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GOVERNMENT OF FIJI

REGULATION OF NATIONAL SPECTRUM (AMENDMENT) DECREE 2013
(DECREE NO. 18 OF 2013)

IN exercise of the powers vested in me as the President of the Republic of Fiji and the Commander in Chief of the Republic of Fiji Military Forces by virtue of the Executive Authority of Fiji Decree 2009, I hereby make the following Decree—

A DECREE TO AMEND THE REGULATION OF NATIONAL SPECTRUM DECREE 2009

Short title and commencement

1.—(1) This Decree may be cited as the Regulation of National Spectrum (Amendment) Decree 2013, and shall come into force on the date of its publication in the *Gazette*.

(2) The Regulation of National Spectrum Decree 2009 shall be referred to as the “Principal Decree”.

Section 1 amended

2. Section 1 of the Principal Decree is deleted and substituted with the following—

“PART 1 – PRELIMINARY

Short title and commencement

1. This Decree may be cited as the Regulation of National Spectrum Decree 2009, and shall come into force on 12th November, 2009.”

Section 2 amended

3. Section 2 of the Principal Decree is amended by—

- (a) inserting “– (1)” after “2.”;
- (b) inserting the following new definitions in subsection (1)—

““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;

“approved radio engineer” means a person for the time being approved by the Permanent Secretary under section 139;

- “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” means any transmission of programmes, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by means of broadcasting receiving apparatus but does not include any such transmission of programmes—
- (a) made on the demand of a particular person for reception only by that person; or
 - (b) made solely for performance or display in a public place;
- “co-channel emissions” means emissions, other than unwanted 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 Fiji, 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 Fiji; and
 - (b) any Annex or amendment to the Convention accepted under Article 90 of the Convention to the extent adopted by Fiji; 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 Fiji;
- “current management rights” has the meaning given to it by section 57 (1);
- “e.i.r.p.” means equivalent isotropically radiated power, being the power supplied to an antenna by a radio transmitter multiplied by the antenna gain of the antenna in a given direction relative to an isotropic antenna;
- “emission” means radiation produced, or the production of radiation, by a radio transmitter;
- “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;
- “inappropriate receiver” means a receiver prescribed as an inappropriate receiver by regulations made under section 144 (3);
- “induction” means the process by which one 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 144 (1) (o) as the infringement fee for the offence;
- “infringement offence” means—
- (a) an offence under section 28;
 - (b) an offence prescribed as an infringement offence in regulations made under section 144 (1) (n);
- “instrument” means an instrument in any of the forms prescribed by regulations made under this Decree for the purposes of any of the provisions of Parts 3 to 11;
- “interference”—
- (a) means the effect of radio waves owing to 1 or more emissions, radiations, or inductions, or any combination of 1 or more of those things, on the reception of radiocommunications; but
 - (b) does not include any effect on the reception of radiocommunications by inappropriate receivers;
- “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 Decree, or in accordance with regulations made under this Decree 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;
- (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 Fiji,—

- (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 91 (a);
 - (ii) in relation to the granting of spectrum licences under section 59, a mortgagee who, in right of a mortgage of management rights, is entitled to exercise the power referred to in section 91 (b);

“National Frequency Table” means a document recording the frequency allocation, that is—

- (a) developed, maintained and amended, from time to time, by the Ministry based on International Conventions for each frequency range; and
- (b) published in the *Gazette*;

“Permanent Secretary” means the Permanent Secretary responsible for Communications;

“power floor” means the minimum level of emissions, expressed in terms of e.i.r.p., specified in a record of management rights;

“programme”—

- (a) means sounds or visual images, or a combination of sounds and visual images, intended—
 - (i) to inform, enlighten or entertain;
 - (ii) to promote the interests of any person; or
 - (iii) to promote any product or service; but
- (b) does not include visual images, whether or not combined with sounds, that consist predominantly of alphanumeric text;

“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 14;

“radio receiver” means an apparatus designed to receive radio waves for the purpose of radiocommunications;

“radio transmitter” means an apparatus designed to produce radio waves for the purpose of radiocommunications;

“radio waves” means electromagnetic waves of frequencies lower than 3, 000 gigahertz, propagated in space without artificial guide;

“record of management rights”—

(a) means a record of management rights constituted under section 13 (3); and

(b) includes a record of management rights created under section 54, 56, or 58;

“reference standard” means a standard or specification issued under section 142;

“register”—

(a) when used as a noun, means the Register of Radio Frequencies established under section 9;

(b) when used as a verb, means to record on the register;

“Registrar” means the Registrar of Radio Frequencies;

“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;

“spectrum licence” means a licence created under Part 7;

“successive management rights” has the meaning given to it by section 57 (1);

“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;” and

(c) inserting the following new subsection after subsection (1) —

“(2) For the purposes of this Decree, information is deemed to be recorded in the register when it has been entered and recorded in the computer, including ancillary devices used for the purpose of recording information in electronic form, for the time being used for the purpose of keeping the register.”

New parts inserted

4. The Principal Decree is amended by—

(a) repealing section 9;

- (b) renumbering sections 8, 10 and 11 as sections 152, 153 and 154 respectively; and
- (c) inserting the following new parts after section 7—

“PART 2— ADMINISTRATION

Registrar of Radio Frequencies

8. There must be a Registrar of Radio Frequencies.

Register of Radio Frequencies

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

Form of register

10.—(1) Subject to this Decree, the register shall be kept in such form as the Registrar considers appropriate.

(2) The register may be in the form of information stored by means of a computer.

(3) The register shall reflect the National Frequency Table, including any amendments made thereto.

(4) The register shall contain—

- (a) each record of management rights;
- (b) particulars of all transfers required by this Decree to be registered affecting the frequencies to which each record of management rights relates;
- (c) particulars of all spectrum licences required by this Decree to be registered affecting the frequencies to which each record of management rights relates;
- (d) particulars of all radio licences granted by the Permanent Secretary under Part 14; and
- (e) such other matters as are required or permitted by this Decree to be registered.

Documents to be received in evidence

11. Every document purporting to be signed or issued by the Registrar, or by an employee employed to assist the Registrar in the exercise of the Registrar’s functions under this Decree, must be received in evidence, and must, in the absence of proof to the contrary, be deemed to be signed or issued by or under the direction of the Registrar.

PART 3 — RADIO FREQUENCIES REGISTERED UNDER THIS DECREE

Applications to register radio frequencies

12.—(1) A record of management rights in relation to a radio frequency may be recorded in the register only on the application of the Permanent Secretary.

(2) Every application to record in the register a record of management rights in relation to a radio frequency shall be in the prescribed form.

Registration of management rights for radio frequencies

13.—(1) The Registrar shall receive applications from the Permanent Secretary, in the prescribed form, for the recording of a record of management rights in relation to any radio frequencies.

(2) The Permanent 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) Subject to section 47, on receipt of an application that complies with this section, the Registrar shall record the frequencies to which the application relates in the register, and every such entry shall constitute a record of management rights in relation to those frequencies.

Record of management rights

14.—(1) Every record of management rights constituted under section 13 (3) shall, when recorded, name the State acting by and through the Permanent Secretary as the manager of the frequencies to which the record of management rights relates.

(2) Every record of management rights shall be given a reference number at the time that the radio frequencies to which it relates are registered.

(3) Part 4, so far as applicable and with all necessary modifications, shall apply to every application made under section 13 as if it were an application made under section 19.

Creation of successive records of management rights

15. 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.

Variation of conditions in record of management rights

16.—(1) The conditions that apply to spectrum licences created in relation to a record of management rights may be varied, added to, or removed at any time by mutual agreement between the manager and the Permanent Secretary.

(2) The Registrar must be notified of any agreement referred to in subsection (1) in the prescribed form.

(3) Nothing in this section affects the operation of sections 65, 66, 67 and 68.

(4) No variation, addition, or removal of a condition made under subsection (1) applies to a spectrum licence that was registered before the date of that variation, addition, or removal.

PART 4—REGISTRATION

When instruments deemed registered

17. Every instrument registered under this Decree shall be deemed to be registered for the purposes of this Decree at the time recorded in the register as the time at which the instrument was registered.

Priority according to time of registration

18.—(1) Instruments presented for registration under this Decree shall be registered in the chronological order in which they are received by the Registrar.

(2) Registered instruments that relate to or affect the same interest in the same radio frequencies shall have priority in the order in which they are registered.

Application for registration

19.—(1) The Registrar shall receive applications to register particulars of all instruments required by this Decree to be registered.

(2) Every application under subsection (1)—

(a) shall be made by presenting an instrument in the prescribed form;

(b) shall contain such particulars as are specified in the form;

(c) shall be executed in the manner specified in the form; and

(d) shall be accompanied by the prescribed fee, if any.

Registration procedure

20. On receipt of an application that complies with section 21, and is completed to the satisfaction of the Registrar, the Registrar shall—

(a) record in the register the particulars set out in the instrument required by this Decree to be registered and the time at which the particulars are so recorded;

(b) issue a certificate as to the particulars recorded in the register pursuant to paragraph (a);

(c) retain a record of the instrument in the Registrar's office; and

(d) forward the certificate issued under paragraph (b) to the person who presented the instrument for registration.

Procedure in relation to defective applications for registration

21. Where any instrument lodged for registration with the Registrar is found not to be in order for registration, the Registrar may—

(a) return the instrument and all other instruments lodged in connection with that instrument, or such of them as the Registrar thinks fit, to the person by whom they were lodged or, where that person is not available, to such other person as may, in the opinion of the Registrar, be entitled to receive them; or

(b) retain the instrument pending rectification of any matter required by the Registrar to be rectified.

Failure to comply with requisition

22. If any requisition made by the Registrar in respect of any instrument retained for rectification under section 21 is not complied with within such time as the Registrar may specify in that behalf in a notice given by post, delivery, or electronic transmission (for example, by fax or email) to the person who lodged the instrument, or to the person entitled under the instrument, the Registrar—

- (a) may refuse to complete or proceed with the registration of the instrument or to do any act or make any entry in relation to the instrument; and
- (b) may return the instrument and all other instruments lodged in connection with the instrument, or such of those instruments as the Registrar thinks fit, to the person by whom they were lodged or, where that person is not available, to such other person as may, in the opinion of the Registrar, be entitled to receive them.

Fees in relation to defective applications

23. —(1) Where any instrument is returned as provided in section 21 (a), any fees paid to the Registrar in respect of the instrument shall be forfeited, unless any matter required to be rectified to enable the instrument to be registered is so rectified and the instrument is again lodged with the Registrar within a period of 40 working days from the date of its return by the Registrar under section 21 (a).

(2) Where any instrument is returned as provided in section 22 (b), any fees paid to the Registrar in respect of that instrument shall be forfeited.

(3) Nothing in this section applies in respect of any spectrum licence that is returned under section 29 (1) or to any modification of a spectrum licence that is returned under section 68.

Copies of documents and requisitions

24. Before returning any instrument in accordance with section 21 or section 22, the Registrar—

- (a) shall make a copy of the instrument;
- (b) shall attach to the copy of the instrument a copy of the requisition specifying the matters required to be rectified, and, where applicable, of the notice forwarded under section 22; and
- (c) shall file the copies made under paragraphs (a) and (b) in the Registrar's office as if the instrument had been registered.

Returned instrument deemed not to have been presented for registration

25. Where any instrument is returned pursuant to section 21 or section 22 or section 29, it shall be deemed not to have been presented for registration.

Application for correction of register

26.—(1) Every person who presents an instrument for registration under section 19 may, after receiving the certificate issued under section 20 (b), request that the Registrar correct the record on the register of the particulars set out in the instrument on the grounds that the register does not record accurately those particulars or is for any other reason incorrect.

(2) Every application made under subsection (1) shall be in the prescribed form, and shall be accompanied by a copy of the certificate issued under section 20 (b) that relates to the record on the register to which the application relates.

Correction of register

27.—(1) Where, upon receipt of a request under section 26, the Registrar is satisfied that the register does not record accurately the particulars set out in the instrument to which the request relates or is for any other reason incorrect, the Registrar shall correct the register accordingly and record on the register the nature of the correction and the time at which the correction was made.

(2) The Registrar may, of the Registrar's own motion, correct the register, recording on the register the nature of the correction and the time at which the correction was made, if the Registrar is satisfied that the register—

- (a) does not record accurately the particulars set out in an instrument to which an entry in the register relates;
- (b) requires updating because a rightholder or manager or holder of a radio licence has changed that person's name or address, or because a name or address is wrongly entered in the register; or

(c) is incorrect for any other reason.

(3) Subsection (2) applies whether or not a person has requested that the Registrar correct the register under section 26.

(4) As soon as practicable after correcting the register under subsection (1), the Registrar shall notify the person who made the application under section 19 of the correction.

Duty to notify change of name or address

28.—(1) If a rightholder or manager or holder of a radio licence changes that person's name or address, that person must, within 1 month after the change, notify the Registrar of the person's new name or address.

(2) A breach of subsection (1) is an infringement offence.

Registrar's duties in relation to registration of spectrum licences

29. —(1) Where an instrument received by the Registrar for registration under section 19 (1) is a spectrum licence in a form prescribed for the purposes of section 59, 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 21 (a).

(2) The Registrar must not register any spectrum licence unless an instrument received by the Registrar for registration under section 19 (1) is a spectrum licence in a form prescribed for the purposes of section 59.

(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;
- (b) will not endanger the functioning of any radio service essential to the protection of life and property;
- (c) will not cause harmful interference to rights conferred by registered spectrum or radio licences;
- (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 19 (1) is a spectrum licence in a form prescribed for the purposes of section 59, —

- (a) the Registrar may require the Permanent 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 33; 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 21 (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 19 (1) relates is technically compatible with the exercise of any rights by any other person under a spectrum licence or radio licence.

Matters relevant to radio engineer's certificate under section 29

30. A radio engineer issuing a certificate under section 29—

- (a) must, before issuing the certificate, have regard to—
 - (i) the nature and characteristics of the rights described in the spectrum licence;
 - (ii) the International Radio Regulations;
 - (iii) the ITU-R reports and recommendations;
 - (iv) Annex 10 of the Convention on International Civil Aviation;
 - (v) the International Convention for the Safety of Life at Sea;
 - (vi) the nature of the service proposed to be operated under the spectrum licence; and
 - (vii) any relevant reference standards issued by the Permanent Secretary; but
- (b) must not, in considering whether to issue the certificate, have regard to the reception of radio waves by inappropriate receivers.

Registration of spectrum licences and modifications where management rights mortgaged

31.—(1) Where—

- (a) an instrument received by the Registrar for registration under section 19 (1) is a spectrum licence in the form prescribed for the purposes of section 59 or a modification in the form prescribed for the purposes of sections 65, 66, 67 or 68; and
- (b) a mortgage of the management rights pursuant to which the spectrum licence is granted is registered under this Decree, unless otherwise specified in the licence—

the Registrar shall not register that spectrum licence or that modification unless the Registrar obtains the prior approval of the Minister, and receives from the applicant for registration an acknowledgment from the mortgagee that the mortgagee has consented to the grant of that spectrum licence or the making of that modification.

(2) Every such acknowledgment shall be in the prescribed form and shall be signed by the mortgagee.

Instruments not effectual until registered

32.—(1) No instrument that purports—

- (a) to transfer or mortgage management rights in relation to radio frequencies in respect of which a record of management rights has been recorded under this Decree; or
- (b) to grant or transfer or mortgage any spectrum licence—

shall have effect until it is registered in accordance with this Part.

(2) If 2 or more instruments executed by the same manager or rightholder, and purporting to transfer management rights in relation to the same radio frequencies, or to transfer the same spectrum licence, are presented at the same time to the Registrar for registration, the Registrar shall not register any of the transfers to which the instruments relate until the Registrar is satisfied that one of the instruments has priority in time over the other instrument or instruments and shall, in that case, accept for registration the instrument having priority.

Register to be open for search

33.—(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;
- (b) frequency band or frequency within a frequency band; or
- (c) any other search reference specified in regulations made under this Decree.

(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 Permanent Secretary has advised the Registrar in writing that the record contains information that would be likely to prejudice the security or defence of Fiji.

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

Registrar to issue search copies

34. — (1) The Registrar shall, upon application and payment of the prescribed fee, furnish to any person a copy of any record in the register.

(2) Nothing in subsection (1) requires the Registrar to furnish to any person a copy of any record if permission to search that record has been or could be declined to that person pursuant to section 33 (3).

Certified copies of register to be evidence

35. — (1) The Registrar shall, upon application and payment of the prescribed fee, furnish to any person a certified copy of any record in the register.

(2) Every such certified copy signed by the Registrar shall be received in evidence for all purposes as conclusive evidence that the particulars shown on the certified copy have been duly registered.

(3) Nothing in subsection (1) requires the Registrar to furnish to any person a certified copy of any record if permission to search that record has been or could be declined to that person pursuant to section 33 (3).

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

High Court may investigate cases of lost instruments

36. Where any instrument executed for the purpose of transferring or mortgaging management rights in relation to any radio frequencies, or granting or transferring or mortgaging any spectrum licence, is lost or destroyed before it is registered, the person claiming to be entitled to the interest by virtue of the lost instrument may make application to the High Court to have the person's claim investigated and declared.

Court may order registration of interest

37.—(1) Upon proof to the satisfaction of the court—

- (a) that an instrument to which section 36 applies has been lost or destroyed;
- (b) that the applicant is entitled to have the interest to which the application relates registered; and
- (c) that due notice of the application has been given —
 - (i) to the manager intended to be affected; and
 - (ii) to all other parties having an interest in the application,

the court may make an order defining and declaring the interest of the applicant under the instrument, and requiring the Registrar to amend the register accordingly.

(2) The Registrar shall comply with any order made under subsection (1).

(3) Every registration effected pursuant to an order made under subsection (1) shall have effect from the date on which the Registrar amends the register in compliance with the order as if the original instrument had been duly registered, and that instrument shall for the purposes of this Decree be deemed to have been in the terms or to the effect specified in the order.

Expiry of registration

38. 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 Decree 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 14 apply to each frequency until a further record of management rights is created for that frequency.

PART 5 — RECORD OF MANAGEMENT RIGHTS

Content of record of management rights

39. Every record of management rights shall specify—

- (a) the name and address of the manager;
- (b) the range of frequencies to which the record of management rights relates;
- (c) the adjacent frequencies emission limits applying to the frequencies to which the record of management rights relates;
- (d) the protection limit applying to the frequencies to which the record of management rights relates;
- (e) the power floor applying to the frequencies to which the record of management rights relates;
- (f) any conditions applying to the spectrum licences created in relation to the record of management rights, being, —
 - (i) in the case of a record of management rights entered on the register pursuant to section 13 (3), any conditions specified in the application pursuant to which the record of management rights was recorded on the register;
 - (ii) in the case of a record of management rights that is created pursuant to section 54 (1) upon the cancellation of a record of management rights pursuant to section 53, any conditions specified on the cancelled record of management rights;
 - (iii) in the case of a record of management rights that is created under section 56 (1) on the cancellation of 2 or more records of management rights under section 55, any conditions specified on the cancelled records of management rights; or
 - (iv) in the case of a record of management rights that is created under section 58 (1) on the cancellation of 2 records of management rights under section 57, any conditions specified on the cancelled records of management rights;
- (g) any variation, addition, or removal of a condition that applies to the spectrum licences created in relation to the record of management rights;
- (h) the commencement date of the record of management rights, being,—
 - (i) in the case of a record of management rights constituted under section 13 (3), the commencement date specified on the application pursuant to which the record of management rights was recorded on the register;
 - (ii) in the case of a record of management rights that is created pursuant to section 54 (1) upon the cancellation of a record of management rights pursuant to section 53, the commencement date specified on the notice of transfer pursuant to which the new record of management rights was created;
 - (iii) in the case of a record of management rights that is created under section 56 (1) on the cancellation of 2 or more records of management rights under section 55, the date on which the Registrar creates that new record of management rights; or
 - (iv) in the case of a record of management rights that is created under section 58 (1) on the cancellation of 2 records of management rights under section 57, the date on which the Registrar creates that new record of management rights;
- (i) the expiry date applying to the record of management rights, being, —
 - (i) in the case of a record of management rights constituted under section 13 (3), the expiry date specified on the application pursuant to which the record of management rights was recorded on the register, which expiry date shall in no case be later than the date of the expiry of the period of 20 years from the commencement date of the record of management rights;
 - (ii) in the case of a record of management rights that is created pursuant to section 54 (1) upon the cancellation of a record of management rights pursuant to section 53, the expiry date specified on the cancelled record of management rights;
 - (iii) in the case of a record of management rights that is created under section 56 (1) on the cancellation of 2 or more records of management rights under section 55, the expiry date specified on the cancelled records of management rights; or

- (iv) in the case of a record of management rights that is created under section 58 (1) on the cancellation of 2 records of management rights under section 57, the expiry date specified on the record of management rights for the successive management rights; and
- (j) 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.

Power floors applying when radio frequencies registered under Decree

40. —(1) Unless section 41 or section 42 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 .

Modification of power floors

41. Where the Permanent 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.

Power floors applying after creation of records of management rights under section 54 (1), 56 (1), or 58 (1)

42.—(1) Where, under section 53 (1), the Registrar cancels a record of management rights and, under section 54 (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) If, under section 55 (1) or section 57 (3), the Registrar cancels any records of management rights and, under section 56 (1) or section 58 (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.

Ceiling for management rights

43. Nothing in Parts 4 to 13 applies to any emissions transmitted from any point that is more than 50 kilometres above the surface of the earth.

Protection limit applying when radio frequencies registered under Decree

44. —(1) Subject to sections 45 and 46, the protection limit relating to the range of frequencies to which each record of management rights relates shall be the protection limit specified on the application pursuant to which the record of management rights was recorded on the register.

(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.

Modification of protection limit

45. Where the Permanent Secretary and any manager agree to modify the protection limit applying to that manager's record of management rights, they may present to the Registrar for the purposes of registration a notice in the prescribed form specifying—

- (a) the protection limit that is to apply, pursuant to the agreement, to that record of management rights; and
- (b) the date from which the modified protection limit is to apply.

Protection limit applying after creation of records of management rights under section 54 (1), 56 (1), or 58 (1)

46. —(1) Where, pursuant to section 53 (1), the Registrar cancels a record of management rights and, pursuant to section 54 (1), creates new records of management rights in relation to the frequencies to which the cancelled

record of management rights relates, the protection limit applying to each record of management rights so created shall be the protection limit specified in the cancelled record of management rights.

(2) If, under section 55 (1) or section 57 (3), the Registrar cancels any records of management rights and, under section 56 (1) or section 58 (1), creates a new record of management rights in relation to the ranges of frequencies to which the cancelled records of management rights relate, the protection limits specified in the cancelled records of management rights continue to apply to those ranges of frequencies.

Restriction on registration of adjacent frequencies emission limits

47. Where an application is made to the Registrar under section 13 in relation to any radio frequencies, the Registrar shall not register those frequencies under that section if any adjacent frequencies emission limit specified in that application in relation to any frequency exceeds the protection limit specified in relation to that frequency in any record of management rights constituted under subsection (2) of that section.

Adjacent frequencies emission limits applying when radio frequencies registered under Decree

48. The adjacent frequencies emission limits relating to the range of frequencies to which each record of management rights relates shall be the adjacent frequencies emission limits specified in the application pursuant to which the record of management rights was recorded on the register.

Modification of adjacent frequencies emission limits

49. —(1) Where any manager and any adjacent manager agree to modify the adjacent frequencies emission limit applying to any frequency or frequencies falling within the range of frequencies specified in the adjacent manager's record of management rights, they may present to the Registrar for the purposes of registration a notice in the prescribed form specifying—

- (a) the adjacent frequencies emission limit or adjacent frequencies emission limits that is or are to apply pursuant to the agreement; and
- (b) the date from which the modified adjacent frequencies emission limit or limits is or are to apply.

(2) No modification of any adjacent frequencies emission limit or limits shall affect any unwanted emission limit applying to any spectrum licence created before the date specified in the notice given under subsection (1) as the date from which the modified adjacent frequencies emission limit or limits is or are to apply.

Adjacent frequencies emission limits applying after creation of records of management rights under section 54 (1), 56 (1), or 58 (1)

50. —(1) Where, pursuant to section 53 (1), the Registrar cancels a record of management rights and, pursuant to section 54 (1), creates new records of management rights in relation to the frequencies to which the cancelled record of management rights relates, the adjacent frequencies emission limits applying to each record of management rights so created shall be,—

- (a) in relation to the frequencies adjacent to the boundaries of the range of frequencies to which the cancelled record of management rights relates, the adjacent frequencies emission limits specified in the cancelled record of management rights as relating to those frequencies; and
- (b) in relation to the frequencies adjacent to the boundaries created as a result of the creation of the records of management rights, the adjacent frequencies emission limits specified in the notice of transfer pursuant to which the records of management rights are created.

(2) If, under section 55 (1) or section 57 (3), the Registrar cancels any records of management rights and, under section 56 (1) or section 58 (1), creates a new record of management rights in relation to the ranges of frequencies to which the cancelled records of management rights relate, the adjacent frequencies emission limits applying to the frequencies adjacent to the boundaries of the range of frequencies to which the new record of management rights relates are the adjacent frequencies emission limits specified in the cancelled records of management rights as relating to those frequencies.

PART 6 — TRANSFERS AND AGGREGATIONS OF MANAGEMENT RIGHTS

Transfer by manager

51. —(1) Where a manager intends to transfer the manager's management rights, or such of the management rights as relate to part of the range of frequencies to which the manager's record of management rights relates, the manager may execute for the purpose of registration a notice of transfer in the prescribed form.

(2) The manager must obtain the prior approval of the Minister before he or she transfers the manager's management rights under this section.

(3) 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;
- (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.

New record of management rights unnecessary if management rights in respect of all frequencies transferred

52. If any notice of transfer purports to transfer management rights in respect of all radio frequencies to which a record of management rights relates, it shall not be necessary for the Registrar to cancel that record of management rights, and the record of the transfer endorsed on the record of management rights shall be sufficient evidence that the transferee named in that record is the manager in relation to the range of frequencies to which the notice relates, as if a record of management rights had been created in the name of the transferee.

Record of management rights to be cancelled on transfer of part of range of frequencies

53. —(1) If a notice of transfer purports to transfer the management rights in respect of part only of the range of frequencies specified in a record of management rights, the Registrar must record on the record of management rights that the record of management rights is cancelled.

(2) The recording of the cancellation under subsection (1) has the effect of cancelling the record of management rights.

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

54. —(1) The Registrar, upon cancelling any record of management rights under section 53, shall create —

- (a) a record of management rights in relation to the radio frequencies transferred; and
- (b) a record of management rights in relation to the radio frequencies retained by the manager.

(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.

Aggregation of management rights with common boundary

55.—(1) Subject to subsection (3), where a manager has the management rights in respect of ranges of frequencies that share a common boundary, the manager may request that the Registrar cancel the records of management rights relating to those ranges of frequencies, and create 1 record of management rights relating to all of those ranges of frequencies.

(2) If, upon receipt of a request under subsection (1), the Registrar is satisfied —

- (a) that the request relates to ranges of frequencies that share a common boundary; and
- (b) that the person making the request, or on whose behalf the request is made, has the management rights in respect of the radio frequencies to which the request relates,

the Registrar shall record on the records of management rights to which the request relates that the records of management rights are cancelled, and such record shall have the effect of cancelling the records of management rights.

(3) No request may be made under this section for the cancellation of any records of management rights relating to any ranges of frequencies unless the records of management rights to which the request relates all have the same expiry date applying to them.

New record of management rights to be created for all rights to which request under section 55 relates

56. —(1) The Registrar, upon cancelling any records of management rights under section 55, shall create a record of management rights in respect of the radio frequencies to which the cancelled records of management rights relate.

(2) The Registrar shall record on every record of management rights created under subsection (1) the reference number of every spectrum licence that was recorded on any of the cancelled records of management rights.

Aggregation of current and successive management rights

57. – (1) This section applies to a manager if —

- (a) the manager has management rights that expire in less than 5 years' time (the current management rights);
- (b) the manager is also the manager of subsequent management rights created in relation to the same range of frequencies as the current management rights (the successive management rights);
- (c) the records of management rights of both the current management rights and the successive management rights have —
 - (i) the same power floors;
 - (ii) the same protection limits;
 - (iii) the same adjacent frequencies emission limits; and
 - (iv) the same conditions applying to spectrum licences created in relation to those records; and
- (d) the commencement date of the record of management rights relating to the successive management rights is no more than 1 day after the expiry date applying to the record of management rights relating to the current management rights.

(2) A manager to whom this section applies may request that the Registrar cancel the records of management rights of both the current management rights and the successive management rights, and create 1 record of management rights relating to the range of frequencies concerned.

(3) If, upon receipt of a request under subsection (2), the Registrar is satisfied that subsection (1) applies, the Registrar must record on the records of management rights to which the request relates that the records of management rights are cancelled, and that recording of the cancellation has the effect of cancelling the records of management rights.

New record of management rights to be created for all rights to which request under section 57 relates

58. – (1) The Registrar, upon cancelling any records of management rights under section 57, must create a record of management rights in respect of the radio frequencies to which the cancelled records of management rights relate.

(2) The Registrar must record on every record of management rights created under subsection (1) the reference number of every spectrum licence that was recorded on the cancelled records of management rights.

PART 7 — REGISTRATION OF RIGHTHOLDERS

Creation of spectrum licence by manager

59. – (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;
- (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 63.

Contents of spectrum licence

60. – (1) Every spectrum licence must specify —

- (a) the name and address of the rightholder;
- (b) the frequency band within which radio waves may be transmitted;

- (c) except for licences granted or reserved under section 59 (1) (b), the protection area;
- (d) except for licences granted or reserved under section 59 (1) (c), any unwanted emission limits applying to emissions from a radio transmitter or transmitters;
- (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;
- (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;
- (g) whether the spectrum licence may be transferred to another person by the rightholder with or without the consent of the manager;
- (h) whether the spectrum licence may be cancelled by 1 or more of the rightholder, the manager, or the rightholder and manager together;
- (i) whether the spectrum licence may be modified by 1 or more of the rightholder, the manager, or the rightholder and manager together;
- (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 Decree.

(2) A spectrum licence may specify that the spectrum licence is a general user spectrum licence for the purposes of section 63.

Reference number of spectrum licence

61. Every spectrum licence to which section 59 applies shall be given a reference number at the time that it is registered, which number shall consist of —

- (a) the reference number of the record of management rights to which it relates; and
- (b) a further reference number that uniquely identifies the spectrum licence.

Transmissions by persons with agreement of rightholder

62. —(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 114 as applied to the rightholder's spectrum licence;
- (d) the 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.

Transmissions in accordance with general user spectrum licences

63. —(1) This section applies to every spectrum licence created under section 59 (1) (b) that is specified as a general user spectrum licence in accordance with section 59 (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;
- (b) any conditions specified in the spectrum licence under section 60 (1) (j); and
- (c) the 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 Decree.

(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 112, 113, or 114.

Transfer of spectrum licence

64. —(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 obtains the prior approval of the Minister and receives the 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.

Modification or cancellation of spectrum licence by rightholder alone

65. —(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 send to the Registrar, by electronic or other means and for the purposes of registration, a notice in the prescribed form.

(2) The notice must specify—

- (a) the modification to the spectrum licence; and
- (b) the date from which the modification or cancellation is to apply.

(3) As soon as practicable after receiving a notice under subsection (1), the Registrar must ensure that the details specified in the notice are sent, by electronic or other means, to 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.

Modification or cancellation of spectrum licence by manager alone

66. —(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 send to the Registrar, by electronic or other means and for the purposes of registration, a notice in the prescribed form.

(2) The notice must specify—

- (a) the modification to the licence; and
- (b) the date from which the modification or cancellation is to apply.

(3) As soon as practicable after receiving a notice under subsection (1), the Registrar must ensure that the details specified in the notice are sent, by electronic or other means, to the rightholder.

Modification or cancellation of spectrum licence by rightholder and manager

67. —(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.

Modification of spectrum licence where 2 or more managers

68. If the reference number of a spectrum licence is recorded in accordance with section 54 (2) 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.

Registrar's duties in relation to registration of modification or cancellation of spectrum licence

69. —(1) Where an instrument received by the Registrar for registration under section 19 (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 21 (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;
- (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 21 (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 60 (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;
- (b) will not endanger the functioning of any radio service essential to the protection of life and property;
- (c) will not cause harmful interference to rights conferred by registered spectrum or radio licences;
- (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 Permanent 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 33 (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 21 (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 19 (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.

Matters relevant to radio engineer's certificate under section 69

70. A radio engineer issuing a certificate under section 69 —

- (a) must, before issuing the certificate, have regard to—
 - (i) the nature and characteristics of the rights described in the spectrum licence;
 - (ii) the International Radio Regulations;
 - (iii) the ITU-R reports and recommendations;
 - (iv) Annex 10 of the Convention on International Civil Aviation;
 - (v) the International Convention for the Safety of Life at Sea;
 - (vi) the nature of the service proposed to be operated under the spectrum licence; and
 - (vii) any relevant reference standards issued by the Permanent Secretary; but
- (b) must not, in considering whether to issue the certificate, have regard to the reception of radio waves by inappropriate receivers.

PART 8 — GUARANTEE OF MANAGEMENT RIGHTS TO REGISTERED MANAGERS

Guarantee of management rights

71. —(1) Subject to subsection (3), the production of a certified copy of a record of management rights in the register shall, unless the contrary is proved by production of the register or a certified copy of the register, be held in every court of law or equity and for all purposes to be conclusive proof that the manager shown in the certified copy is entitled to the management rights in relation to the radio frequencies to which the certified copy relates.

(2) Subject to subsection (3), the production of a certified copy of a spectrum licence registered under this Decree shall, unless the contrary is proved by production of the register or a certified copy of the register, be held in every court of law or equity and for all purposes to be conclusive proof that the rightholder shown in the certified copy is entitled to the rights of a rightholder in relation to the radio frequency to which the certified copy relates.

(3) Nothing in subsection (1) or subsection (2) shall apply in respect of any action brought by any person deprived of management rights in relation to any radio frequencies, or of any rights as rightholder in relation to any spectrum licence, or of any rights as mortgagee of any management rights or any spectrum licence, by fraud, as against —

- (a) the person registered as manager or rightholder through fraud; or
- (b) a person deriving otherwise than as a transferee bona fide for value from or through a person registered as manager or rightholder through fraud.

Purchasers from registered manager or rightholder not affected by notice

72. Notwithstanding any rule of law or equity, except in the case of fraud, no person contracting or dealing with or taking or proposing to take a transfer from the manager in relation to any radio frequencies, or from a rightholder in relation to any spectrum licence, —

- (a) shall be required —
 - (i) to inquire into or ascertain the circumstances in or the consideration for which that manager or any previous manager, or, as the case may require, that rightholder or any previous rightholder, is or was registered; or

- (ii) to see to the application of the purchase money or of any part of it; or
- (b) shall be affected by notice, direct or constructive, of any trust or unregistered interest, and the knowledge that any such trust or unregistered interest is in existence shall not of itself be imputed as fraud.

No liability on bona fide purchaser or mortgagee

73. — (1) This section applies to —

- (a) any person who has acquired management rights in relation to any radio frequencies, or any rights as rightholder in relation to any spectrum licence, as a bona fide purchaser for value, and is registered as manager or, as the case may require, rightholder under this Decree; and
- (b) any person to whom a mortgage of any management rights or spectrum licence has been granted under this Decree, as a mortgagee bona fide for value, and who is registered as a mortgagee of the management rights or spectrum licence under this Decree.

(2) No person to whom this section applies shall be subject to action for recovery of damages, or be deprived of the management rights or spectrum licence in respect of which the person is registered or, as the case may be, that person's interest as mortgagee, on the ground that the vendor from whom the registered manager or rightholder so acquired the management rights or spectrum licence or, as the case may require, the mortgagor of the management rights or spectrum licence —

- (a) may have been registered as manager or rightholder through fraud or error, or under any void or voidable instrument; or
- (b) may have derived from a person registered as manager or rightholder through fraud or error, or under any void or voidable instrument.

Compensation for mistake or misfeasance of Registrar

74. Any person —

- (a) who sustains loss or damage through any omission, mistake, or misfeasance of the Registrar, or of any employee employed to assist the Registrar in the exercise of the Registrar's functions under this Decree, in the execution of their respective duties; or
- (b) who is deprived of any management rights or spectrum licence in respect of which the person is registered as the manager or rightholder, or of any interest as mortgagee of any management rights or spectrum licence, by the registration of any other person as the manager or rightholder of those management rights or that spectrum licence or, as the case may require, as mortgagee of those management rights or that spectrum licence, or by any error, omission, or misdescription in any record of management rights, or in any entry or memorial in the register, or has sustained any loss or damage by the wrongful inclusion of management rights in any record of management rights, and who by virtue of section 71 is unable to bring an action in respect of those management rights or, as the case may require, that spectrum licence or that interest,

may bring an action against the State for recovery of damages.

Compensation for loss occurring after search and before registration

75. — (1) In this section, unless the context otherwise requires, —

- “first operative period”, in relation to any transaction to which this section applies, means the period of 10 working days commencing with the ninth working day preceding the date on which the transaction is settled;
- “purchase money” includes, in relation to any mortgage, the amount to be advanced by the mortgagee in consideration of the grant of the mortgage;
- “search copy”, in relation to any record of management rights or any spectrum licence, means a search copy of that record or spectrum licence prepared and issued by the Registrar under and for the purposes of this section;
- “second operative period”, in relation to any transaction to which this section applies, means the period of 40 working days commencing with the first working day after the date on which the transaction is settled;

“transaction to which this section applies” means any agreement or arrangement entered into in respect of any management rights or spectrum licence under this Decree whereby one party (in this section referred to as the purchaser) is to acquire or has acquired from the other party (in this section referred to as the vendor) an interest in those management rights or that spectrum licence for valuable consideration.

(2) For the purposes of this section, except as the parties may expressly agree a transaction is settled when the purchaser pays, gives, or otherwise makes available to the vendor the purchase money or other consideration, either in full or to the extent necessary to entitle the purchaser, in terms of the agreement or arrangement relating to the transaction, to call upon the vendor to do everything required of the vendor under that agreement or arrangement to enable the purchaser to register the interest to which the transaction relates.

(3) Any purchaser under a transaction to which this section applies who obtains, at any time during the first operative period, a search copy in respect of the management rights or spectrum licence that is the subject of the transaction and who sustains any loss or damage through the registration or lodging under this Decree of any instrument or other document relating to those management rights or that spectrum licence may bring an action against the State for the recovery of damages if —

- (a) no entry or memorial in the register relating to that registration or lodging appears in the search copy; and
- (b) the registration or lodging was effected at any time before the expiry of the second operative period or the sooner registration of all instruments and other documents necessary to give effect to the transaction.

(4) For the purposes of an action under this section, the court may, on application made to it in that behalf by the purchaser (whether before or after the expiry of the second operative period), extend the second operative period for such length of time as it thinks just where it is satisfied that the registration of all instruments and other documents giving effect to the transaction have not been registered within that period and that the delay in such registration is attributable otherwise than to the fault of the purchaser, or of the purchaser’s solicitor or agents.

Notice of action to be served on Attorney-General and Registrar

76.—(1) Notice in writing of every action against the State under section 74 or section 75, and of the cause of the action, and of the amount claimed, shall be served upon the Attorney-General, and also upon the Registrar, at least 20 working days before the commencement of the action.

(2) If those officers concur that the claim ought to be admitted, as to the whole or any part of the claim, without suit or action, and jointly certify to that effect, the amount of the claim may, without further appropriation than this section, be paid, out of public money appropriated by Cabinet, in whole or in part to the person entitled to that amount in accordance with the certificate.

(3) If, after notice of the admission has been served on the claimant, or the solicitor or agent of the claimant, the claimant proceeds with the action, and recovers no more than the amount admitted, the claimant —

- (a) shall not be entitled to recover any costs as against the State; and
- (b) shall be liable to the State for the costs of defending the action in the same manner as if judgment had been given for the defendant in the action.

Recovery of compensation paid and costs in case of fraud

77.—(1) Where any sum of money has been lawfully paid out of public money as compensation for any loss occasioned by fraud on the part of any person causing or procuring that person to be registered as manager or rightholder, or as mortgagee of any management rights or spectrum licence, by virtue of any dealing with or transmission from a registered manager or rightholder, the amount of that compensation, together with all costs incurred in testing or defending any claim or action in relation to that compensation, shall be deemed a debt due to the State from the person legally responsible for that fraud and may be recovered from that person, or from that person’s personal representatives, by action at law, in the name of the Registrar, or, in the case of bankruptcy, may be proved as a debt due from that person’s estate.

(2) A certificate signed by the Minister for Finance, verifying the fact of the payment of compensation out of public money, shall be *prima facie* proof that such payment was made.

(3) All money recovered in any action pursuant to subsection (1) shall be paid into the Consolidated Fund.

Recovery of compensation paid where loss caused by solicitor's negligence

78. —(1) Without limiting section 77, where any sum of money is lawfully paid out of public money as compensation for any loss or damage sustained in any case to which section 75 applies, and that loss or damage was caused wholly or partly by the negligence of the purchaser's solicitor, the amount of that compensation (together with all costs incurred in testing or defending any claim or action in relation to that compensation), to the extent that it may properly be attributed to that solicitor's negligence, shall be deemed a debt due to the State from that solicitor, and may be recovered from that solicitor or from that solicitor's personal representatives, by action of law, in the name of the Registrar, or, in the case of bankruptcy, may be proved as a debt due from that solicitor's estate.

(2) No solicitor shall be held for the purposes of subsection (1) to have acted negligently merely because that solicitor relied on a search copy issued under and for the purposes of section 75 without also searching any other record held by the Registrar unless, in the special circumstances of the case, a prudent and competent solicitor would have searched that record.

(3) A certificate signed by the Minister for Finance, verifying the fact of the payment of compensation out of public money, shall, for the purposes of this section, be *prima facie* proof that such payment was made.

(4) All money recovered in any action pursuant to subsection (1) shall be paid into the Consolidated Fund.

PART 9 — GENERAL PROVISIONS

Registrar may require production of documents, etc.

79. —(1) The Registrar may require any person making or concurring in any application under this Decree to produce any document in that person's possession or control relating to the radio frequencies the subject of the application, and, if necessary, give any further information or explanation concerning any such document.

(2) Where, pursuant to subsection (1), the Registrar requires, in respect of any application, the production of any document or the giving of any information or explanation, the Registrar may decline to do any act in relation to that application until that requirement is complied with.

(3) Every person commits an offence who, in purported compliance with any requirement made under subsection (1), furnishes information, or produces a document, knowing it to be false or misleading in a material respect.

(4) Every person who commits an offence against subsection (3) is liable on summary conviction to a fine not exceeding, —

- (a) in the case of an individual, \$10,000;
- (b) in the case of a body corporate, \$25,000.

Appeals against decisions of Registrar

80. —(1) Any person who is prejudicially affected by any decision of the Registrar under section 21 or section 27 (1) or section 27 (2) or section 32 (2) or section 79 (1) or section 101 or section 104 (2) or section 104 (3) may appeal to the High Court against the decision.

(2) An appeal under subsection (1) shall be brought within 28 days after the making of the decision appealed against, or within such further time as a Judge of the High Court may allow on application made before or after the expiration of that period.

(3) Subject to any order of the High Court, every decision of the Registrar against which an appeal is lodged shall continue in force and have effect according to its tenor pending the determination of the appeal.

Procedure on appeals

81. On the hearing of an appeal under section 80, the court may confirm, reverse, or modify the decision appealed against, or may give any decision that the Registrar could have given in respect of the matter.

Court may refer appeals back for reconsideration

82. —(1) Notwithstanding anything in section 80, the High Court may, in any case, instead of determining any appeal under that section, direct the Registrar to reconsider, either generally or in respect of any specified matters, the whole or any part of the matter to which the appeal relates.

(2) In giving any direction under this section, the court shall —

- (a) advise the Registrar of its reasons for doing so; and
- (b) give to the Registrar such directions as it thinks just concerning the reconsideration or otherwise of the whole or any part of the matter that is referred back for reconsideration.

(3) In reconsidering the matter so referred back, the Registrar shall have regard to the court's reasons for giving a direction under subsection (1), and to the court's directions under subsection (2).

Fraudulently procuring registration

83. —(1) Every person commits an offence against this Decree who—

- (a) fraudulently procures the registration of any instrument required by this Decree to be registered; or
- (b) fraudulently uses any form prescribed for the purposes of any of the provisions of Parts 3 to 11.

(2) The registration of any transfer procured by fraud shall be void as between all parties to the fraud.

Registrar not bound to attend court or produce register without court order

84. The Registrar shall not be required to produce in any court of law or elsewhere than in the office of the Registrar any record of management rights or other document in the Registrar's custody as Registrar, or to attend before any court or elsewhere to give evidence, except by order of the High Court, which order shall not be made unless the court is satisfied that the Registrar's attendance or the production of the record of management rights or document is necessary, and that the required evidence cannot be given by certified copy of the record of management rights or document.

Liability of officers

85. —(1) No criminal proceedings shall lie against the Registrar, or any employee employed to assist the Registrar in the exercise of the Registrar's functions under this Decree, for anything the Registrar or employee may do or fail to do in the course of the exercise or intended exercise of the functions of the Registrar, unless it is shown that the Registrar or employee acted in bad faith.

(2) Where any civil proceedings are brought against the Registrar, or any employee employed to assist the Registrar in the exercise of the Registrar's functions under this Decree, in their personal capacities, for anything the Registrar or employee has done or failed to do in the course of the exercise or intended exercise of the functions of the Registrar, the Registrar or employee is entitled to be indemnified by the State in respect of all expenses incurred by him or her in connection with the proceedings, and in respect of any amount awarded against him or her in those proceedings, unless it is shown that the Registrar or employee acted, or failed to act, in bad faith.

PART 10 — MORTGAGES

Mortgage to take effect as security only

86. A mortgage under this Decree shall have effect as security, but shall not operate as a transfer of the management rights or spectrum licence charged.

Forms of mortgage

87. Whenever any management rights or spectrum licence under this Decree are or is intended to be charged with or made security for payment of any money, the manager or rightholder shall execute for the purposes of registration a memorandum in the prescribed form.

Alteration of terms of mortgage by endorsement

88. —(1) Subject to subsections (2) and (3), in the case of every mortgage under this Decree, —

- (a) the amount secured by the mortgage may be increased or reduced;
- (b) the rate of interest may be increased or reduced;
- (c) the term or currency of the mortgage may be shortened, extended, or renewed; and
- (d) the covenants, conditions, and powers contained or implied in the mortgage may be varied, negatived, or added to,

by a memorandum in the prescribed form.

(2) The memorandum may include all or any of the matters specified in subsection (1), and in that case the prescribed forms shall be modified accordingly.

(3) It shall not be necessary for a mortgagor to execute a memorandum of reduction, or for a mortgagee to execute a memorandum of increase, of the mortgage debt or of the rate of interest payable under a mortgage.

Consent to variation of mortgage

89. A memorandum varying the terms or conditions of any mortgage of any management rights or spectrum licence subject to a subsequent mortgage shall not be binding on any mortgagee unless the mortgagee has consented to that variation in writing on that memorandum, but that consent shall render that memorandum binding on the mortgagee so consenting, and shall be deemed to be notice to and shall be binding on all persons who may subsequently derive from the mortgagee any interest in the mortgaged management rights or spectrum licence.

Variation of priority of mortgages

90. —(1) Notwithstanding anything in section 18, the priority among themselves of the mortgages affecting any management rights or spectrum licence may from time to time be varied by a memorandum of priority in the prescribed form and registered under this Decree.

(2) The memorandum of priority shall be executed by the mortgagor and also by the mortgagee under every mortgage that, by the memorandum, is postponed to any mortgage over which it previously had priority.

Rights of mortgagee

91. Without limiting the covenants, conditions, and powers that may, by agreement between the mortgagor and the mortgagee, be contained in a mortgage of management rights, a mortgage of management rights may confer on the mortgagee any of the following powers in the event of default, by the mortgagor, in the performance or observance of any covenant contained or implied in the mortgage —

- (a) the power to sell the management rights in respect of all or part of the range of frequencies to which the mortgaged management rights relate;
- (b) the power to grant spectrum licences under section 59 in relation to the mortgaged management rights.

Restriction on exercise of power of sale

92. —(1) Subject to section 94, no power conferred by any mortgage to sell any management rights, or to sell or grant any spectrum licence, or to exercise the rights of a rightholder under a spectrum licence, shall become or be deemed to have become exercisable, by reason of any default in the payment of any money secured by any mortgage of any management rights or any spectrum licence, or by reason of any default in the performance or observance of any other covenant expressed or implied in the mortgage, unless and until the mortgagee serves on the mortgagor a notice that complies with the requirements of this section, and (in any case where the default complained of is capable of remedy) the mortgagor fails to remedy the default before the date specified in the notice.

(2) Every such notice shall be in the prescribed form; but no notice shall be void merely because of any variation from the prescribed form unless —

- (a) the notice does not adequately inform the mortgagor of —
 - (i) the nature and extent of the default complained of;
 - (ii) the date by which the mortgagor is required to remedy the default (if it is capable of remedy); and
 - (iii) the rights that the mortgagee will be entitled to exercise if the default is not remedied within the specified period; and
- (b) the variation materially prejudices the interests of the mortgagor.

(3) The date to be specified in the notice shall be not earlier than 1 month from the service of the notice.

Notice to subsequent mortgagee

93. —(1) Where any management rights or spectrum licence that are or is subject to a mortgage are or is subject to any subsequent mortgage, and the mortgagee has actual notice of the name and address of the subsequent mortgagee, the first-mentioned mortgagee shall forthwith after serving notice on the mortgagor under section 92 serve a copy of the notice on the subsequent mortgagee.

(2) Failure to comply with subsection (1) shall not of itself prevent any of the powers referred to in section 92 from becoming or being deemed to have become exercisable, or prevent any money secured by a mortgage from becoming or being deemed to have become payable.

Court may permit mortgagee to exercise power before period expired

94. —(1) Where any notice under section 92 (1) relates to a power to exercise the rights of a rightholder under a spectrum licence, the High Court may, on the application of the mortgagee made *ex parte* or otherwise as the court thinks fit, grant leave to the mortgagee to exercise the power at any time before the date specified in the notice.

(2) Leave may be granted under subsection (1) either unconditionally or upon or subject to such conditions as the court thinks fit.

Restriction on action to recover deficiency

95. If at any time the mortgagee under any mortgage of any management rights or any spectrum licence exercises the power of sale conferred by the mortgage, and the amount realised is less than the amount owing under the covenant to repay expressed or implied in the mortgage, no action to recover the amount of the deficiency or any part of the deficiency shall be commenced by the mortgagee against any person (not being the mortgagor of the management rights or spectrum licence at the time of the exercise of the power of sale) unless the mortgagee, at least 1 month before the exercise of the power of sale, serves on that person notice of the mortgagee's intention to exercise the power of sale and to commence action against that person to recover the amount of the deficiency in the event of the amount realised being less than the amount owing under the covenant to repay.

No contracting out

96. Sections 92 to 95 shall have effect notwithstanding any provision to the contrary in any mortgage or other agreement.

Application of purchase money

97. The purchase money from the sale by the mortgagee of any management rights or spectrum licence shall be applied as follows —

- (a) first, in payment of the expenses occasioned by the sale;
- (b) secondly, in payment of the money then due or owing to the mortgagee;
- (c) thirdly, in payment of subsequent registered mortgages (if any) in the order of their priority;
- (d) fourthly, the surplus (if any) shall be paid to the mortgagor.

Transfer by mortgagee

98. Upon the registration of any transfer executed by a mortgagee for the purpose of the sale, by the mortgagee, of any management rights or spectrum licence, ownership of those management rights or that spectrum licence shall pass to and vest in the purchaser, freed and discharged from all liability on account of the mortgage, and of any interest other than an instrument created by an instrument that has priority over the mortgage or which by reason of the consent of the mortgagee is binding on the mortgagee.

Discharge of mortgage

99. —(1) Where the sum secured by a mortgage has been paid off either wholly or in part, or where for any other reason the mortgagee has become bound to discharge the mortgage either wholly or partially, the mortgagee shall complete a memorandum in the prescribed form.

(2) A discharge of mortgage, when registered under this Decree, shall effectually discharge the management rights or spectrum licence from the mortgage to the extent specified in the memorandum of discharge.

PART 11 — ACQUISITIONS BY OPERATION OF LAW, CAVEATS

Person claiming under operation of law may apply to have interest registered

100. — (1) Any person claiming to be entitled by operation of law to be registered as manager or rightholder in relation to any radio frequencies may make application to the Registrar in the prescribed form to have the person registered as manager or rightholder.

(2) Every application under subsection (1) shall be accompanied by such evidence in support of the application as may be necessary to establish the applicant's entitlement to be registered as manager or rightholder.

(3) No application may be made under subsection (1) in respect of any entitlement arising or claimed to have arisen before the commencement of this Decree.

Procedure on application

101. If, on any application under section 100, the Registrar is satisfied that the applicant is entitled to be registered as manager or rightholder in relation to the radio frequencies to which the application relates, the Registrar shall register the applicant as manager or rightholder, as the case may require.

Caveat against dealing with radio frequencies

102. —(1) Any person —

(a) claiming to be entitled to, or to be beneficially interested in, —

- (i) the management rights in relation to any radio frequencies in respect of which a record of management rights is registered under this Decree; or
- (ii) any spectrum licence,

by virtue of any unregistered agreement or other instrument, or of any trust expressed or implied, or otherwise howsoever; or

(b) transferring —

- (i) the management rights in relation to any such radio frequencies; or
- (ii) any spectrum licence,

to any other person to be held in trust,

may at any time lodge with the Registrar a caveat in the prescribed form.

(2) Every caveat lodged under subsection (1) shall contain a statement of the grounds on which the caveat is lodged.

(3) No caveat may be lodged pursuant to subsection (1) (a) in respect of any entitlement or beneficial interest arising or claimed to have arisen before the commencement of this Decree.

Service of notices as to caveats

103. Every notice relating to a caveat and any proceedings in respect of a caveat, if served at the place appointed in the caveat, shall be deemed duly served.

Effect of caveat

104. — (1) Subject to subsections (2) to (4), so long as a caveat remains in force, the Registrar shall not make any entry on the register having the effect of —

- (a) charging or transferring the management rights to which the caveat relates, or creating or modifying any spectrum licence under those management rights; or
- (b) charging or transferring or modifying the spectrum licence to which the caveat relates.

(2) Subsection (1) shall not prevent the Registrar from making any entry where —

- (a) the caveator consents to the making of that entry; or
- (b) the making of that entry is necessary to complete the registration of any instrument that has been accepted for registration before the receipt of the caveat.

(3) Subsection (1) shall not prevent the Registrar from making any entry necessary to effect the registration of a transfer of any interest in any management rights or spectrum licence where —

- (a) the transfer is expressed to be made in pursuance of a power of sale conferred on the transferor by virtue of a registered mortgage of those management rights or that spectrum licence (hereafter in this subsection referred to as the empowering mortgage);
- (b) the caveat was lodged after the registration of the empowering mortgage;
- (c) the interest claimed by the caveator arises under an unregistered mortgage or an agreement to mortgage, dated later than the date of registration of the empowering mortgage and relating to the same interest to which the empowering mortgage relates; and
- (d) the Registrar is not satisfied from the particulars stated in the caveat that, on the assumption that the caveator is able to prove the caveator's claim, the caveator would be entitled to —
 - (i) an order of the court that the registration of the empowering mortgage be cancelled; or
 - (ii) the registration of any instrument that would have the effect of making the mortgagee's interest under the empowering mortgage subject to the interest claimed by the caveator.

(4) In any case to which subsection (3) applies, the caveat shall, upon the registration of the transfer, be deemed to have lapsed and the interest of the mortgagor expressed in that transfer to be transferred shall pass to and vest in

the purchaser freed and discharged of the interest claimed by the caveator, and the Registrar may make on the register any entry necessary to show that the caveat has lapsed.

Notice of caveat to be given to persons affected

105. Upon the receipt of any caveat that complies with section 102, and is completed to the satisfaction of the Registrar, the Registrar shall give notice of the caveat to —

- (a) the manager against whose management rights the caveat has been lodged; or
- (b) the rightholder against whose spectrum licence the caveat has been lodged.

Procedure for removal of caveat

106. — (1) Any manager or rightholder against whose management rights or spectrum licence a caveat has been lodged, or any other person having any registered interest in any management rights or spectrum licence against which a caveat has been lodged, may apply to the High Court for an order that the caveat be removed.

(2) The court, upon proof that notice of the application has been served on the caveator or the person on whose behalf the caveat has been lodged, may make such order, either *ex parte* or otherwise, as the court thinks fit.

Lapse of caveat against dealings

107. Every caveat shall, upon the expiry of 10 working days after notice is given to the caveator that application has been made for the registration of any instrument affecting the management rights or spectrum licence protected by the caveat, be deemed to have lapsed as to those management rights or that spectrum licence, or so much of those management rights or that spectrum licence as is referred to in the notice, unless —

- (a) before the expiry of the 10 working days, notice is given to the Registrar that application for an order to the contrary has been made to the High Court; and
- (b) such an order is made and served on the Registrar within a further period of 20 working days.

Person entering or maintaining caveat without due cause liable for damages

108. — (1) Any person who, without reasonable cause, lodges any caveat is liable in damages for any loss or damage suffered by any person as a result of the lodging of the caveat.

(2) Any person who lodges a caveat and who, when that caveat is no longer needed to protect any interest of the caveator, fails, without reasonable cause, to withdraw that caveat as soon as reasonably practicable after having been requested to do so by any person prejudicially affected by the caveat is liable in damages for any loss or damage suffered by any person as a result of the failure to withdraw the caveat.

Caveat may be withdrawn

109. — (1) Any caveat may be withdrawn by the caveator or by the caveator's attorney or agent under a written authority, and either as to the whole or any part of the management rights or spectrum licence protected by the caveat.

(2) Every withdrawal of a caveat shall be made in the prescribed form.

No second caveat may be entered

110. When any caveat lodged under this Part has lapsed or has been withdrawn, it shall not be lawful for the Registrar to receive any second caveat affecting the same management rights or spectrum licence by the same person, or in the same right and for the same cause, except by order of the High Court.

PART 12 — RIGHTS AND DUTIES OF MANAGERS AND RIGHTHOLDERS

Rights conferred by registration as manager

111. Subject to any spectrum licence granted by the manager, every manager shall have the right to create spectrum licences under section 59 in relation to the frequencies specified in the manager's record of management rights and in relation to any location in Fiji.

Rights conferred on rightholder by spectrum licence

112. — (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 113.

(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 113.

(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 113.

(4) If the rightholder complies with section 114, the right to transmit radio waves includes the right to transmit unwanted emissions.

Requirements to be complied with in exercise of rights

113.—(1) Every rightholder, in exercising rights under section 112, shall comply with —

- (a) any conditions specified in the record of management rights in relation to which the rightholder's spectrum licence is registered;
- (b) any conditions specified in the spectrum licence pursuant to section 60 (1) (j); and
- (c) the requirements specified in the Schedule.

(2) Every person who fails to comply with subsection (1) shall be deemed not to be acting in accordance with the person's rights as rightholder for the purposes of section 115.

Compliance with unwanted emission limits

114.—(1) No rightholder, in exercising rights under section 112, shall transmit unwanted emissions on any frequency within the range of frequencies to which the unwanted emission limit specified in the spectrum licence applies, at a level greater than is specified in the spectrum licence as the unwanted emission limit applying to that frequency.

(2) No rightholder, in exercising rights under section 112, 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.

(3) Every person who contravenes subsection (1) or subsection (2) shall be deemed not to be acting in accordance with the person's rights as rightholder for the purposes of section 115.

Transmission other than in accordance with spectrum licence

115.—(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 Decree 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.

(2) Every person who contravenes this section commits an offence against this Decree.

(3) Nothing in subsection (1) applies to the transmission of unintended emissions from a receiver tuned to receive emissions from a rightholder transmitting in accordance with the rightholder's spectrum licence.

Transmission under radio licence not affected

116. Nothing in section 115 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 131 (c).

PART 13 — INTERFERENCE

Interference to receivers

117. 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.

Definitions for sections 120 to 124

118. — (1) For the purposes of sections 120 to 124, —

“arbitrator” means a representative of the Ministry;

“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 arbitrator determines otherwise in accordance with section 122 (3).

(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.

Sections 118 to 124 apply where transmissions not commenced

119. 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 118 to 124 apply as though the lawful transmissions had commenced.

Notice of harmful interference

120. — (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) If both the claimant and the respondent are holders of radio licences and the matter is in relation to those licences,—

- (a) the provisions of subsections (7) to (9) and sections 121 to 124 do not apply;
- (b) the matter may be referred to the Permanent Secretary by the claimant or the respondent; and
- (c) the Permanent Secretary may take any action that the Permanent Secretary thinks fit.

(3) The claimant may, after the expiry of 10 working days from the date when the matter was referred to the Permanent Secretary under subsection (2), by notice in the prescribed form to the Permanent Secretary, request that the Permanent Secretary refer the matter to arbitration under section 121 if, within that 10-working-day period, —

- (a) the action specified in the notice given under subsection (1) has not been taken;
- (b) the claimant continues to believe that the respondent’s transmissions have caused or contributed to, or are causing or contributing to, harmful interference in the protection area of the claimant, and that the action that is specified in the notice is justified; and
- (c) the claimant, the respondent, and the Permanent Secretary have not agreed on a method of reaching an agreement to deal with the harmful interference or to refer the matter to arbitration.

(4) Despite subsection (2) (a), if a claimant has made a request under subsection (3), sections 121 to 124 apply.

(5) 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 Permanent Secretary, and the Permanent 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 120 to 122 and section 124.

(6) A notice given under subsection (1) must state —

- (a) the nature of the harmful interference experienced;
- (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;
- (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 one of the actions referred to in subsection (7) 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.

(7) 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;
- (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;
- (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.

(8) 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;
- (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-workingday period, by notice in the prescribed form to the Permanent Secretary, request the Permanent Secretary to refer the matter to arbitration under section 121.

(9) Where the claimant and the respondent agree on a method of reaching an agreement to deal with the harmful interference under subsection (7) (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 Permanent Secretary, request the Permanent Secretary to refer the matter to arbitration under section 121.

Reference to arbitration by Permanent Secretary

121. —(1) Where the Permanent Secretary receives a request under section 120 (3), (8), or (9), and the Permanent Secretary is satisfied that —

- (a) the alleged harmful interference is being caused in the protection area of a registered spectrum licence or radio licence;
- (b) the transmissions allegedly causing or contributing to the harmful interference are being lawfully made under a registered spectrum licence or radio licence;
- (c) there is *prima facie* evidence of harmful interference and that the harmful interference is being caused or contributed to by the respondent;
- (d) a notice was properly given under section 120 (1) concerning that harmful interference;
- (e) the time limits specified in section 120 have expired; and
- (f) the respondent has not taken the action specified in that notice,

the Permanent Secretary may refer the matter to arbitration as though the claimant and the respondent had agreed to refer the matter to arbitration.

(2) The reference by the Permanent Secretary may specify the matters that would otherwise be included in an arbitration agreement or submission, and that reference is an arbitration agreement or submission for the purposes of the Arbitration Act (Cap. 38).

Matters relevant to arbitration

122.—(1) The arbitrator'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;
- (b) the technical compatibility between the claimant's receiver and the respondent's transmitter as determined by —
 - (i) the nature and characteristics of the rights described in the licences concerned;
 - (ii) the International Radio Regulations;
 - (iii) the ITU-R reports and recommendations;
 - (iv) Annex 10 of the Convention on International Civil Aviation;
 - (v) the International Convention for the Safety of Life at Sea;
 - (vi) the nature of the service operated or proposed to be operated under any licences concerned; and
 - (vii) any relevant reference standards issued by the Permanent Secretary;
- (c) which of the licences held by the parties to the dispute was registered or granted first;
- (d) the desirability of minimising disruption to existing services;
- (e) the terms of the licences concerned; and
- (f) any other matters prescribed by regulations made under this Decree or that the arbitrator considers relevant.

(2) The arbitrator must not have regard to the reception of radio waves by inappropriate receivers.

(3) Unless a person proceeds as a claimant in accordance with section 118 (3), where the claimant is the holder of a radio licence that does not specify an area as a protection area, the arbitrator must determine, from the technical details on the licence, whether the area considered by the claimant as the protection area for that licence is the protection area.

Offence to transmit in breach of Permanent Secretary's direction

123. Every person who contravenes a direction given by the Permanent Secretary under section 120 (5) commits an offence against this Decree.

Powers when deciding disputes

124.—(1) The arbitrator has the power to determine the cause of the harmful interference and has the power to direct the parties to the dispute or the Permanent Secretary to take action to reduce or eliminate harmful interference.

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

PART 14 — RADIO LICENCES

Part to apply to frequencies unless or until record of management rights registered and rights commence

125.—(1) This Part applies to every radio frequency unless or until a record of management rights is registered and the rights have commenced under Part 3 in respect of that radio frequency.

(2) Where a record of management rights is registered and commenced under Part 3 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.

Granting of radio licences

126.—(1) For the purposes of this section, Fiji ship includes any vessel for the time being registered in Fiji under the Marine Act 1986.

(2) The Permanent 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 Fiji, or from any Fiji ship, or from any aircraft registered in Fiji 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 Permanent 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 Schedule.

Permanent Secretary to have regard to Government policy

127. In the exercise of his or her functions, duties, and powers under section 126 or under any regulations made under section 131 (a), the Permanent Secretary shall have regard to the general policy of the Government in relation to the functions, duties, and powers of the Permanent Secretary under that section.

Offences

128. Every person commits an offence under this Decree who transmits radio waves, otherwise than —

- (a) under, or in conformity with, the terms and conditions of a radio licence issued under section 126;
- or
- (b) in accordance with regulations made under section 131 (c) exempting the transmission of radio waves from the need to obtain a radio licence.

Presumptions

129.—(1) For the purposes of section 128, 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 Permanent Secretary is satisfied that the transmitter has been rendered inoperative.

Radiocommunication within territorial limits

130.—(1) The Minister may, from time to time, make regulations governing or prohibiting the use of radio apparatus on merchant ships, or on aircraft, of whatever nationality or registration, or on foreign ships of war or foreign military aircraft, while within the territorial limits of Fiji.

(2) Any such regulations may prescribe fines, not exceeding \$20,000 in any case, for any breach of the regulations and provide for the detention of any merchant ship or civil aircraft on which a breach of the regulations has been made, pending the institution and determination of proceedings in respect of the breach and pending the recovery of any fine imposed in respect of the breach.

Regulations

131. The Minister may, from time to time, 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 providing for the terms and conditions subject to which radio licences may be granted, amended, transferred, suspended, or revoked (including the amending of those terms and conditions);
- (b) providing for the making of applications for, and the granting of, general user radio licences granting to every person the right to transmit radio waves on any frequency specified in the licence, and providing for the terms and conditions subject to which general user radio licences may be granted, amended, transferred, suspended, or revoked (including the amending of those terms and conditions);
- (c) providing for the grant of exemptions from the requirement for a radio licence in respect of the transmission of radio waves using certain radio apparatus, where the Minister 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 Schedule;

- (e) providing for the allocation of radio licences by competitive tender, auction, or by any other means, and for the payment of consideration to the State for the allocation;
- (f) providing for the making of applications for, and the granting of, radio licences, providing for the protection from harmful interference from co-channel emissions, and providing for the terms and conditions subject to which radio licences may be granted, amended, transferred, suspended, or revoked (including the amending of those terms and conditions);
- (g) prescribing offences in respect of contraventions of any regulations made under this section.

PART 15 — ENFORCEMENT AND REMEDIES

Actions for damages for contravention of section 115

132.—(1) Every person is liable in damages for any loss or damage caused by that person engaging in conduct that constitutes any of the following —

- (a) a contravention of section 115;
- (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.

(2) Any action under subsection (1) may be commenced at any time within 3 years from the time when the cause of action arose.

Injunction may be granted for contravention of section 115

133.—(1) The High Court may, on the application of the Permanent Secretary or of any rightholder affected by the conduct to which the application relates, grant an injunction restraining a person from engaging in conduct that constitutes or would constitute any of the following —

- (a) a contravention of section 115;
- (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.

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

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

Powers to obtain evidence

134.—(1) Subject to this section, any employee of the Ministry authorised in writing by the Permanent Secretary for the purpose, or a police officer, may, where there are reasonable grounds for believing that any person has committed or is committing an offence against this Decree or against any regulations made under section 144 (1) (f), at any time in the day or night, enter upon and search any premises, building, aircraft, ship, carriage, vehicle, box, receptacle, or place and —

- (a) inspect and remove any documents in the possession of, or under the control of, any person, and take copies of or extracts from any such documents; and
- (b) inspect and remove any radio apparatus or interfering equipment in the possession of, or under the control of, any person.

(2) No person shall exercise the powers conferred by subsection (1) unless the person obtains a search warrant authorising that person to exercise those powers in subsection (1).

Penalties

135.—(1) Every person who commits an offence against this Decree, or against any regulations made under this Decree, for which no penalty is provided elsewhere than in this section shall be liable on summary conviction to a fine not exceeding, —

- (a) in the case of an individual, \$30,000;
- (b) in the case of a body corporate, \$200,000.

(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.

Commission of infringement offence

136. Where any person is alleged to have committed an infringement offence, that person may either —

- (a) be proceeded against for an alleged offence against this Decree under the High Court Act (Cap. 13);
- or
- (b) be served with an infringement notice as provided for in section 137.

Infringement notices

137.—(1) Where the Permanent Secretary or any person duly authorised by the Permanent 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 Permanent 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;
- (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) 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 statement that the person served with the notice has the right to request a hearing;
- (f) 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;
- (g) such other particulars as are prescribed in regulations made under this Decree.

(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 the High Court Act (Cap. 13).

Forfeiture

138.—(1) Where, in any proceedings under section 135, the court finds that a person has committed an offence against this Decree, or against any regulations made under this Decree, the court may order any radio apparatus or interfering equipment (being the property of a person convicted under that section) in relation to which the offence has been committed to be forfeited.

(2) Subject to subsection (3) and to any directions of the court that orders the forfeiture, any such radio apparatus or interfering equipment that is forfeited under subsection (1) may be sold, destroyed, or otherwise disposed of as the Permanent Secretary may direct.

(3) Where any radio apparatus or interfering equipment that is forfeited under subsection (1) is sold, the proceeds of the sale shall be applied as if the proceeds were a fine incurred under section 135.

PART 16 — MISCELLANEOUS PROVISIONS

Approval of radio engineers

139.—(1) The Permanent Secretary may from time to time, on application made on the form provided for the purpose by the Permanent Secretary, grant to an applicant an approval authorising the applicant to give certificates for the purposes of sections 29, 48, 49 and 69.

(2) The Permanent Secretary shall not approve a person under subsection (1) unless the person is, by reason of his or her qualifications and experience in radio engineering, a suitable person to give certificates for the purposes of sections 29, 48, 49, and 69.

(3) Where the Permanent Secretary is satisfied that any person approved under subsection (1) is no longer qualified by virtue of subsection (2) to be an approved radio engineer, the Permanent Secretary may revoke that person's approval.

Licensing of supply of radio apparatus

140.—(1) The Permanent Secretary may, in accordance with regulations made under section 144, grant licences for the supply and importation for supply of radio apparatus.

(2) Subject to any such regulations, every such licence shall be in such form and for such period, and shall contain such terms, conditions, and restrictions, as the Permanent Secretary thinks fit.

Offence

141.—(1) In this section, the term restricted radio apparatus means radio apparatus of any class or classes of radio apparatus the supply and importation for supply of which is, pursuant to regulations made under section 144, prohibited except pursuant to a licence or licences granted under this Part.

(2) Every person commits an offence who, not being the holder of a licence issued under section 140 authorising that person to do so, does any of the following —

- (a) supplies or imports for supply any restricted radio apparatus;
- (b) offers to supply or to import for supply any restricted radio apparatus;
- (c) possesses for supply any restricted radio apparatus.

Permanent Secretary may issue reference standards

142.—(1) The Permanent Secretary may from time to time, by notice in the *Gazette*, issue standards or specifications relating to the performance of —

- (a) any radio apparatus;
- (b) radio apparatus of any class or classes;
- (c) any system for the effecting of radiocommunication, whether by transmission or reception, or both.

(2) Any reference standard may be in like manner amended or revoked at any time.

Offence to disclose contents of radiocommunications

143.—(1) Every person commits an offence against this Decree 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;
- (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 Permanent Secretary for the purpose of ensuring compliance with this Decree;
- (b) by a police officer, a Customs officer, or any other class of law enforcement official listed in regulations made under this Decree for the purpose of avoiding prejudice to the maintenance of the law, including the detection, prevention, investigation, prosecution, and punishment of offences.

Regulations

- 144.—(1) The Minister may, from time to time, make regulations for all or any of the following purposes —
- (a) prohibiting the supply and importation for supply of radio apparatus of any class or classes except pursuant to a licence or licences granted under section 140;
 - (b) providing for the exemption of certain radio apparatus, as determined by the Minister, from the requirement that the supply and importation for supply of that radio apparatus be licensed, where the Minister is satisfied that a licence for the supply and importation for supply of that radio apparatus is not required for the efficient and effective management of the radio frequency spectrum;
 - (c) providing for the granting of licences for the supply and importation for supply of radio apparatus to which regulations made under paragraph (a) apply and for the terms and conditions subject to which any such licences may be granted, refused, transferred, suspended, or revoked;
 - (d) providing for examinations to determine the competence of persons wishing to operate radio apparatus and prescribing fees in respect of those examinations, and providing for the issue, revocation, or suspension of certificates of competency in respect of any operations, and for the authorisation by the Permanent Secretary of —
 - (i) persons to conduct the examinations;
 - (ii) persons to issue certificates;
 - (iii) the content of the examinations; and
 - (iv) the conduct of the examinations;
 - (e) prohibiting the operation of radio apparatus of any class or classes except pursuant to a certificate of competency issued under this Decree;
 - (f) providing for the prohibition or control of the installation, use, sale, distribution, manufacture, or importation 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 Decree;
 - (g) prescribing search references for access to the register;
 - (h) 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;
 - (i) prescribing the matters to which an arbitrator must have regard under section 122;
 - (j) prescribing the classes of persons who may intercept radiocommunications under section 143;
 - (k) prescribing forms for the purposes of this Decree;
 - (l) prescribing requirements for the standardisation of —
 - (i) technical systems for radiocommunications;
 - (ii) technical formats for radiocommunications;
 - (m) prescribing offences in respect of the contravention of, or non-compliance with, any regulations made under this section;
 - (n) prescribing those breaches of regulations made under paragraph (f) that constitute infringement offences against this Decree;
 - (o) prescribing the infringement fee (not exceeding \$2,000) for each infringement offence;
 - (p) such other matters as are contemplated by or necessary for giving full effect to the provisions of this Decree and for its due administration.

(2) Different fees and different forms may be prescribed for different infringement offences.

(3) The Minister may, in accordance with a recommendation of the Permanent Secretary, make regulations declaring receivers of any kind to be inappropriate receivers for the purposes of this Decree.

(4) The Permanent Secretary may only make a recommendation under subsection (3) if the Permanent Secretary is satisfied that the type of receiver concerned will or may compromise the optimal utilisation of the radio frequency spectrum.

Permanent Secretary may prescribe forms

145.—(1) The Permanent Secretary may, by notice in the *Gazette*, prescribe any forms, including infringement and reminder notices, that are not otherwise specifically prescribed.

(2) Different forms may be prescribed for different infringement offences.

Regulations prohibiting unauthorised broadcasting from high seas

146. — (1) The Minister may, from time to time, make regulations prohibiting broadcasting contrary to international regulations from a ship or installation on the high seas.

(2) Regulations made under subsection (1) may make a breach of the regulations an offence punishable on summary conviction in Fiji if —

- (a) the ship is a Fiji ship;
- (b) the installation is registered in Fiji;
- (c) the person engaged in broadcasting is a Fiji citizen or ordinarily resident in Fiji;
- (d) the broadcast can be received in Fiji; or
- (e) radiocommunication within the territorial limits of Fiji is suffering interference.

(3) Regulations made under subsection (1) may prescribe fines, not exceeding \$20,000 in any case, for any breach of the regulations and provide for the detention of any ship or installation on which a breach of the regulations is alleged to have occurred or has occurred, pending the institution and determination of proceedings in respect of the breach and pending the recovery of any fine imposed in respect of the breach.

(4) Notwithstanding anything in any other enactment, proceedings for the trial and punishment of any person charged with having committed an offence against regulations made under subsection (1) shall not be instituted in any court except with the consent of the Attorney-General and on the Attorney-General's certificate that it is expedient that the proceedings should be instituted.

(5) A person alleged to have committed an offence against regulations made under subsection (1) may be arrested or a warrant for the person's arrest may be issued and executed, and the person may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General to the institution of proceedings for the offence has not been obtained; but no further or other proceedings shall be taken until that consent has been obtained.

(6) In this section, —

“broadcasting” means any transmission of programmes, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by means of broadcasting receiving apparatus but does not include any such transmission of programmes —

- (a) made on the demand of a particular person for reception only by that person; or
- (b) made solely for performance or display in a public place;

“Fiji ship” any vessel for the time being registered in Fiji under the Marine Act 1986.

Regulations prescribing fees

147. — (1) The Minister may, from time to time, make regulations prescribing the matters in respect of which fees are payable under this Decree, the amounts of those fees or the method by which they are to be assessed, and the persons liable for payment of the fees, and providing for the method of payment of, or the waiver or refund of any such fees.

(2) Without limiting the generality of subsection (1), any regulations made under this section may make provision for the payment, by managers or rightholders or both, of an annual fee payable to the Permanent Secretary, which fee may include an amount to cover the costs incurred by the Permanent Secretary in respect of measures taken to deal with interference with the reception of broadcast signals.

Recovery of fees

148. — (1) Any fee that is not paid in accordance with regulations made under this Decree, until paid in full, constitutes a debt to the State, and may be recovered from the person liable at the suit of the Permanent Secretary or the Registrar in any court of competent jurisdiction.

(2) The Permanent Secretary or the Registrar may from time to time enter into agreements or arrangements, on such terms and conditions as the Permanent Secretary or the Registrar thinks fit, with any person to collect or assist in collecting any fees payable in accordance with regulations made under this Decree.

(3) If a rightholder does not pay any fee relating to a spectrum licence in accordance with regulations made under this Decree in full within 6 months of the date the fee is due,—

- (a) the manager of the management rights to which the spectrum licence relates is jointly and severally liable with the rightholder for payment of the unpaid fees; and
- (b) regardless of whether or not the spectrum licence may be cancelled by the manager alone, and independently of any right of the manager to cancel the licence in accordance with section 66 or 67, the manager may cancel the licence to which the unpaid fees relate by sending to the Registrar, by electronic or other means and for the purposes of registration, a notice in the prescribed form.

(4) The notice must specify—

- (a) that the spectrum licence is cancelled; and
- (b) the date from which the cancellation is to apply.

(5) As soon as practicable after receiving a notice under subsection (3) (b), the Registrar must ensure that the details specified in the notice are sent, by electronic or other means, to the rightholder.

Distress calls

149. Nothing in this Decree shall prohibit any person in distress from using any means at that person's disposal to attract attention, indicate the person's position, and obtain assistance.

Acquisition or disposition of management rights or licence in relation to radio frequencies

150.—(1) Subject to subsections (2) and (3), management rights in relation to radio frequencies and spectrum licences created under section 59 shall be deemed to be assets of a business.

(2) Nothing in subsection (1) applies in respect of the acquisition, by the State, of the management rights in relation to any radio frequencies where those management rights are acquired by the State on the recording, under section 13 (3), of a record of management rights in relation to the frequencies to which those rights relate.

Conversion into registered spectrum licence

151. Every allocation or reallocation made under section 5 in respect of spectrum, band, frequency or microwave links for radio broadcast, television broadcast, telecommunications or any other service which uses radio frequency spectrum, band or microwave links shall be converted into a registered spectrum licence or registered spectrum management rights in accordance with this Decree.”

New Schedule inserted

5. The Principal Decree is amended by inserting the following new Schedule—

“SCHEDULE
(sections 113, 126)

REQUIREMENTS IN RELATION TO RADIO LICENCES AND SPECTRUM LICENCES

1. Compliance with International Radio Regulations

Every person transmitting radio waves must comply with the International Radio Regulations.

2. False or misleading communication

No person may—

- (a) cause or permit the transmission, under any spectrum licence, radio licence, or exemption by regulations made under this Decree 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 Decree from the requirement to obtain a radio licence or spectrum licence, in breach of any other enactment.”

GIVEN under my hand this 16th day of May 2013.

EPELI NAILATIKAU
President of the Republic of Fiji