where the charge, pledge or lien arises by operation of law pursuant to a permitted activity under this Act in circumstances where RONTEL is duly discharging its obligations giving rise to the charge, pledge or lien or is disputing those obligations in good faith.

APPLICATION OF FUNDS

23. The funds of RONTEL shall be applied for --

- (a) the payment of remunerations and allowances payable under this Act; and
- (b) the payment or discharge of any other expenses, charges, fees, subscriptions and obligations incurred or undertaken by RONTEL; and
- (c) the payment of interest and principal on borrowings of RONTEL; and
- (d) any other payments which are required or permitted to be made under this Act or any other law.

SURPLUS OF FUNDS

24. (1) Any surplus at the end of any financial year of RONTEL's revenues over the sums required by RONTEL for that year for meeting its obligations and performing its functions under this Act or any other law shall be applied by the Board as follows:--

- (a) 35% as payment to the Republic;
- (b) 40% to a development and capital works fund;
- (c) 15% to a contingencies fund, to allay or ameliorate disasters and emergencies;
- (d) the balance as determined by the Minister.

(2) The funds referred to in subsection (1)(b) and (1)(c) shall be invested in such interest-bearing accounts at a bank or lending institution as are approved by the Board.

(3) In making a determination under subsection (1)(d), regard shall be had to any advice furnished by the Board to the Minister regarding the financial affairs of RONTEL.

ACCOUNTS OF RONTEL

25. (1) RONTEL shall manage its finances and keep proper books of accounts and records in accordance with sound accounting principles consistently accepted and applied internationally and shall ensure as far as possible that its revenue is sufficient to meet its expenditures properly chargeable to revenue.

(2) RONTEL shall open and maintain such bank accounts, with a bank or banks approved by the Minister for the purpose, as are necessary for the exercise and performance of its powers and functions, and shall pay into them all moneys received by RONTEL in the exercise and performance of its powers and functions.

(3) Notwithstanding subsection (2), in respect of money advanced or borrowed under this Act for the purposes of RONTEL, the Board shall maintain a separate account in respect of the money that is related to each purpose, and shall cause proper entries of --

- (a) all moneys so advanced or borrowed for a particular purpose of RONTEL; and

to be made in the account maintained in respect of the purpose.

(4) All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments made or drawn on behalf of RONTEL shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, as prescribed, or until such time as regulations are made, by the Chairman, the Managing Director and any one other Director, as determined by the Board,

(5) All receipts for money paid to or received by RONTEL shall be signed and executed in such manner as the Board determines by resolution from time to time.

ANNUAL BUDGET

26. (1) RONTEL shall prepare and submit to the Minister not less than one month before the date of commencement of each financial year a budget of the estimates of revenues and expenditure and the planned operations of RONTEL for that year.

(2) Within fourteen days of receiving a budget under subsection (1), the Minister shall lay it before the Cabinet for consideration.

(3) The Cabinet may approve or reject the budget.

(4) An approval under subsection (3) may be given with such directions as to variations as the Cabinet sees fit.

(5) Where the Cabinet has rejected a budget or directed a variation, the Board shall revise the budget in accordance with any directions of the Cabinet and resubmit it through the Minister to the Cabinet.

(6) Where during any financial year the Board considers that the budget or any part of it cannot be met or should not be undertaken or should be changed, RONTEL shall submit to the Minister a revised budget.

(7) A revised budget under subsection (6) shall be subject to approval by the Cabinet, which may approve it either without variation or with such variations as the Cabinet may direct.

(8) Where the Cabinet has directed a variation under subsection (7), the Board shall revise the budget in accordance with any directions of the Cabinet and resubmit it through the Minister to the Cabinet.

AUDIT

27. The accounts of RONTEL shall be subject to inspection and audit by the Director of Audit in accordance with the Audit Act 1973.

REPORTS

28. (1) RONTEL shall on or before the twenty-fifth day of March, June, September and December of each year, submit to the Minister --

- (a) a balance sheet;
- (b) the profit and loss account; and
- (c) the source and application of fund statement;

for the preceding quarter, together with the report comparing the results achieved by RONTEL up to the end of that quarter with the corresponding information in the budget and projected accounts for that financial year submitted under section 26.

(2) RONTEL shall, as soon as possible after 1 July in each year, furnish to the Minister a report on the progress and the performance of RONTEL in relation to its functions for the preceding financial year ending 30 June.

(3) A report under this section shall include financial statements comparing the results achieved by RONTEL with the corresponding information in the budget and the projected accounts for that financial year, and the corresponding results achieved for the previous financial year.

(4) As soon as practicable after receiving the report referred to in subsection (2), the Minister shall cause it to be laid before Parliament.

(5) RONTEL shall furnish to the Minister such other or additional information relating to its performance, operations and proposed operations as the Board considers appropriate or as the Minister from time to time requires.

PART III --TELECOMMUNICATIONS SERVICES

THE TELECOMMUNICATIONS SERVICES OF NAURU

29. (1) The telecommunications services of Nauru consist of --

- (a) the national telephone service provided by RONTEL;
- (b) services, including broadcasting services, provided by or using licensed systems
- (c) authorised services.

(2) Any other telecommunications service used or provided for use in Nauru is an illegal service.

THE NATIONAL TELEPHONE SERVICE

30. (1) The national telephone service consists of-

- (a) the telecommunications system provided by RONTEL; and
- (b) subscriber systems authorised by RONTEL to be connected to the national telephone service.

(2) An application to subscribe to the national telephone service shall be made in writing to RONTEL in the prescribed form, or, until the form is prescribed, in such manner and form as is determined by RONTEL.

(3) RONTEL may refuse the application of an applicant --

- (a) who is an undischarged bankrupt; or
- (b) who has a previous record of failure to pay any account relating to the provision of telecommunications; or
- (c) who has been previously convicted of an offence relating to telecommunications; or (d) on any other reasonable grounds.

(4) A subscriber may be connected to the national telephone service conditions as to--

- (a) connection of equipment or systems; and
- (b) payment of fees and charges; and
- (c) provision of bonds, guarantees or other assurances as to payment,

as are prescribed, or, until such time as they are prescribed, as are determined by RONTEL.

~~or such~~

(5) A subscriber may apply in writing in the prescribed form to RONTEL for alteration, relocation or removal of his connection, or, until the form is prescribed, in such manner and form as is determined by RONTEL.

RATES AND CHARGES

31. (1) The Board, in consultation with the Minister, may from time to time set or vary rates and charges for connection, alteration, relocation or removal of the connection and for use of the national telephone service.

(2) The Board shall publish the rates and charges referred to in subsection (1) in such manner as it considers appropriate to inform the public.

LICENSED SYSTEMS

32. (1) This section does not apply to subscriber systems which are connected to the national telephone system in accordance with 30.

(2) A person may apply to the Republic for a licence to use a system in Nauru.

(3) The forms and classes of licences, and other matters pertaining to them, are as prescribed.

(4) The grant of licences under this section may be subject to such further conditions as to use as the Republic thinks fit.

ALLOCATION OF FREQUENCIES

33. (1) The Republic shall allocate frequencies or groups of frequencies to the Republic for use for broadcasting.

(2) The Republic may regulate the use of frequencies allocated under subsection (1), including the use of those frequencies for purposes of broadcasting by persons other than the Republic.

(3) The Republic may allocate frequencies or groups of frequencies for use in or by licensed systems, and for such other purpose as it thinks fit.

(4) In the allocation of frequencies under this section, RONTEL shall have regard to any plan or scheme of allocation of frequencies established by any international agreement, including agreements with other countries.

AUTHORISED SERVICES

34. (1) The Republic may authorise a person in writing to provide a service for public use, notwithstanding that RONTEL is already providing a similar or corresponding system or service.

(2) An authorisation under subsection (1) may be by way of licence, contractual agreement, or otherwise.

(3) An authorisation under subsection (1) shall be made on such terms and conditions as to use, connection to other services including the national telephone service, rates and charges to be made in relation to the service and other related matters as are determined or agreed by RONTEL.

(4) A person authorised to provide a service under this section is an authorised provider.

APPROVAL OF EQUIPMENT

35. (1) This section does not apply to radio or television receivers used by an end-user to receive a broadcasting service.

(2) The Republic may approve equipment for use, either by reference to a class, type or brand of equipment, or by individual approval in accordance with subsection (5), as --

- (a) subscriber equipment; or
- (b) equipment for use with a licensed system; or
- (c) equipment for use with an authorised service.

(3) An approval under subsection (1) may include such conditions as to the modification of the equipment as the Republic considers fit.

(4) A person intending to use equipment which has not been approved by the Republic in accordance with subsection (1) shall make written application to the Republic describing the equipment, the use to which it shall be put, and any other information which the Republic may reasonably require.

(5) Upon receipt of an application under subsection (3), the Republic may --

- (a) approve; or
 - (b) refuse to approve; or
 - (c) approve subject to such conditions as it thinks fit, including conditions as to modification, of the equipment.
- (6) Equipment which has not been approved under this section is illegal equipment.

DECLARATION OF ILLEGAL EQUIPMENT

36. The Republic may by notice in the Gazette declare a type, class or brand of equipment to be illegal equipment.

MODIFICATION OF EQUIPMENT

37. (1) The Republic may require the owner of any equipment to present it to RONTTEL for such modification as to frequencies and other matters as RONTTEL thinks fit.

(2) Equipment which is required to be presented under subsection (1) and which has not been so presented within a reasonable time is illegal equipment.

(3) Equipment which has been modified otherwise than in accordance with the approval of the Republic is illegal equipment.

EQUIPMENT CAUSING INTERFERENCE

38. Equipment which persistently causes interference and which is not capable of being modified so as to prevent the interference is illegal equipment.

DETERMINATION OF TECHNICAL STANDARDS

39. (1) The Republic may, by notice in the Gazette, determine technical standards relating to systems or to equipment that is connected or to be connected to a system.

(2) The Republic may only determine a standard under subsection (1) where it believes it is necessary or desirable to do so in order to --

- (a) protect the integrity of a system or the safety of persons working on, or using services supplied by means of a system; and
- (b) ensure the compatibility of equipment with a system to which it is connected; or
- (c) ensure that equipment connected to a system complies with recognised international standards; or
- (d) maintain or improve the quality of services; or
- (e) reduce or limit interference to telecommunications or to any uses or functions of equipment; or
- (f) establish an adequate level of immunity from electromagnetic disturbance to systems.

(3) Where a technical standard has been declared under subsection (1), equipment used or operated in breach of that standard is illegal equipment.

PART IV--ENFORCEMENT

INSPECTORS

40. (1) The Minister may, by notice in the Gazette, appoint an inspector for the purposes of this Act.

(2) An inspector appointed under subsection (1) shall be issued with an identity card,

(3) An inspector who has been reasonably required to produce his identity card, and has failed to do so, is not entitled to exercise any powers under this Act.

POWERS OF INSPECTORS

41. (1) For the purposes of enforcing this Act, an inspector has the following powers:--

- (a) at any time during the day or night, to enter any land, vehicle, vessel, aircraft, or premises other than residential premises;
- (b) with the consent of the occupier or with a warrant, to enter residential premises;
- (c) to search for any thing which may afford evidence of the commission of an offence against this Act;
- (d) to inspect and take photographs, or make sketches of the land, vehicle, vessel, aircraft or premises or any thing at or in them;
- (e) to inspect, and to remove or make copies of, any book, record or document which may afford evidence of the commission of an offence against this Act, and to remove, or make copies;
- (f) such other powers as are given to him by or under this Act.

(2) Where an inspector has reasonable grounds for believing that an offence against this Act has been, is being or is about to be committed, he may, without warrant, seize any equipment or other thing which he reasonably believes has been, is being or is about to be used in connection with the offence.

(3) An inspector may at any time seize illegal equipment, notwithstanding that the person in possession of the equipment did not or could not know that it is illegal equipment.

(4) In exercising powers under this Act, an inspector may use such force and assistance as is reasonably necessary.

OFFENCES

42. (1) A person who --

(a) provides or uses an illegal system or service; or

(b) provides, uses, sells or possesses equipment knowing or suspecting on reasonable grounds that it is for use with an illegal system or service; or

(c) provides or uses an illegal connection; or

(d) provides, uses, sells or possesses equipment knowing or suspecting on reasonable grounds that it is for use in making an illegal connection; or

(e) intentionally operates equipment or a system at frequencies other than those allocated for use by that equipment or system; or

(f) provides, uses, sells or possesses illegal equipment knowing that it is illegal; or

(g) provides or uses equipment contrary to the conditions of its approval for use under section 35; or

(h) breaches any condition as to the use or modification of equipment under section 35(3) or section 37; or

(i) modifies any equipment the modification of which is prohibited,

is guilty of an offence.

(2) A subscriber to the national telephone service who breaches or fails to comply with a condition of the connection is guilty of an offence.

(3) A person licensed to provide or use a system under section 32 who breaches a condition of his licence is guilty of an offence.

(4) An authorised provider who breaches a condition of his authorisation under section 34 is guilty of an offence.

(5) A person, other than an officer of RONTEL acting in the proper course of his duties, who makes or uses a connection to the national telephone service otherwise than in accordance with section 30 or 34 is guilty of an offence.

(6) An officer of RONTEL, an authorised provider or his employee, agent or contractor who, otherwise than in the proper course of his duties, intentionally modifies or interferes with the contents of a communication sent by means of system is guilty of an offence.

PROTECTION OF COMMUNICATIONS AND OTHER INFORMATION

43. (1) Directors, officers of RONTEL, authorised providers and their employees, agents and contractors shall treat as confidential any communication, any information relating to a communication or the contents of any document, which comes to their knowledge in the course of their duties or their connection with RONTEL.

(2) A person who, otherwise than as a Director, an officer of RONTEL or an authorised provider or his employee, agent or contractor acting in the proper course of his duties-

(a) intentionally intercepts; or

(b) makes use of; or

(c) intentionally discloses to any person,

a communication or the contents or substance of a communication, or any information or the contents of any document that comes to his knowledge or to which he has access in the course of his duties or his connection with RONTTEL, is guilty of an offence.

(3) Nothing in this section applies to anything done --

(a) in obedience to a warrant, or to any disclosure in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings; or

(b) to the extent that the interception, use or disclosure is authorised or required under this Act or any other law; or

(c) to the extent that the person providing the information authorised its disclosure at the time of providing the information; or

(d) to the extent necessary to enable the Minister, the Board or the Managing Director to publish statistical information concerning the subject matter of the functions of RONTTEL; or

(e) to the extent necessary to enable the Board to give advice to the Minister.

(4) A person who is convicted of an offence under subsection (2) is liable for any profit made in consequence of any damage suffered by RONTTEL or any other person as a result of the commission of the offence, in addition to the satisfaction of any criminal penalty that may be imposed.

ILLEGAL TRANSMISSIONS

44. (1) This section does not apply to the use of equipment used in accordance with an agreement, treaty or convention entered into between the Republic and any other country or countries, or any international, regional or sub-regional body,

(2) Subject to subsection (4), a person outside Nauru who, without a valid license, uses equipment on board a foreign vessel or foreign aircraft --

(a) for the purposes of broadcasting to the general public in Nauru radio programs or television programs; or

(b) in a manner that the person knows is likely to interfere substantially with communications within Nauru or between Nauru and a place outside Nauru,

is guilty of an offence.

(3) Subject to subsection (4), a person who knowingly operates equipment --

(3) (a) so as to cause interference with the operation of any other equipment or System; or (b) so as to interfere with the safe operation of vessels or aircraft; or

(c) in a manner likely to endanger the safety of another person or to cause another person to suffer or incur substantial loss or damage,

is guilty of an offence.

(4) It is a defence to a charge of contravening subsection (2) or (3) that this use or operation of the equipment was believed to be reasonably necessary for the purpose of --

(a) securing the safety of a vessel or aircraft that was in danger; or

(b) dealing with an emergency involving a serious threat to the environment; or

(c) dealing with an emergency involving risk of death of, or injury to, persons; or

(d) dealing with an emergency involving risk of substantial loss of, or substantial damage to, property.

(5) The burden of proving any of the matters in subsection (4) lies on the defendant.

IMPROPER USE OF SERVICES

45. A person who uses a system to send a message or other matter --

(a) which is offensive or of an indecent, obscene or menacing character; or

(b) for the purpose of causing annoyance, inconvenience or needless anxiety to another person,

is guilty of an offence.

PROTECTION OF FACILITIES

46. A person who, intending to --

(a) prevent or obstruct the transmission or delivery of a communication; or

(b) commit mischief,

damages, removes or tampers with any facility or system or any part of a facility or system is guilty of an offence.

OBSTRUCTION OF INSPECTORS

47. A person who --

(a) furnishes to an officer of RONTEL any particulars which, to his knowledge, are false or misleading in any material respect; or

(b) refuses or fails to facilitate entry to or examination of any land, premises, vehicle, vessel, aircraft, equipment or other thing as required or permitted by this Act; or

(c) assaults, threatens, obstructs, hinders, resists, delays, intimidates or fails to take all reasonable measures to ensure the safety of, an inspector in the performance of his duties under this Act; or

(d) wilfully misleads, or by threats, demands or promises, attempts to influence improperly, an inspector or an officer of RONTEL in the performance of his duty,

is guilty of an offence.

GENERAL PENALTY

48. A person guilty of an offence under this Act for which no penalty is expressly provided is liable to a penalty not exceeding \$10,000 or imprisonment for a term not exceeding 10 years.

PROSECUTIONS UNDER OTHER LAWS

49. Nothing in this Act prevents any person from being prosecuted under any other written law for any act or omission which constitutes an offence against this Act, or from being liable under that other written law to any punishment or penalty higher or other than that prescribed by this Act, but no person shall be punished more than once for the same offence.

REMEDIES~

50. A person who has suffered loss or damage caused by interference may at any time apply to a Court for --

- (a) an order that appropriate measures be taken in order to prevent or mitigate any further interference; and
- (b) damages for any loss suffered as a result of the interference, including loss of any benefit that the person might reasonably have been expected to obtain but for the interference,

DISCONNECTION OF EQUIPMENT

51. (1) RONTEL may, at any time, disconnect any equipment from a system where --
a) the equipment is a threat to the safety or proper functioning of the system or the safety of any person; or

(b) the equipment causes or threatens to cause interference to the system and cannot be modified so as to prevent the interference; or

(c) the equipment or the connection is illegal; or

(d) there has been persistent failure to make any payment required by this Act for the connection.

(2) Nothing in this section prevents any person from being prosecuted for an offence against this Act.

FORFEITURE OF EQUIPMENT

52. (1) Where a person is convicted of an offence against this Act in connection with any equipment or facility, the equipment or facility is forfeited to RONTEL and may be dealt with as RONTEL thinks fit.

(2) Notwithstanding that no person has been convicted of an offence in relation to illegal equipment, illegal equipment that has been seized by an inspector under this Act is forfeited to RONTEL and may be dealt with as RONTEL thinks fit.

(3) Nothing in subsection (2) prevents any person from being prosecuted for an offence against this Act.

PRESUMPTIONS AS TO EQUIPMENT

53. (1) For the purposes of this Act, the occupier of any place, and the person in charge of any vehicle, vessel or aircraft, on or in which there is any equipment, shall be presumed to be in possession of and to be using the equipment until the contrary is proved.

(2) For the purposes of this Act, any equipment shall be deemed to remain capable of operation notwithstanding the fact that it is temporarily incapable of doing so, unless RONTEL or a person authorised by RONTEL is satisfied that it has been dismantled or rendered completely inoperative.

PART V – MISCELLANEOUS

EMERGENCIES

54. (1) Where on the occurrence of a public emergency, or in the interest of public security or national defence, it appears to the Cabinet to be necessary or desirable, the Cabinet may, by order in the ~~Gazette~~ or in writing, give directions to any appropriate person in relation to--

- (a) the prohibition or regulation of the use of systems and services; and
- (b) the possession or taking control of or use for official purposes of systems and services; ~~and~~
- (c) the stopping, delay or interception of communications; and
- (d) the carrying out of any other purposes which the Cabinet may consider necessary.

(2) The Republic may pay compensation or make grants to the owner or operator of any system or service for defraying or contributing towards any losses which may be sustained by reason of compliance with any directions of the Cabinet under subsection (1), and any sums required for this purpose shall be paid out of funds provided by Parliament for the purpose.

DUTIES AND LIABILITIES OF DIRECTORS AND OFFICERS

55. (1) A Director shall at all times act honestly and exercise reasonable diligence in the discharge of the duties of his office.

(2) No Director or officer shall be personally liable for any act or omission done or made in his capacity as Director or officer in good faith and in the exercise of reasonable care and diligence in the course of the operations of RONTTEL.

(3) In respect of any liability incurred in connection with any act or omission referred to in subsection (1), the Director or officer, as the case may be, shall be indemnified by the Republic.

LIABILITY OF RONTTEL

56. RONTTEL shall not be liable in any proceedings for the content or nature of any message or communication sent or transmitted by use of the national telephone system or any other system or service provided by RONTTEL.

REGULATIONS

57. The Cabinet may make regulations not inconsistent with this Act prescribing all matters necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular prescribing matters for and in relation to --

- (a) the terms and conditions of service of the staff of RONTTEL; and
- (b) the manner and form of applications to subscribe to the national telephone service, the conditions of connection and the manner and form to apply for alteration, relocation or removal of a connection, and related matters;
- (c) the grant of licences to provide and use systems, and the exemption of a person or class of persons, or a system or class of systems, from licence requirements; and
- (d) the allocation, variation of allocation and reallocation of frequencies and other related matters; and

- (e) the provision of authorised services; and
- (f) the approval and modification of equipment; and
- (g) the determination of technical standards; and
- (h) any fees, charges, taxes, bonds or securities payable in respect of any matter under this Act; and
- (i) prescribing penalties of fines not exceeding \$5,000 for offences against the regulations.

PART VI – REPEAL, SAVINGS AND TRANSITIONAL

INTERPRETATION OF PART V

58. In this Part, "Directorate of Telecommunications" means the division of the Department of Island Development and Industry concerned with and dealing with telecommunications matters.

REPEAL OF WIRELESS TELEGRAPHY ACT 1974

59. The Wireless Telegraphy Act 1974 is repealed.

SAVING OF WIRELESS TELEGRAPHY REGULATIONS 1976 AND EXISTING LICENCES

60. (1) Notwithstanding section 59, until regulations are made under this Act to provide for matters relating to telecommunications, the Wireless Telegraphy Regulations 1976 made under the Wireless Telegraphy Act 1974 (repealed) and in force immediately before the commencement of this Act shall apply, as nearly as may be, as if made under this Act.

(2) A reference in the Wireless Telegraphy Regulations 1976 to "wireless communication" or "wireless telegraphy" shall be read as a reference to telecommunications under this Act.

(3) Subject to subsection (4), all licences granted under the Wireless Telegraphy Regulations 1976 which were valid and in force immediately before the commencement of this Act shall continue, on that coming into operation, to have full force and effect until the expiry of the current period for which they were granted or made or until they sooner expire or are revoked according to law.

(4) Where, on the commencement of this Act, RONTTEL is of the opinion that any term or condition of any licence granted under the Wireless Telegraphy Regulations 1976, including a fee level paid or payable in respect of the licence, is at variance with the provisions of this Act to an extent that makes it unacceptable, it shall by written notice –

- (a) advise the licensee of the term or condition that is unacceptable; and
- (b) specify the variation in the term or condition required to ensure compliance with this Act; and
- (c) advise that the variation shall apply in respect of the licence with effect from a date specified in the notice, unless it receives notification from the licensee that the variation is unacceptable, in which case the licence shall cease to have effect from the date specified.

TRANSFER OF PROPERTY TO RONTTEL

61. All property which was held or occupied by the Republic on behalf of or in favour of the Directorate of Telecommunications immediately before the commencement of this Act is, on that commencement, transferred to and becomes property of RONTTEL, without the need for any further conveyance, transfer, assignment or assurance.

CONTRACTS AND AGREEMENTS

62. (1) Subject to section 63, all contracts and agreements entered into, made with or addressed to ~~the Republic~~ through the Directorate of Telecommunications or through the Department of Island Development and Industry on behalf of the Directorate of Telecommunications, insofar as they relate to ~~the functions~~ of RONTEL under this Act, are, to the extent that they were, immediately before the commencement of this Act, binding on and of full force and effect against or in favour of the Republic ~~as, on that commencement, binding on and of full force and effect against or in favour of RONTEL as if, instead of the Republic, RONTEL has been a party to them or bound by them~~ or entitled to the benefit of them.

(2) Where the Republic continues to receive any proceeds under a contract or agreement of the kind referred to in subsection (1) following the commencement of this Act, the Republic shall pay to RONTEL proceeds received by it under that contract, less any expenses incurred by the Republic in relation to or as a result of that contract.

MONEYS, DEBTS AND CLAIMS

63. Notwithstanding section 62 --

(a) all money payable to the Republic on behalf or on account of the Directorate of Telecommunications, or the Department of Island Development and Industry on behalf of the Directorate of Telecommunications, shall, on the commencement of this Act, become money payable to RONTEL; and

(b) all money payable by and debts due from the Republic and all claims, liquidated and unliquidated, recoverable against the Republic on behalf or on account of the Directorate of Telecommunications, or the Department of Island Development and Industry on behalf of the Directorate of Telecommunications, shall continue to be payable by, due from or recoverable against the Republic as if this Act had not been made.

LEGAL AND OTHER PROCEEDINGS

64. (1) Where, immediately before the commencement of this Act, any legal or other proceedings relating to any asset, right or liability referred to in this Part, other than proceedings for money payable, was pending or existing by or against the Republic, it does not, on that commencement, abate or discontinue, or be in any way affected by any provision of this Act but it may be prosecuted, continued and enforced by, against or in favour of the person or body as if this Act had not been made.

(2) Any legal or other proceedings relating to any money payable to the Republic on behalf or on account of the Directorate of Telecommunications, or the Department of Island Development and Industry on behalf of the Directorate of Telecommunications, which might, but for the commencement of this Act, have been commenced or continued by the Republic may, upon the commencement of this Act, be continued by RONTEL.

TRANSFER OF STAFF OF RONTEL

65. (1) The person who, immediately before the commencement of this Act, held the office of Director of Telecommunications shall, on that commencement, hold office as Chief executive Officer, on the same terms and conditions, until such times as a Chief Executive Officer is appointed and terms and conditions determined in accordance with section 16.

(2) A person who, immediately before the commencement of this Act, held an office in the Directorate of Telecommunications shall, on that commencement, be deemed to hold a similar office under this Act, on similar terms and conditions, until such time as appointments are made under this Act.

APPLICATION OF ACTS AND OTHER INSTRUMENTS

66 (1) Where --

(a) any written law other than this Act; or

(b) any document or instrument wherever made or executed,

contains a reference, express or implied, to the Directorate of Telecommunications, or the Department or Directorate responsible for telecommunications matters, that reference shall, on the coming into operation of this Act, except where the context otherwise requires, be read and construed and have effect as a reference to RONTTEL.

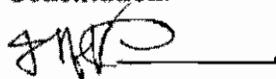
(2) Where --

(a) any written law other than this Act; or

(b) any document or instrument wherever made or executed,

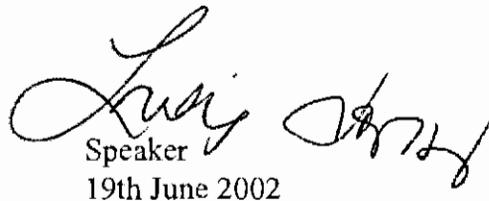
contains a reference, express or implied, to the Wireless Telegraphy Act 1974 (repealed), that reference shall, on the coming into operation of this Act, except where the context otherwise requires, be read and construed and have effect as a reference to this Act.

I hereby certify that the above is a fair print of a Bill for an Act entitled **Telecommunications Act 2002**, that has been passed by Parliament of Nauru and is now presented to the Speaker for his Certificate under Article 47 of the Constitution.



Clerk of Parliament
19th June 2002

Pursuant to Article 47 of the Constitution, **I, LUDWIG D. SCOTTY**, Speaker of Parliament, **hereby certify** that the **Telecommunications Act 2002** has been passed by Parliament of Nauru.



Speaker
19th June 2002