

No. 50 of 1996.

Radio Spectrum Act 1996.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



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ARRANGEMENT OF SECTIONS.

PART I – PRELIMINARY.

1. Compliance with constitutional requirements.
2. Interpretation.
 - “aircraft”
 - “apparatus”
 - “Appeals Panel”
 - “broadcast-satellite service”
 - “broadcasting service”
 - “Chief Executive”
 - “Commission”
 - “licence”
 - “licensee”
 - “low power device”
 - “master”
 - “orbit-spectrum”
 - “PANGTEL”
 - “public correspondence”
 - “Radio Regulations”
 - “radiocommunication”
 - “space station”
 - “station”
 - “this Act”
 - “unauthorized broadcast”
 - “vessel”
3. Act binds the State.
4. Application.
5. Exemptions.

PART II – RADIO SPECTRUM MANAGEMENT.

6. Rights to grant licences to establish radiocommunication stations, etc.
7. Licences.
8. Emergencies.
9. Illegal use of stations and apparatus.
10. Pirate stations.
11. Supply, etc., of certain goods, etc.
12. Search and seizure.
13. Presumptions as to apparatus.
14. Forfeiture.

PART IIA – REVIEW OF PANGTEL DECISIONS.

- 14A. Review by Appeals Panel.
- 14B. Minister's power to intervene.

PART III – MISCELLANEOUS.

15. Regulations.
16. Consultation.

PART IV – REPEAL AND SAVINGS.

17. Repeal.
18. Savings of licences, etc.

INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Radio Spectrum Act 1996,

Being an Act relating to radiocommunication in Papua New Guinea—

- (a) to authorize the Government to establish, maintain, and operate radiocommunication stations; and
- (b) to permit the operation of radiocommunication stations under licence; and
- (c) to regulate the use of radiocommunication generally; and
- (d) to repeal the *Radiocommunications Act* (Chapter 152), and for related purposes.

PART I. – PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the *Constitution*, namely—

- (a) the right to freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
- (b) the right to freedom of conscience, thought and religion conferred by Section 45 of the *Constitution*; and
- (c) the right to freedom of expression conferred by Section 46 of the *Constitution*; and
- (d) the right to freedom of employment conferred by Section 48 of the *Constitution*; and
- (e) the right to privacy conferred by Section 49 of the *Constitution*; and
- (f) the right to freedom of information conferred by Section 51 of the *Constitution*,

is a law that is made for the purpose of giving effect to the public interest in defence, public safety, public order and public welfare.

(2) For the purposes of Section 53 (*Protection from unjust deprivation of property*) of the *Constitution*, it is hereby declared that the purposes of this Act are public purposes.

2. INTERPRETATION.

(1)¹ In this Act, unless the contrary intention appears—

“**aircraft**” includes an airship and a balloon;

“**apparatus**” means any equipment capable of effecting radiocommunication, whether by transmission or reception or both;

²“**Appeals Panel**” has the same meaning as in the Independent Consumer and Competition Commission Act 2002;

“**broadcast-satellite service**” means a radiocommunication service in which transmission (whether sound transmission, television transmission or other transmission) by space stations are intended for direct reception (whether individual reception or community reception) by the general public;

“**broadcasting service**” means a radiocommunication service in which the transmissions (whether sound transmission, television transmission or other transmissions) by terrestrial stations are intended for direct reception by the general public;

“**Chief Executive**” means the Chief Executive of PANGTEL;

³“**Commission**” means the Independent Consumer and Competition Commission established under the Independent Consumer and Competition Commission Act 2002;

“**licence**” means a licence issued under this Act;

“**licensee**” means a holder of a licence issued under this Act;

“**low power device**” means an electronic device with limited transmitter output power and operating on frequency bands allocated by PANGTEL;

“**master**”, in relation to a vessel or an aircraft, means the person in charge or in command of the vessel or aircraft;

“**orbit-spectrum**” means all space and certain terrestrial facilities and resources that are part of fixed, mobile, broadcasting and other types of man-made satellites, satellite systems and/or satellite services, including but not limited to frequencies, orbital paths and orbital positions;

¹ Section 2 Subsection (1) amended by No. 26 of 2002, s. 4.

² Section 2 Subsection (1) amended by No. 26 of 2002, s. 4.

³ Section 2 Subsection (1) amended by No. 26 of 2002, s. 4.

⁴⁵**“PANGTEL”** means the Papua New Guinea Radiocommunications Technical Authority and Telecommunications Technical Authority established by the *Telecommunications Act 1996*;

“public correspondence” means any telecommunication which any office and/or station is obliged, by reason of its being at the disposal of the public, to accept for transmission;

“Radio Regulations” means the Radio Regulations published by the international Telecommunication Union in pursuance of a recommendation of the World Administrative Radio Conference at Geneva, 1967, as amended from time to time, and includes the appendices to those Radio Regulations and any additional Regulations;

“radiocommunication” means any transmission, emission or reception of signs, signals, impulses, writings, images or intelligence of any nature by means of electromagnetic waves and includes transmission for the actuation, control or observance of machinery or other equipment of frequencies up to 3,000GHz propagated in space without artificial guide;

“space station” means a station located on an object which is beyond, is intended to be beyond, or has been beyond the major portion of the earth’s atmosphere and includes a satellite;

“station” means one or more transmitters or receivers or a combination of transmitters and receivers, including the accessory equipment, necessary at one location for carrying on a radiocommunication service;

“this Act” includes the regulations;

“unauthorized broadcast” means the transmission otherwise than as authorized by or under this Act of radiocommunication intended for direct reception by the general public in Papua New Guinea;

“vessel” includes all vessels used in navigation by water.

(2) Unless the contrary intention appears, any words or phrases used in this Act and not defined in this Act and used in the Radio Regulations have the same meaning or interpretation as given to them in the Radio Regulations.

3. ACT BINDS THE STATE.

This Act binds the State.

4. APPLICATION.

This Act applies both inside and outside the country.

⁴ Section 2 Subsection (1) amended by No. 26 of 2002, s. 4.

⁵ Section 2 Subsection (1) amended by No. 26 of 2002, s. 4.

5. EXEMPTIONS.

(1) Except as specified in Subsection (2), this Act does not apply to—

- (a) the Defence Force, in relation to the frequency bands allocated for use by the Defence Force exclusively; and
- (b) apparatus intended for reception of broadcast services other than broadcast satellite service receivers; and
- (c) low power devices.

(2) The Defence Force shall pay an annual fee for the use of the spectrum allocated exclusively to the Defence Force as notified to the Defence Force by PANGTEL.

PART II. – RADIO SPECTRUM MANAGEMENT.

6. RIGHTS TO GRANT LICENCES TO ESTABLISH RADIOCOMMUNICATION STATIONS, ETC.

Subject to Section 5, PANGTEL has the exclusive right to grant licences for–

- (a) the use of a radio frequency or group of frequencies allocated by PANGTEL; and
- (b) the establishment, erection, maintenance and operation of stations and apparatus for the purpose of–
 - (i) transmitting radiocommunication to, and receiving radiocommunication from, any place, vehicle, vessel or aircraft in the country; and
 - (ii) transmitting radiocommunication to, and receiving radiocommunication from, any space station or place, vehicle, vessel or aircraft outside the country; and
 - (iii) providing a radiocommunication service.

7. LICENCES.

(1) PANGTEL, in accordance with the regulations, may grant licences–

- (a) for the use of a radio frequency or group of frequencies; or
- (b) to establish, erect, maintain and operate stations and apparatus for the purpose of transmitting and receiving radiocommunication; or
- (c) to establish, erect, maintain and operate stations and apparatus for the purpose of providing a radiocommunication service; or
- (d) to deal in or let on hire or loan, or to repair or adjust apparatus.

(2)⁶ ⁷Subject to Subsection (3) to (9) (inclusive), a licence shall be in such form, for such period and subject to such conditions as PANGTEL thinks fit.

(3)⁸ ⁹In considering applications for licences by persons licensed or applying to be licensed as telecommunications carriers under the Telecommunications Act 1996, PANGTEL shall apply the principle that as far as practicable, such persons shall be given access to such radio spectrum as may reasonably be required to allow the effective operation of their licensed telecommunications network.

(4)¹⁰ ¹¹PANGTEL shall consult the Commission before issuing or refusing to issue any licence to a person referred to in Subsection (3).

⁶ Section 7 Subsection (2) substituted by No. 26 of 2002, s. 5.

⁷ Section 7 Subsection (2) substituted by No. 26 of 2002, s. 5.

⁸ Section 7 Subsection (3) inserted by No. 26 of 2002, s. 5.

⁹ Section 7 Subsection (3) inserted by No. 26 of 2002, s. 5.

¹⁰ Section 7 Subsection (4) inserted by No. 26 of 2002, s. 5.

¹¹ Section 7 Subsection (4) inserted by No. 26 of 2002, s. 5.

(5)¹² ¹³In issuing any licence to a person referred to in Subsection (3), PANGTEL shall issue the licence for a period not less than the period of the person's telecommunications carrier licence and on terms and conditions which are not inconsistent with that telecommunications carrier licence.

(6)¹⁴ ¹⁵PANGTEL shall consult the Commission before taking any action to suspend or revoke a licence issued to a person referred to in Subsection (3).

(7)¹⁶ ¹⁷Notwithstanding Subsection (1), the regulations shall be of no effect to the extent that they are inconsistent with the principle in Subsection (3).

(8)¹⁸ ¹⁹If the Commission and PANGTEL, in consultations under this section, are unable to agree, the views of the Commission shall prevail.

(9)²⁰ ²¹Decision by PANGTEL under Subsection (3) or Subsection (6) may be reviewed by the Appeals Panel.

8. EMERGENCIES.

(1) Where, in the opinion of PANGTEL, an emergency exists that makes action under this section desirable, PANGTEL or a person authorized by PANGTEL may take possession of and maintain and operate any apparatus or, by order, may prohibit or restrict all or any radiocommunication.

(2) A person who—

- (a) hinders or obstructs a person in the exercise of the powers conferred by Subsection (1); or
- (b) fails to comply with an order given under that subsection,

is guilty of an offence.

Penalty: Imprisonment for a term not exceeding 10 years.

(3) Where action is taken under Subsection (1) in relation to any apparatus owned or operated by is a licensee, the State is liable to pay compensation for any loss or damage sustained by the licensee.

(4) The amount of the compensation shall be as agreed between PANGTEL acting on behalf of the State and the licensee or, in default of agreement, as fixed by arbitration.

¹² Section 7 Subsection (5) inserted by No. 26 of 2002, s. 5.

¹³ Section 7 Subsection (5) inserted by No. 26 of 2002, s. 5.

¹⁴ Section 7 Subsection (6) inserted by No. 26 of 2002, s. 5.

¹⁵ Section 7 Subsection (6) inserted by No. 26 of 2002, s. 5.

¹⁶ Section 7 Subsection (7) inserted by No. 26 of 2002, s. 5.

¹⁷ Section 7 Subsection (7) inserted by No. 26 of 2002, s. 5.

¹⁸ Section 7 Subsection (8) inserted by No. 26 of 2002, s. 5.

¹⁹ Section 7 Subsection (8) inserted by No. 26 of 2002, s. 5.

²⁰ Section 7 Subsection (9) inserted by No. 26 of 2002, s. 5.

²¹ Section 7 Subsection (9) inserted by No. 26 of 2002, s. 5.

9. ILLEGAL USE OF STATIONS AND APPARATUS.

(1) Subject to Section 5, a person who establishes, erects, maintains or operates a station or possesses or uses any apparatus otherwise than under a licence under Section 6, and in accordance with the conditions of the licence and the provisions of this Act, is guilty of an offence.

Penalty: A fine not exceeding K10,000.00.

Default penalty: A fine not exceeding K10,000.00.

(2) Notwithstanding Section 24 of the *Criminal Code 1974*, where a contravention of Subsection (1) occurs in relation to a merchant ship or civil aircraft the owner and the master are each guilty of an offence.

Penalty: A fine not exceeding K10,000.00.

(3) A vessel or aircraft referred to in Subsection (2) is liable to be seized by, or by order of, PANGTEL and held until the amount of any fine imposed is paid.

10. PIRATE STATIONS.

A person who—

- (a) establishes, maintains or operates a station or apparatus for the purpose of making an unauthorized transmission or reception; or
- (b) makes an unauthorized transmission or reception,

is guilty of an offence.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding 10 years.

Default penalty: A fine not exceeding K10,000.00.

11. SUPPLY, ETC., OF CERTAIN GOODS, ETC.

A person who—

- (a) has in his possession or sells or supplies to another person any goods knowing, or having reasonable cause to believe, that they are for use—
 - (i) in connection with the making of unapproved radiocommunication transmission or reception; or
 - (ii) in or in connection with the navigation, operation or maintenance of a vessel used or to be used in or in connection with the making of unapproved radiocommunication transmission or reception; or
- (b) maintains or installs or does any act or thing in or in connection with the maintenance or installation of, any appliance, apparatus or thing knowing, or having reasonable cause to believe, that the appliance, apparatus or thing is used, or is to be used, for or in connection with the making of unapproved radiocommunication transmission or reception; or

- (c) does any act or thing in or in connection with the navigation, operation or maintenance of a vessel that he knows, or has reasonable cause to believe, is used, or is to be used, in connection with the making of unapproved transmission or reception; or
- (d) transports any goods to a vessel that he knows, or has reasonable cause to believe, is used, or is to be used, in connection with the making of unapproved radiocommunication transmission or reception,

is guilty of an offence.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding 10 years.

Default penalty: A fine not exceeding K10,000.00.

12. SEARCH AND SEIZURE.

(1) Where a Magistrate of a District Court is satisfied by information on oath that there are reasonable grounds for suspecting that any apparatus in connection with which an offence against this Act has been or is being committed is on or in any place, vehicle, vessel, or aircraft, he may grant a search warrant to a person authorized by PANGTEL.

(2) A warrant under Subsection (1) authorizes the person to whom it is addressed to enter and search, by force and with assistants if necessary, the place, vehicle, vessel or aircraft the subject of the warrant, and to seize and remove any apparatus in or on it in connection with which an offence against this Act appears to him to have been committed.

13. PRESUMPTIONS AS TO APPARATUS.

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

(2) For the purposes of this Act, any apparatus shall be deemed to remain capable of receiving or transmitting radiocommunication notwithstanding the fact that it is temporarily incapable of doing so, unless PANGTEL or a person authorized by PANGTEL is satisfied that it has been dismantled or rendered completely inoperative.

14. FORFEITURE.

Where a person is convicted of an offence against this Act in connection with any apparatus, the apparatus is forfeited to PANGTEL and shall be dealt with in such manner as PANGTEL thinks proper.

PART IIA. – REVIEW OF PANGTEL DECISIONS.

14A. REVIEW BY APPEALS PANEL.

²²(1) An application may be made to the Appeals Panel by a person licensed or applying to be licensed as a telecommunications carrier under the Telecommunications Act 1996 for review of a decision by PANGTEL under Section 7.

(2) An application for review of a decision referred to in Subsection (1) shall –

- (a) be in writing; and
- (b) set out the decision to which the application relates; and
- (c) set out in detail the grounds on which the applicant seeks review and the decision sought on the review; and
- (d) be accompanied by any information that the applicant considers should be taken into account by the Appeals Panel on the review; and
- (e) be lodged with the Appeals Panel within ten days from the date on which the applicant was notified of PANGTEL’s decision.

(3) The Appeals Panel may stay the operation of the decision to which the application relates.

(4) A review shall be decided within four weeks of the application being lodged with the Appeals Panel.

(5) After considering the application, the Appeals Panel may confirm the decision or return the matter to the original decision maker with directions the Appeals Panel considers appropriate

(6) The Appeals Panel shall give the applicant written notice of the decision, and the reasons for the decision, on the review.

(7) Where the entity the subject of a decision referred to in Subsection (1) is a regulated entity, the Appeals Panel shall consist of an International Arbitrator (unless a regulatory contract applying to the regulated entity provides that the Appeals Panel need not consist of an International Arbitrator).

14B. MINISTER’S POWER TO INTERVENE.

²³The Minister may intervene, personally or by counsel or other representative, in a review under this part for the purpose of introducing evidence, or make submissions, on any question relevant to the public interest.

²² Section 14A Inserted by No. 26 of 2002, s. 6.

²³ Section 14B Inserted by No. 26 of 2002, s. 6.

PART III. – MISCELLANEOUS.**15. REGULATIONS.**

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Act, and in particular for—

- (a) prescribing the conditions under which apparatus will be accepted for licensing purposes; and
- (b) providing for examinations for persons wishing to operate apparatus and for the issue, cancellation or suspension of certificates of competency; and
- (c) prescribing the forms of licences, fees to be charged for licences and other matter including method of payment of licence fees; and
- (d) providing for the control or inspection of any apparatus or other equipment that causes or is likely to cause interference to the working of radiocommunication and other services; and
- (e) providing for the recovery of reasonable labour costs and related expenses incurred by PANGTEL as a result of conducting inspections of apparatus or other equipment; and
- (f) prescribing penalties of fines not exceeding K10,000.00 or imprisonment for a term not exceeding 10 years for offences against the regulations.

16. CONSULTATION.

PANGTEL may, in performing its functions and exercising its powers under this Act, where it considers it practical and appropriate—

- (a) consult with—
 - (i) any governmental body or commercial, industrial or consumer organization; or
 - (ii) any other relevant body or organization; or
- (b) engage as consultants such persons as it considers fit on such terms and conditions as are determined by it.

PART IV. – REPEAL AND SAVINGS.

17. REPEAL.

The following Acts are repealed:–

- (a) *Radiocommunications Act* (Chapter 152);
- (b) *Radiocommunications (Amendment) Act* 1992.

18. SAVINGS OF LICENCES, ETC.

(1) Subject to this section a licence issued under the Acts repealed by Section 17 and in force immediately prior to the coming into operation of this Act shall, notwithstanding the repeal, continue in force for the period for which it was issued unless earlier terminated according to law.

(2) PANGTEL may vary or cancel a licence to which Subsection (1) refers.

(3) Before varying or cancelling a licence under this section, PANGTEL shall give to the licence holder 30 days' written notice of its intention to do so and shall give–

- (a) the reasons for so doing; and
- (b) in the case of a variation, the particulars of the variation proposed.

(4) A licence holder, on whom a notice under Subsection (3) is served, may within 30 days of the date of service of the notice, make representations to PANGTEL as to why the licence should not be varied or cancelled and PANGTEL shall consider any such representations before making a final decision as to whether or not to vary or cancel the licence.

(5) No compensation is payable to any person by PANGTEL or the State as a result of the variation or cancellation of a licence under this section.

(6) A licence holder to which Subsection (1) applies may surrender the licence to PANGTEL and where PANGTEL accepts the surrender of the licence, the licence is deemed to have been cancelled.

Office of Legislative Counsel, PNG