



ANALYSIS

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1988, No. 164

An Act to amend the Telecommunications Act 1987

[10 December 1988]

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

1. Short Title and commencement—(1) This Act may be cited as the Telecommunications Amendment Act 1988, and shall be read together with and deemed part of the Telecommunications Act 1987 (hereinafter referred to as the principal Act).

(2) Except as provided in subsection (3) of this section, this Act shall come into force on the date on which it receives the Royal assent.

(3) Sections 2, 3 (1) and (3) to (9), 4, 5, 6, 7, 8, 9, 13, 14, 16, 17, 18, and 25 of this Act shall come into force on the 1st day of April 1989.

2. Act to bind Crown—(1) The principal Act is hereby amended by inserting, after section 1 and before Part I, the following section:

“1A. This Act shall bind the Crown.”

(2) The principal Act is hereby consequentially amended by repealing section 22.

3. Interpretation—(1) Section 2 (1) of the principal Act is hereby amended by repealing the definition of the terms “demarcation point”, “PABX”, “person”, and “telex station”.

(2) Section 2 (1) of the principal Act is hereby further amended by adding to the definition of the term “Corporation” the words “; and includes any subsidiary (within the meaning of section 158 of the Companies Act 1955) of the Corporation”.

(3) Section 2 (1) of the principal Act is hereby further amended by omitting from the definition of the term “network” the words “, other than any system used only for broadcasting (as defined in section 2 of the Broadcasting Act 1976)”.

(4) Section 2 (1) of the principal Act is hereby further amended by repealing the definition of the term “network operator”, and substituting the following definition:

“‘Network operator’ means the Corporation and any person declared by the Governor-General by Order in Council under section 2A of this Act to be a network operator for the purposes of this Act or any provision or provisions of this Act:”.

(5) Section 2 (1) of the principal Act is hereby further amended by repealing the definition of the term “telephone station”, and substituting the following definition:

“‘Telephone station’ means any terminal device capable of being used for transmitting or receiving any communications over a network designed for the transmission of voice communication:”.

(6) Section 2 (1) of the principal Act is hereby further amended by repealing the definition of the term “works”, and substituting the following definition:

“ ‘Works’ includes—

“(a) A line and any instrument, furniture, plant, office, building, machinery, engine, excavation, or work, of whatever description, used in relation to, or in any way connected with, a line; and

“(b) A fixed radio station.”

(7) Section 2 (1) of the principal Act is hereby further amended by inserting, in their appropriate alphabetical order, the following definitions:

“ ‘Fixed radio station’ means radio apparatus comprising transmitters or receivers, or a combination of transmitters and receivers, installed at a fixed location, for the purposes of carrying on a radiocommunication service:

“ ‘Minister’ means the Minister of Commerce:

“ ‘Radiocommunication’ means any transmission, emission, or reception of signs, signals, writing, images, sounds, or intelligence of any nature by electromagnetic waves of frequencies between 9 kilohertz and 3,000 gigahertz, propagated in space without artificial guide:

“ ‘Radio apparatus’ means any apparatus intended for the purpose of effecting radiocommunication, whether by transmission or reception, or both:

“ ‘Registered operator’ means a person registered as an operator under regulations made under section 5 of this Act:”

(8) Section 2 of the principal Act is hereby further amended by inserting, after subsection (1), the following subsection:

“(1A) For the purposes of sections 11, 12, 15, and 20 of this Act—

“ ‘Line’ means a wire or wires or a conductor of any other kind (including a fibre optic cable) used or intended to be used for telecommunication; and includes any pole, insulator, casing, minor fixture, tunnel, or other equipment or material used or intended to be used for supporting, enclosing, surrounding, or protecting any such wire or conductor; and also includes any part of a line:

“ ‘Existing lines’ means any lines constructed by the Corporation before the 1st day of April 1989 and includes any lines that were wholly or partly in existence, or work on the construction, erection or

laying of which commenced before the 1st day of April 1989.”

(9) Section 2 of the principal Act is hereby further amended by repealing subsection (2), and substituting the following subsection:

“(2) For the purposes of section 2A of this Act, any 2 or more corporate bodies are deemed to be one person if—

“(a) One of them is a body corporate of which the others are subsidiaries (within the meaning of section 158 of the Companies Act 1955); or

“(b) All of them are subsidiaries (within the meaning of that section) of one and the same body corporate”.

4. Order in Council declaring person to be network operator—The principal Act is hereby amended by inserting, after section 2, the following section:

“2A. (1) The purpose of this section is to facilitate entry into and competition in telecommunication markets.

“(2) Where the Minister is satisfied that a declaration is necessary to enable a person to commence or carry on a business of providing facilities for telecommunication between 10 or more other persons, the Minister shall make a recommendation under subsection (3) of this section.

“(3) The Governor-General may from time to time, on the recommendation of the Minister, by Order in Council published in the *Gazette*, declare a person to be a network operator for the purposes of this Act or any provision or provisions of this Act.

“(4) Where the Minister is satisfied that a network operator has ceased to provide facilities for telecommunication between 10 or more other persons, the Minister shall make a recommendation under subsection (5) of this section.

“(5) The Governor-General may from time to time, on the recommendation of the Minister, by Order in Council published in the *Gazette*, revoke a declaration made under subsection (3) of this section.”

5. Protection of network—The principal Act is hereby amended by repealing section 3.

6. Telecommunications links—The principal Act is hereby amended by repealing section 4.

7. New sections substituted—The principal Act is hereby amended by repealing section 5, and substituting the following sections:

“5. Regulations—The Governor-General may from time to time, by Order in Council, for the purpose of promoting a competitive market in international telecommunication services in New Zealand, make regulations for all or any of the following matters:

- “(a) Providing for the registration of persons or any class or classes of persons establishing, operating, or maintaining facilities in New Zealand for the purpose of providing to other persons in New Zealand telecommunication services to or from territories outside New Zealand:
- “(b) Prescribing the terms and conditions subject to which any such registration may be granted, refused, amended, transferred, or revoked:
- “(c) Prescribing fees payable by applicants for registration and registered operators:
- “(d) Prescribing that applicants for registration and registered operators shall furnish to the Secretary of Commerce such statements, reports, and agreements as the Secretary may require and providing that the Secretary may disclose any such statements, reports, or agreements to interested parties.

“5A. Offences in relation to regulations made under section 5—Every person who—

- “(a) Supplies any information for the purpose of obtaining or maintaining registration or for the purpose of obtaining the waiver of any term or condition of registration, knowing that information to be incorrect or misleading; or
- “(b) Fails to comply with any term or condition of registration contained in regulations made pursuant to section 5 of this Act,—

commits an offence and is liable on summary conviction to a fine not exceeding \$20,000 and, if the offence is a continuing one, to a further fine not exceeding \$2,000 for every day or part of a day during which the offence is continued.

“5B. Registered operators providing international telecommunication services—(1) No person other than a person registered in accordance with regulations made under

section 5 of this Act shall establish, operate, or maintain facilities in New Zealand for the purpose of providing to other persons in New Zealand telecommunication services to or from territories outside New Zealand.

“(2) Every person who contravenes subsection (1) of this section commits an offence, and shall be liable, on summary conviction, to a fine not exceeding \$100,000, and, if the offence is a continuing one, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence is continued.”

8. Interference with network—Section 6 of the principal Act is hereby amended by repealing subsections (3) and (4).

9. Repeal of transitional provisions relating to customer equipment—The principal Act is hereby amended by repealing section 7.

10. Offensive language and disturbing use of telephone—(1) Section 8 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsection:

“(2) Every person commits an offence against this Act who—

“(a) Uses, or causes or suffers to be used, any telephone station for the purpose of disturbing, annoying, or irritating any person, whether by calling up without speech or by wantonly or maliciously transmitting communications or sounds, with the intention of offending the recipient; or

“(b) In using a telecommunications device, knowingly gives any fictitious order, instruction, or message.”

(2) Section 8 (3) of the principal Act is hereby amended by omitting the expression “1 year”, and substituting the words “3 months or a fine not exceeding \$2,000”.

11. Indecent or obscene telephone calls for pecuniary gain—The principal Act is hereby amended by inserting, after section 8, the following section:

“8A. (1) Every person commits an offence against this Act who, in using a telephone station, uses or causes to be used indecent or obscene language or makes or causes to be made a suggestion of an indecent or obscene nature, for the purpose of obtaining any pecuniary gain or other commercial benefit.

“(2) Every person who commits an offence against subsection (1) of this section is liable, on summary conviction,—

“(a) In the case of an individual, to a fine not exceeding \$2,000:

“(b) In the case of a body corporate, to a fine not exceeding \$5,000.”

12. Monitoring of telecommunications—Section 10 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) Any employee of a network operator may, when acting in the course of, and for the purposes of, his or her duty, intercept any telecommunications by means of a listening device or any other device for the purposes of maintaining telecommunication services.”

13. Rights of entry in respect of lines—The principal Act is hereby amended by repealing section 11, and substituting the following section:

“11. (1) Where a network operator wishes to enter upon any land (including land owned by the Crown) for the purpose of constructing, erecting, laying, or maintaining any line, the network operator may, upon giving the owner and occupier of the land not less than 10 working days notice of its intention to do so, apply to a District Court for an order under this section.

“(2) On being satisfied that the construction, erection, laying, or maintenance of any line is necessary for the purposes of telecommunications, and that the network operator has taken all reasonable steps to negotiate an agreement for entry, and that, in relation to the construction, erection, or laying of any line, no practical alternative route exists, the Court may make an order authorising the network operator to—

“(a) Enter and re-enter the land at reasonable times, with or without such assistants, aircraft, boats, vehicles, appliances, machinery, and equipment as are reasonably necessary for the construction, erection, laying, or maintenance of any line:

“(b) Perform such work as may be reasonably necessary to construct, erect, lay, or maintain any line.

“(3) Every order under this section shall specify—

“(a) How and when entry is to be made; and

“(b) The specific powers intended to be exercised; and

“(c) Such other conditions (including conditions relating to the payment of compensation) as the Court thinks fit to impose.

“(4) Before exercising any powers authorised by an order made under this section, the network operator shall serve the order on the owner and occupier of the land to which the order relates.

“(5) Every officer, employee, or agent of a network operator acting in pursuance of an order made under this section shall have with him or her and shall produce on initial entry and if required to do so, evidence of his or her authority and identity.”

14. Rights of entry in respect of existing works and existing lines—(1) Section 12 of the principal Act is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) Subject to subsection (3) of this section, a network operator may enter upon land (including land owned by the Crown) for the purpose of gaining access to any existing works or existing lines owned by the operator and may perform any act or operation necessary for the purpose of inspecting, maintaining, or repairing any such works or lines.”

(2) Section 12 (2) of the principal Act is hereby amended—

(a) By omitting the words “or structure”, and substituting the words “structure, or other work”:

(b) By inserting, after the words “by that Act)”, the words “or that a line was constructed before the 1st day of April 1989 under the authority of this Act”.

15. New sections substituted relating to removal of trees—The principal Act is hereby amended by repealing sections 13 and 14, and substituting the following sections:

“13. **Removal of trees, etc.**—(1) Where any tree, shrub, or plant on any land or road injures, prejudices, or obstructs any line, or interferes with or is likely to interfere with any line, the network operator utilising the line may request the owner or occupier of the land, or local authority or other body or person having control of the road, to remove or trim any such tree, shrub, or plant.

“(2) Where the owner, occupier, local authority, or other body or person fails to comply with any request made under subsection (1) of this section, the network operator utilising the line may, upon giving such owner, occupier, local authority, or other body or person not less than 10 working days’ notice of its intention to do so, apply to the District Court for an order authorising the network operator to remove or trim the tree,

shrub, or plant in respect of which the request was made, and the Court, on being satisfied that subsection (1) of this section applies to the tree, shrub, or plant, may make such an order on such terms and conditions (including those relating to notice and time of removal or trimming) as the Court thinks fit.

“(3) Where a network operator removes or trims a tree, shrub, or plant on any land or road under the authority of an order made under subsection (2) of this section, the owner, occupier, local authority, or other body or person to whom notice of the application under that subsection was given shall be liable for the reasonable cost of the work of the network operator.

“**14. Removal of trees, etc., in emergency**—(1) Where there is imminent danger to or serious interference with any line arising from any tree, shrub, or plant on any land or road, the network operator may, on giving such oral notice to the occupier of the land or local authority or other body or person having control of the road as may be possible in the circumstances, enter upon the land or road where the tree, shrub, or plant is rooted or overhangs and there do such work in respect of the tree, shrub, or plant as is necessary and sufficient to remove the imminent danger or serious interference.

“(2) Every officer, employee, or agent of a network operator entering under subsection (1) of this section shall carry evidence of his or her authority and identity, or be working under the immediate control of a person holding evidence of that person’s authority and identity, which shall be produced if requested.

“(3) Where a network operator removes or trims a tree, shrub, or plant on any land or road, under the authority of subsection (1) of this section, the occupier of the land or local authority or other body or person having control of the road, as the case may be, shall be liable for the reasonable cost of the work of the network operator.”

16. New sections substituted—The principal Act is hereby amended by repealing section 15, and substituting the following sections:

“**15. Construction or repairing of lines on roads**—(1) Except as provided in subsection (2) of this section a network operator may from time to time construct, place, and maintain lines in, on, along, over, across, or under any road; and for any of these purposes may open or break up any road, and alter the

position thereunder of any pipe (not being a main) for the supply of water or gas; and may alter, repair, or remove any such lines or any part thereof.

“(2) No network operator shall exercise the powers contained in subsection (1) of this section otherwise than in accordance with such reasonable conditions as the local authority or other body or person having jurisdiction over that road may prescribe.

“15A. **Notice to be given before alteration to lines or works on road**—(1) Except as provided in subsection (5) of this section, before a network operator proceeds to open or break up any road, the network operator shall give to the local authority or other body or person having jurisdiction over the road, written notice of the intention to undertake the work.

“(2) Every such notice shall specify the location of the proposed work, the nature of the work to be undertaken, and the reasons for it.

“(3) Within 21 days after the receipt of the written notice of the intention to undertake work, the local authority or other body or person having jurisdiction over the road shall notify the network operator in writing of any conditions imposed pursuant to section 15 (2) of this Act.

“(4) Where a local authority or other body or person having jurisdiction over the road fails to notify the network operator of the conditions imposed pursuant to section 15 (2) of this Act within the 21 day period referred to in subsection (3) of this section, no such conditions may be imposed, and the network operator may commence work.

“(5) Where any such work is rendered urgent and necessary by any defective equipment, or other emergency, the network operator shall be excused from complying with the requirements of subsection (1) of this section before commencing the work, but shall give the information required by subsection (2) of this section as soon as practicable thereafter.

“15B. **Offence for failure to comply with section 15 or section 15A**—(1) A network operator who fails to comply with section 15 or section 15A of this Act commits an offence against this Act and shall be liable, on summary conviction, to a fine not exceeding \$10,000.

“(2) In addition to any fine imposed pursuant to subsection (1) of this section, the Court may make such order relating to compensation as it thinks fit.

“15c. Appeals in relation to conditions imposed—(1) A network operator shall have a right of appeal to a District Court against all or any of the conditions imposed pursuant to section 15 (2) of this Act by the local authority or other body or person having jurisdiction over the road.

“(2) Every such appeal shall be made by giving notice of appeal within 60 days after the date of notification of the conditions imposed or within such further time as the Court may allow.

“15d. Determination of appeals—(1) In its determination of any appeal a District Court may confirm or modify or cancel any or all of the conditions imposed.

“(2) The decision of a District Court in the determination of an appeal under section 15c of this Act shall be final.”

17. Protection of existing works and lines—Section 20 of the principal Act is hereby amended—

(a) By inserting, after the words “existing works”, the words “or existing lines”:

(b) By inserting, after the words “the works”, and also after the words “such works”, the words “or lines”.

18. New Part inserted—The principal Act is hereby amended by inserting, after Part I, the following new Part IA:

“PART IA

“ENFORCEMENT AND REMEDIES

“20A. Jurisdiction of High Court—In accordance with this Part of this Act, the High Court shall have jurisdiction to hear and determine the following matters:

“(a) Applications for injunctions under section 20c of this Act:

“(b) Actions for damages under section 20d of this Act.

“20B. Jurisdiction of District Courts—In accordance with this Part of this Act, a District Court shall have jurisdiction to hear and determine actions for damages under section 20d of this Act.

“20c. Injunctions may be granted by Court for contravention of section 6—(1) The High Court may, on the application of the network operator, grant an injunction restraining a person from engaging in conduct that constitutes or would constitute any of the following:

“(a) A contravention of section 6 of this Act:

“(b) Any attempt to contravene that provision:

“(c) Aiding, abetting, counselling, or procuring any other person to contravene that provision:

“(d) Inducing, or attempting to induce, any other person, whether by threats, promises, or otherwise, to contravene that provision:

“(e) Being in any way directly or indirectly, knowingly concerned in, or party to, the contravention by any other person of that provision:

“(f) Conspiring with any other person to contravene that provision.

“(2) The Court may at any time rescind or vary an injunction granted under this section.

“(3) Where an application is made to the Court under this section for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the Court may,—

“(a) If it is satisfied that the person has engaged in conduct of that kind, grant an injunction restraining the person from engaging in conduct of that kind; or

“(b) If in the opinion of the Court it is desirable to do so, grant an interim injunction restraining the person from engaging in conduct of that kind,—

whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind.

“(4) Where an application is made to the Court under this section for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the Court may,—

“(a) If it appears to the Court that, in the event that an injunction is not granted, it is likely that the person will engage in conduct of that kind, grant an injunction restraining the person from engaging in conduct of that kind; or

“(b) If in the opinion of the Court it is desirable to do so, grant an interim injunction restraining the person from engaging in conduct of that kind,—

whether or not the person has previously engaged in conduct of that kind and whether or not there is imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

“20D. . . .ctions for damages for contravention of section 6—(1) Every person who engages in conduct that constitutes any of the following matters:

“(a) A contravention of section 6 of this Act:

“(b) Aiding, abetting, counselling, or procuring the contravention of that section:

“(c) Inducing by threats, promises, or otherwise, the contravention of that section:

“(d) Being in any way directly or indirectly, knowingly concerned in, or party to, the contravention of that section:

“(e) Conspiring with any other person in the contravention of that section,—

is liable, at the suit of any person suffering any loss or damage as a result of that conduct, to damages as if that conduct constituted a tort.

“(2) In the exercise of its jurisdiction under this section a District Court shall not make an order requiring a person to pay an amount exceeding \$12,000.

“(3) An action under subsection (1) of this section may be commenced at any time within 3 years from the time when the cause of action arose.”

19. Objects of this Part—The principal Act is hereby amended by inserting in Part II, before section 21, the following section:

“20E. The purpose of this Part of this Act is to provide for the regulation of radio apparatus to ensure efficient and effective management of the radio frequency spectrum.”

20. Interpretation—Section 21 of the principal Act is hereby amended by inserting, in the appropriate alphabetical order, the following definitions:

“‘Interfering equipment’ means any apparatus or equipment of any kind (whether radio apparatus or equipment or not) that may generate electric waves (being radio frequency energy) likely to interfere with radiocommunications; and includes an electric power line within the meaning of the Public Works Act 1981:

“‘Registrar’ means the Registrar of a Court; and includes any Deputy Registrar.”.

21. Powers to obtain documents and radio apparatus—
(1) Section 26 of the principal Act is hereby amended by inserting, after the word “premises”, in each place where it occurs, the words “building, aircraft, ship, carriage, vehicle, box, receptacle, or place”.

(2) Section 26 of the principal Act is hereby further amended by inserting, after the words “radio apparatus”, in each place where they occur, the words “or interfering equipment”.

(3) Section 26 (3) of the principal Act is hereby amended by inserting, after the words “Justice of the Peace”, in each place where they occur, the words “or any Registrar (not being a constable)”.

(4) Section 26 (4) of the principal Act is hereby amended by repealing the words “, within such period as shall be specified in the warrant,”, and substituting the words “or any constable”.

(5) Section 26 of the principal Act is hereby further amended by inserting, after subsection (4), the following subsections:

“(4A) Any warrant may be executed by the person named in the warrant or by any constable.

“(4B) Every warrant to search any premises, building, aircraft, ship, carriage, vehicle, or place shall authorise the persons named in the warrant or any constable at any time within one month from the date thereof to enter and search the premises, building, aircraft, ship, carriage, vehicle, or place with such assistants as may be necessary, and, if necessary, to use force for making entry, whether by breaking open doors or otherwise; and shall authorise any person named in the warrant or any constable to break open any box or receptacle, by force if necessary.

“(4C) Every warrant to search any box or receptacle shall authorise any person named in the warrant to break open the box or receptacle, by force if necessary.”

22. Penalties—(1) Section 27 (1) is hereby amended by inserting, after the words “this Act”, the words “or against any regulations made under this Part of this Act”.

(2) Section 27 of the principal Act is hereby further amended by inserting, after the words “radio apparatus”, in each place where they occur, the words “or interfering equipment”.

23. Delegation of powers by Secretary—(1) The principal Act is hereby amended by repealing section 28.

(2) Every delegation made under section 28 of the principal Act that was in force immediately before the commencement of this Act shall continue to have effect according to its tenor as if it had been made on that commencement under section 28 or section 41 of the State Sector Act 1988 and may be amended and revoked accordingly.

24. Regulations—(1) Section 30 (2) of the principal Act is hereby amended by inserting, after paragraph (a), the following paragraphs:

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

“(ab) Providing for the exemption of certain radio apparatus, as determined by the Secretary, from the requirement to be licensed where the Secretary is satisfied that a licence is not required for the efficient and effective management of the radio frequency spectrum.”.

(2) Section 30 (2) of the principal Act is hereby further amended by inserting, after paragraph (e), the following paragraph:

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

(3) Section 30 of the principal Act is hereby further amended by inserting, after subsection (2), the following subsection:

“(2A) Without limiting the Acts Interpretation Act 1924, no regulation made under this Act shall be invalid because it leaves any matter to the discretion of the Secretary or any other person or because it authorises the Secretary or any other person to give any consent or approval or to set any standard on or subject to conditions to be approved by the Secretary.”

25. Amendments to other enactments—(1) The Town and Country Planning Act 1977 is hereby amended by repealing paragraph (b) of section 64 (1), and substituting the following paragraph:

“(b) Lines as defined in section 2 (1A) of the Telecommunications Act 1987.”

(2) Section 35 (4) of the New Zealand Railways Corporation Act 1981 is hereby amended by inserting, before the word “Notwithstanding”, the words “Subject to the Telecommunications Act 1987, but”.