

Radiocommunications Amendment Act 2000

Public Act 2000 No 8
Date of assent 7 April 2000

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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Radiocommunications Amendment Act 2000.

- (2) In this Act, the Radiocommunications Act 1989 is called “the principal Act”.

2 Commencement

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

3 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—

“(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

“**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

“**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 under section 130

“**auditor** means a person who is qualified for appointment as auditor of a company under the Companies Act 1993

“**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

“**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

“**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—

- “(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
- “(c) the international standards and recommended practices from time to time accepted and amended by the International Civil Aviation organisation under Article 37 of the Convention, to the extent adopted by New Zealand

“**Court Registrar** means the Registrar of a court; and includes any Deputy Registrar of a court

“**eirp** 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

“**emission** means radiation produced, or the production of radiation, by a radio transmitter

“**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

“**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

“**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)

“**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

“**interference** means the effect of radio waves owing to 1 or more emissions, radiations, or inductions, or any combination of 1 or more of those things, on the reception of radiocommunications

“**interfering equipment** means any electrical conductor, or 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

“**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—

“(a) the Annex to that Convention; and

“(b) all amendments of that Convention; and

“(c) all protocols to that Convention

“**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

“**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
- “(b) any reports or recommendations adopted in substitution for any such reports or recommendations

“**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
- “(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 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)

“**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

“**power floor** means the minimum level of emissions, expressed in terms of eirp, specified in a record of management rights

“**programme** has the meaning given to that term by section 2 of the Broadcasting Act 1989

“**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 the first-mentioned record of management rights relates

“**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

“**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

“**Radio New Zealand** means the public radio company within the meaning of section 2 of the Radio New Zealand Act 1995 to be known as Radio New Zealand Limited in accordance with section 19 of that Act; 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

“**radio receiver** means apparatus designed to receive radio waves for the purpose of radiocommunications

“**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

“**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

“**reference standard** means a standard or specification issued under section 133

“**Register**—

“(a) when used as a noun, means the Register of Radio Frequencies established under section 5:

“(b) when used as a verb, means to record on the Register:

“**Registrar** means the Registrar of Radio Frequencies appointed under section 4; and includes the Deputy Registrar of Radio Frequencies appointed under that section

“**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

“**spectrum licence** means a licence created under Part VI

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

“**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

“**unwanted emission**, in relation to a spectrum licence, means an emission outside the frequency band specified in the spectrum licence

“**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.”

4 **New section 5 substituted**

The principal Act is amended by repealing section 5, and substituting the following section:

“5 **Register of Radio Frequencies**

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

5 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.”

6 Registration of management rights for radio frequencies

(1) Section 10 of the principal Act is amended by inserting in the section heading, after the word “of”, the words “management rights for”.

(2) 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.”

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

7 New section 11A inserted

The principal Act is amended by inserting, after section 11, the following section:

“11A Creation of successive records of management rights

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.”

8 Repeal of section 12

Section 12 of the principal Act is repealed.

9 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 under section 25(1) or to any modification of a spectrum licence that is returned under section 57C.”

10 New section 25 substituted

The principal Act is amended by repealing section 25, and substituting the following section:

“25 Registrar’s duties in relation to registration of spectrum licences

- “(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 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).
- “(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.
- “(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.
- “(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.
- “(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

- “(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
 - “(d) is technically compatible with services authorised to be operated under 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.
- “(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
 - “(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).
- “(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.”

11 Registration of spectrum licences and modifications where management rights mortgaged

Section 26(1) of the principal Act 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”.

12 New section 28 substituted

The principal Act is amended by repealing section 28, and substituting the following section:

“28 Register to be open for search

- “(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.
- “(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
 - “(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,—
 - “(a) 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 and that manager, rightholder, or holder of a radio licence has advised the Registrar in writing that that person does not authorise the disclosure of such information; or
 - “(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.
- “(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.”

13 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)”.

14 Certified copies of Register to be evidence

(1) Section 30 of the principal Act is amended by omitting from subsection (3) the expression “28(2)”, and substituting the expression “28(3)”.

(2) Section 30 of the principal Act is amended by adding the following subsection:

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

15 New section 33 substituted

The principal Act is amended by repealing section 33, and substituting the following section:

“33 Expiry of registration

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

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

“(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.”

16 Content of record of management rights

(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:

“(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 “licences”, the word “spectrum”.

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

17 New heading and sections 34A-34D inserted

The principal Act is amended by inserting, after section 34, the following heading and sections:

“Power floors

“34A Power floors applying when radio frequencies registered under Act

- “(1) Unless section 34B or section 34C applies, the power floor relating to each frequency to which each record of management rights relates is the power floor specified on the application under which the record of management rights is recorded on the register.
- “(2) Where no power floor is specified in an application for management rights for a frequency, the power floor is -50dBW.

“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, under 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.

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

- “(1) Where, under section 44(1), the Registrar cancels a record of management rights and, under 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.

- “(2) Where, under section 46(1), the Registrar cancels any records of management rights and, under 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.

“Management rights ceiling

“34D Ceiling for management rights

Nothing in Parts III to XII or Part XVI applies to any emissions transmitted from any point that is more than 50 kilometres above the surface of the earth.”

18 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:

- “(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.”

19 Adjacent frequencies emission limits applying when radio frequencies registered under Act

Section 39(2) of the principal Act is repealed.

20 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”.
- (2) Section 40(3) of the principal Act is repealed.

21 Transfer by manager

Section 42 of the principal Act is amended by adding, as subsection (2), the following subsection:

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

22 New records of management rights to be created for portion transferred and for balance

- (1) Section 45 of the principal Act is amended by omitting the section heading, and substituting the section heading “New records of management rights to be created for portion transferred and for balance”.
- (2) Section 45 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:
- “(2) The Registrar must record on every record of management rights created under subsection (1)—
- “(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;
 - “(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 within the frequency band to which the record of management rights created under subsection (1) relates.”

23 New sections 48 and 49 substituted

The principal Act is amended by repealing sections 48, 49, 50, and 51, and substituting the following sections:

“48 Creation of spectrum licence by manager

“(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

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

“(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,—

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.

“(3) Any spectrum licence created under subsection (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—

“(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

“(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
- “(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
 - “(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 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
 - “(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
 - “(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.”

24 Repeal of sections relating to modification of unwanted emission limits

Sections 53, 54, and 54A of the principal Act are repealed.

25 New sections 55-57D substituted

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.

- “(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;
 - “(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—
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).
- “(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
 - “(b) any conditions specified in the spectrum licence under section 49(1)(j); and
 - “(c) the First Schedule.
- “(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.

- “(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.
- “(5) Every person who transmits radio waves on a frequency specified in a general user spectrum licence and who fails to comply with subsections (2), (3), or (4) commits an offence against this Act.
- “(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.
- “**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.
- “(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.
- “(4) The transfer of a spectrum licence is not valid until the transfer is registered.

“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.
- “(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.

“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.
- “(3) The notice must specify—
- “(a) the modification to the licence; and
 - “(b) the date from which the modification or cancellation is to apply.

“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.
- “(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.

“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.

“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.
- “(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—
- “(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
 - “(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
 - “(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,—
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).
- “(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.
- “(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—
- “(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
 - “(d) is technically compatible with services authorised to be operated under 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.
- “(6) Where a modification to a spectrum licence is received by the Registrar,—
 - “(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
 - “(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).
- “(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.
- “(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.”

26 New section 72A inserted

The principal Act is amended by inserting, after section 72, the following section:

“72A Matters relevant to radio engineer’s certificate

Before issuing a certificate under section 25 or section 57D, a radio engineer must have 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 under the spectrum licence; and
- “(f) any relevant reference standards issued by the Secretary.”

27 Discharge of mortgage

- (1) Section 86(1) 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”.

28 New section 99 substituted

The principal Act is amended by repealing section 99, and substituting the following section:

“99 Rights conferred on rightholder by spectrum licence

- “(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.
- “(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.
- “(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.

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

29 Repeal of provisions relating to rights of holders of certain licences

Section 100 of the principal Act is repealed.

30 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”;
- (c) by omitting from paragraph (b) the expression “49(d)(iii) or section 50(c)(iii) of this Act”, and substituting the expression “49(1)(j)”.

31 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”.
- (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.”

32 Transmission other than in accordance with spectrum licence

- (1) Section 103 of the principal Act is amended by inserting in the section heading, before the word “licence”, the word “spectrum”.
- (2) Section 103 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:
“(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
“(b) a transmission by a person acting in accordance with a general user spectrum licence.”
- (3) Section 103(3) of the principal Act is amended by inserting, before the word “licence”, the word “spectrum”.

33 New section 104 substituted

The principal Act is amended by repealing section 104, and substituting the following section:

“104 Transmission under radio licence not affected

Nothing in section 103 prevents any person from transmitting radio waves in accordance with—

- “(a) a radio licence; or
- “(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).”

34 New section 105 substituted

The principal Act is amended by repealing section 105, and substituting the following section:

“105 Interference to receivers

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.”

35 New sections 106-109C substituted

The principal Act is amended by repealing sections 106 to 109, and substituting the following sections:

“106 Definitions for sections 108-109C

“(1) For the purposes of sections 108 to 109C,—

“**arbitral tribunal** has the same meaning as in the Arbitration Act 1996

“**claimant** means—

“(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

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

“(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 109A(2).

“(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.

“107 Sections 106-109C 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 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 109C apply as though the lawful transmissions had commenced.

“108 Notice of harmful interference

- “(1) Where a 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 concerning that interference.
- “(2) Where both the claimant and the respondent are holders of radio licences and the provisions of subsections (3) to (7) and sections 109 to 109C 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.
- “(3) 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 108 to 109A and section 109C.
- “(4) A notice given under subsection (1) must state—
- “(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
 - “(c) what action the claimant desires to be taken by the respondent to remedy the harmful interference; and
 - “(d) that the respondent has 10 working days following the receipt of the notice within which to take 1 of the ac-

tions referred to in subsection (5) and that, if the action the claimant wishes to be taken to remedy the harmful interference is not taken within 10 working days following the receipt of the notice, the matter may be referred to arbitration under this section.

- “(5) Every respondent who receives a notice properly given under subsection (1) must, within 10 working days of receiving that notice,—
- “(a) take the action to remedy the harmful interference specified in the notice; or
 - “(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
 - “(c) agree with the claimant on a method of reaching an agreement to deal with the harmful interference; or
 - “(d) agree with the claimant to refer the matter to arbitration to be determined in accordance with the Arbitration Act 1996.
- “(6) If, within 10 working days of a notice being properly given under subsection (1),—
- “(a) the action specified in the notice has not been taken; and
 - “(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
 - “(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,—
- the claimant may, following the expiry of that 10-working day period, by notice in the prescribed form to the Secretary, request the Secretary to refer the matter to arbitration under section 109.
- “(7) Where the claimant and the respondent agree on a method of reaching an agreement to deal with the harmful interference

under subsection (5)(c), but no agreement is reached within 20 working days of a notice properly given under subsection (1), the claimant may, following the expiry of that 20-working day period, by notice in the prescribed form to the Secretary, request the Secretary to refer the matter to arbitration under section 109.

“109 Reference to arbitration by Secretary

“(1) Where the Secretary receives a request under section 108(6) or (7), and the Secretary is satisfied that—

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

“(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 108(1) concerning that harmful interference; and

“(e) the time limits specified in section 108 have expired; and

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

the Secretary may refer the matter to arbitration and, except as provided in sections 109A and 109C, the provisions of the Arbitration Act 1996 apply as though the claimant and the respondent had agreed to refer the matter to arbitration.

“(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.

“109A 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 108(5)(d) or section 109 of this Act; instead, the arbitral tri-

bunal's decision must seek to balance the reasonable expectations, rights, and duties of the claimant and the respondent or other persons, without compromising public safety, and having regard to—

- “(a) the costs and effects of possible alternative solutions; and
 - “(b) the technical compatibility between the claimant's receiver and the respondent's transmitter as determined by—
 - “(i) the nature and characteristics of the rights described in the claimant's licence and the respondent's licence; and
 - “(ii) the International Radio Regulations; and
 - “(iii) the ITU-R reports and recommendations; and
 - “(iv) Annex 10 to the Convention on International Civil Aviation; and
 - “(v) the International Convention for the Safety of Life at Sea; and
 - “(vi) 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
 - “(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.
- “(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 arbitral tribunal 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.

“109B Offence to transmit in breach of Secretary's direction

Every person who contravenes a direction given by the Secretary under section 108(3) commits an offence against this Act.

“109C 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.”

36 New Part heading and section 110 substituted

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 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 -50dbw.
- “(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.”

37 New section 111 substituted

The principal Act is amended by repealing section 111, and substituting the following section:

“111 Granting of radio licences

“(1) For the purposes of this section, **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.

“(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 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 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.”

38 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 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”.

39 New section 113 substituted

The principal Act is amended by repealing section 113, and substituting the following section:

“113 Offences

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

- “(a) under, 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.”

40 New section 114 substituted

The principal Act is amended by repealing section 114, and substituting the following section:

“114 Presumptions

- “(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.
- “(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.”

41 Regulations

Section 116 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

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

tions subject to which general user radio licences may be granted, transferred, suspended, or 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:
- “(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:
- “(e) providing for the allocation of radio licences by competitive tender or auction, and for the payment of consideration to the Crown under any tender or auction:
- “(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 conditions subject to which any radio licences may be granted, transferred, suspended, or revoked:
- “(g) prescribing offences in respect of contraventions of any regulations made under this section.”

42 Repeal of section 119

Section 119 of the principal Act is repealed.

43 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.”

44 New sections 128A and 128B inserted

The principal Act is amended by inserting, after section 128, the following sections:

“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
- “(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.
- “(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
 - “(c) by sending it by post addressed to that person at that person’s last known place of residence or business.
- “(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.
- “(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:
 - “(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:

- “(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:
 - “(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 section 21 of the Summary Proceedings Act 1957.”

45 Approval of radio engineers

Section 130 of the principal Act is amended—

- (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 57D”:
- (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 57D”.

46 New section 133A inserted

The principal Act is amended by inserting, after section 133, the following section:

“133A Offence to disclose contents of radiocommunications

- “(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,—
- “(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
 - “(c) discloses the existence of the radiocommunication.
- “(2) Subsection (1) does not apply to any radiocommunications intercepted—
- “(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
 - “(c) by an officer or employee of—
 - “(i) the New Zealand Security Intelligence Service, for the purpose of obtaining intelligence relevant to security; or
 - “(ii) the Government Communications Security Bureau, for the purpose of obtaining foreign intelligence; or
 - “(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 under, and in accordance with, any authority conferred on him or her by or under—
 - “(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; or
 - “(iv) the International Terrorism (Emergency Powers) Act 1987.
- “(3) For the purposes of this section,—
- “**foreign intelligence** means information relating to the capabilities, intentions, or activities of—
 - “(a) any foreign state or group of foreign states; or
 - “(b) any foreign organisation; or
 - “(c) any foreign person
 - “**foreign organisation** means—
 - “(a) any company or body corporate that is incorporated outside New Zealand; or
 - “(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

“(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 **New Zealand person** in section 2(1) of the Inspector-General of Intelligence and Security Act 1996)

“**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

“**security** has the same meaning as in section 2 of the New Zealand Security Intelligence Service Act 1969.

“(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 that section.”

47 Regulations

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

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

“(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:

“(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:

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

“(gd) prescribing the classes of persons who may intercept radio-communications under section 133A:”.

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

- “(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 paragraph (g) that constitute infringement offences against this Act:
- “(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. Different forms and different fees may be prescribed for different offences.”.

48 Regulations prescribing fees

Section 135(1) of the principal Act is amended by inserting, after the words “providing for”, the words “the method of payment of, or”.

49 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”.
- (2) Section 136 of the principal Act is amended—
- (a) by inserting in subsection (1), after the word “Secretary”, the words “or the Registrar”:
- (b) by inserting in subsection (2), after the word “Secretary” in both places where it appears, the words “or the Registrar”.

50 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 “licences”, the word “spectrum”.
- (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”.

- 51 Transitional rights in relation to frequencies in Schedule 6**
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.”
- 52 Bodies specified in Schedule 7 entitled to licence**
Section 170(4) of the principal Act is amended by omitting the words “of Broadcasting”.
- 53 Amendment of advertising restrictions, etc**
Section 172 of the principal Act is amended by omitting the words “of Broadcasting”.
- 54 Amendments to principal Act**
The principal Act is consequentially amended in the manner indicated in Schedule 1 of this Act.
- 55 New Schedule 1 substituted**
The principal Act is amended by repealing the “First Schedule”, and substituting the “First Schedule” set out in “Schedule 2” of this Act.
- 56 Provisions relating to unregistered spectrum licences**
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.
- 57 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.

58 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 17 of this Act), -50dbw.
- (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 17 of this Act), be read as a reference to -50dbw.
- (3) Every application for a management right made before the commencement of this Act is deemed to include a power floor of -50dbw.

59 Spectrum licences registered in accordance with Part 3 of principal Act

- (1) Where any licence was registered in accordance with Part 3 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 3 of the principal Act as amended by this Act.
- (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 3 of the principal Act in force immediately before the commencement of this Act.
- (3) Where a licence granted in accordance with Part 3 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.
- (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 25 of this

Act) as if the licence provided that it could be modified or cancelled only by the rightholder and manager together.

- (5) If maximum permitted interfering signals specified in a licence granted in accordance with Part 3 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 109A of the principal Act.

60 Licences granted under Part 13 of principal Act

- (1) Where any licence has been granted for the installation, operation, or use of radio apparatus in accordance with Part 13 of the principal Act before the commencement of this Act, or was deemed to be a licence granted under that Part by section 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:
- (a) the licence is deemed to include a requirement that persons transmitting in accordance with the licence comply with Schedule 1 of the principal Act (as substituted by section 55 of this Act);
 - (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.
- (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 licence.

61 Addition to Schedule 2 of Privacy Act 1993

Part 1 of Schedule 2 of the Privacy Act 1993 is amended by inserting, after the item relating to the Motor Vehicle Securities Act 1989, the item Radiocommunications Act 1989 Sections 5, 6, and 28.

62 Transitional rights in relation to frequencies in Schedule 6
Section 162(2) of the principal Act is amended by omitting the expression “48(b)”, and substituting the expression “48”.

63 Transitional provisions in relation to frequencies in Schedule 7
Section 170 of the principal Act is amended by omitting the expression “48(b)” wherever it appears, and substituting in each case the expression “48”.

64 Revocation of notices
The following notices are revoked:

- (a) the Radio Interference Notice 1958 (SR 1958/109):
- (b) the Radio (Television) Interference Notice 1961 (SR 1961/29):
- (c) the Radio Interference Notice 1985 (SR 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 Notice 1992, published in the *Gazette* on 20 February 1992, at pages 403 to 405.

Schedule 1
Amendments to principal Act
consequential on amendments made
by section 10

s 54

Section 6

Insert in subsection (3)(c), before the word “licences”, the word “spectrum”.

Section 27

Insert in subsection (1)(b), before the word “licence”, the word “spectrum”.

Insert in subsection (2), before the word “licence”, the word “spectrum”.

Section 31

Insert, before the word “licence”, the word “spectrum”.

Section 45

Insert in subsection (2), before the word “licence” on both occasions it appears, the word “spectrum”.

Section 47

Insert in subsection (2), before the word “licence”, the word “spectrum”.

Section 52

Insert in the section heading, before the word “licence”, the word “spectrum”.

Insert, before the word “licence” on both occasions it appears, the word “spectrum”.

Section 58

Insert in subsection (2), before the word “licence”, the word “spectrum”.

Insert in subsection (3), before the word “licence” on both occasions it appears, the word “spectrum”.

Section 59

Insert, before the word “licence”, the word “spectrum”.

Section 60

Insert in subsection (1), before the word “licence” wherever it appears, the word “spectrum”.

Insert in subsection (2), before the word “licence” wherever it appears, the word “spectrum”.

Section 61

Insert in paragraph (b), before the word “licence” wherever it appears, the word “spectrum”.

Section 62

Insert in subsection (1), before the word “licence” on both occasions it appears in the definition of **search copy**, the word “spectrum”.

Insert in subsection (1), before the word “licence” on both occasions it appears in the definition of **transaction to which this section applies**, the word “spectrum”.

Insert in subsection (3), before the word “licence” on both occasions it appears, the word “spectrum”.

Section 64

Insert in subsection (1), before the word “licence”, the word “spectrum”.

Section 73

Insert, before the word “licence”, the word “spectrum”.

Section 74

Insert, before the word “licence”, the word “spectrum”.

Section 76

Insert, before the word “licence” on both occasions it appears, the word “spectrum”.

Section 77

Insert in subsection (1), before the word “licence”, the word “spectrum”.

Section 78

Insert, before the word “licences”, the word “spectrum”.

Section 79

Insert in subsection (1), before the word “licence” wherever it appears, the word “spectrum”.

Section 80

Insert in subsection (1), before the word “licence”, the word “spectrum”.

Section 81

Insert in subsection (1), before the word “licence”, the word “spectrum”.

Section 82

Insert, before the word “licence” on both occasions it appears, the word “spectrum”.

Section 84

Insert, before the word “licence”, the word “spectrum”.

Section 85

Insert, before the word “licence” on both occasions it appears, the word “spectrum”.

Section 89

Insert in subsection (1)(a)(ii), before the word “licence”, the word “spectrum”.

Section 91

Insert in subsection (1)(a), before the word “licence”, the word “spectrum”.

Insert in subsection (1)(b), before the word “licence”, the word “spectrum”.

Insert in subsection (3), before the word “licence” on both occasions it appears, the word “spectrum”.

Section 92

Insert in paragraph (b), before the word “licence”, the word “spectrum”.

Section 93

Insert in subsection (1), before the word “licence” on both occasions it appears, the word “spectrum”.

Section 94

Insert, before the word “licence” wherever it appears, the word “spectrum”.

Section 96

Insert in subsection (1), before the word “licence”, the word “spectrum”.

Section 97

Insert, before the word “licence”, the word “spectrum”.

Section 98

Insert, before the word “licence”, the word “spectrum”.

Insert, before the word “licences”, the word “spectrum”.

Section 140

Omit the word “apparatus”.

Section 144

Insert in paragraph (a)(i) of the definition of **gross income** in subsection (1); before the word “licence” on the second occasion it appears, the word “spectrum”.

Insert in subsection (2), before the word “licence” on the second occasion it appears, the word “spectrum”.

Insert in subsection (3)(a), before the word “licence” on the second occasion it appears, the word “spectrum”.

Omit the word “apparatus” on each occasion it appears.

Section 145

Insert in subsection (2), before the word “licence”, the word “spectrum”.

Insert in subsection (3), before the word “licence” on the first occasion it appears, the word “spectrum”.

Insert in subsection (4), before the word “licence”, the word “spectrum”.

Omit the word “apparatus” on each occasion it appears.

Section 146

Omit the word “apparatus” on each occasion it appears.

Section 147

Insert, before the word “licence” on the first occasion it appears, the word “spectrum”.

Omit the word “apparatus” on each occasion it appears.

Section 148

Insert, before the word “licence” wherever it appears, the word “spectrum”.

Section 149

Insert, before the word “licence” wherever it appears, the word “spectrum”.

Section 150

Insert, before the word “licence” wherever it appears, the word “spectrum”.

Section 151

Insert, before the word “licence” wherever it appears, the word “spectrum”.

Section 153

Insert, before the word “licence” wherever it appears the word “spectrum”.

Section 154

Omit the word “apparatus” on each occasion it appears.

Section 158

Insert, before the word “licence” wherever it appears, the word “spectrum”.

Section 159

Insert, before the word “licence” wherever it appears, the word “spectrum”.

Section 162

Insert, before the word “licence” on the third, fourth, and sixth occasions it appears, the word “spectrum”.

Omit the word “apparatus” on each occasion it appears.

Section 163

Insert, before the word “licence” wherever it appears, the word “spectrum”.

Section 164

Insert, before the word “licence” wherever it appears, the word “spectrum”.

Section 165

Insert, before the word “licence” wherever it appears, the word “spectrum”.

Section 166

Insert, before the word “licence” wherever it appears, the word “spectrum”.

Section 167

Insert, before the word “licence” wherever it appears, the word “spectrum”.

Section 169

Omit the word “apparatus” on each occasion it appears.

Section 170

Insert in subsections (1) and (2), before the word “licence”, the word “spectrum”.

Insert in subsection (3), before the word “licence” on the first 2 occasions it appears, the word “spectrum”.

Insert in subsections (4) and (5), before the word “licence”, the word “spectrum”.

Omit the word “apparatus” on each occasion it appears.

Section 171

Omit the word “apparatus” on each occasion it appears.

Section 172

Insert, before the word “licence” on the second occasion it appears, the word “spectrum”.

Omit the word “apparatus”.

Section 173

Insert, before the word “licence” on the third and all subsequent occasions it appears, the word “spectrum”.

Omit the word “apparatus” on each occasion it appears.

Section 174

Insert, before the word “licence” wherever it appears, the word “spectrum”.

Section 175

Insert in subsection (1)(c), before the word “licence”, the word “spectrum”.

Omit the word “apparatus” on each occasion it appears.

Section 176

Omit the word “apparatus” on each occasion it appears.

Section 177

Insert, before the word “licence” wherever it appears, the word “spectrum”.

Section 178

Insert, before the word “licence” wherever it appears, the word “spectrum”.

Section 180

Insert in subsection (1)(c), before the word “licence”, the word “spectrum”.

Omit the word “apparatus” on each occasion it appears.

s 55

Schedule 2
New Schedule 1 of principal Act
substituted
First Schedule
Requirements in relation to radio licences
and spectrum licences

ss 101, 111

- 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.

Legislative history

4 December 1997	Introduction and first reading (Bill 98-1)
9 December 1997	Second reading and referral to Commerce Committee
27 August 1998	Reported from Commerce Committee (Bill 98-2)
24 February 2000	Consideration of report
28, 29 March 2000	Committee of the whole House (Bill 98-3)
4 April 2000	Third reading
