

Radiocommunications Amendment Act 2006

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Radiocommunications Amendment Act 2006.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

3 Principal Act amended

This Act amends the Radiocommunications Act 1989.

4 Purpose

The purpose of this Act is to amend the principal Act to—

- (a) provide that radio engineers and others considering questions of interference and technical compatibility should not have regard to the reception of radio waves by inappropriate receivers:
- (b) facilitate the allocation of management rights by enabling the aggregation of future rights with existing rights if an existing manager acquires future rights:
- (c) allow parties who both hold radio licences to use the dispute resolution process in Part 12:
- (d) allow radio licences to be allocated other than by competitive tender or auction:
- (e) make miscellaneous amendments.

5 Interpretation

- (1) Section 2(1) is amended by inserting the following definition after the definition of **Court Registrar**:

“**current management rights** has the meaning given to it by section 47A(1)”.

- (2) Section 2(1) is amended by inserting the following definition after the definition of **harmful interference**:

“**inappropriate receiver** means a receiver prescribed as an inappropriate receiver by regulations made under section 134(1B)”.

- (3) Section 2(1) is amended by repealing the definition of **infringement offence** and substituting the following definition:

“**infringement offence** means—

“(a) an offence under section 24A:

“(b) an offence prescribed as an infringement offence in regulations made under section 134(1)(ja)”.

- (4) Section 2(1) is amended by repealing the definition of **interference** and substituting the following definition:

“**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”.

- (5) Section 2(1) is amended by repealing the definition of **record of management rights** and substituting the following definition:

“**record of management rights**—

- “(a) means a record of management rights constituted under section 10(2); and
- “(b) includes a record of management rights created under section 45, 47, or 47B”.

- (6) Section 2(1) is amended by repealing the definition of **Secretary** and substituting the following definition:

“**Secretary** means the chief executive of the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act”.

- (7) Section 2(1) is amended by inserting the following definition after the definition of **spectrum licence**:

“**successive management rights** has the meaning given to it by section 47A(1)”.

6 New section 6A inserted

The following section is inserted after section 6:

“6A Documents to be received in evidence

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 Act, 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.”

7 Variation of conditions in record of management rights

- (1) Section 11B(1) is amended by inserting “spectrum” after “that apply to”.
- (2) Section 11B(4) is amended by inserting “spectrum” after “applies to a”.

8 Application for correction of Register

Section 23 is amended by repealing subsection (1) and substituting the following subsection:

- “(1) Every person who presents an instrument for registration under section 16 may, after receiving the certificate issued under section 17(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.”

9 Correction of Register

- (1) Section 24 is amended by repealing subsection (2) and substituting the following subsections:

“(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; or
 - “(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.

“(2A) Subsection (2) applies whether or not a person has requested that the Registrar correct the Register under section 23.”
- (2) Section 24(4) is repealed.

10 New section 24A inserted

The following section is inserted after section 24:

“24A Duty to notify change of name or address

- “(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.”

11 New section 25A inserted

The following section is inserted after section 25:

“25A Matters relevant to radio engineer’s certificate under section 25

A radio engineer issuing a certificate under section 25—

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

12 Content of record of management rights

- (1) Section 34(e) is amended by repealing subparagraph (iii) and substituting the following subparagraphs:
- “(iii) in the case of a record of management rights that is created under section 47(1) on the cancellation of 2 or more records of management rights under section 46, 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 47B(1) on the cancellation of 2 records of man-

agement rights under section 47A, any conditions specified on the cancelled records of management rights; and”.

- (2) Section 34(ea) is amended by inserting “spectrum” after “applies to the”.
- (3) Section 34(f) is amended by repealing subparagraph (iii) and substituting the following subparagraphs:
 - “(iii) in the case of a record of management rights that is created under section 47(1) on the cancellation of 2 or more records of management rights under section 46, 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 47B(1) on the cancellation of 2 records of management rights under section 47A, the date on which the Registrar creates that new record of management rights; and”.
- (4) Section 34(g)(i) is amended by omitting “20 years commencing on the date on which the record of management rights is so recorded” and substituting “20 years from the commencement date of the record of management rights”.
- (5) Section 34(g) is amended by repealing subparagraph (iii) and substituting the following subparagraphs:
 - “(iii) in the case of a record of management rights that is created under section 47(1) on the cancellation of 2 or more records of management rights under section 46, 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 47B(1) on the cancellation of 2 records of management rights under section 47A, the expiry date specified on the record of management rights for the successive management rights; and”.

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

- (1) The heading to section 34C is amended by omitting “**section 45(1) or 47(1)**” and substituting “**section 45(1), 47(1), or 47B(1)**”.
- (2) Section 34C is amended by repealing subsection (2) and substituting the following subsection:

“(2) If, under section 46(1) or section 47A(3), the Registrar cancels any records of management rights and, under section 47(1) or section 47B(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.”

14 Protection limit applying after creation of records of management rights under section 45(1) or section 47(1)

(1) The heading to section 37 is amended by omitting “**section 45(1) or section 47(1)**” and substituting “**section 45(1), 47(1), or 47B(1)**”.

(2) Section 37 is amended by repealing subsection (2) and substituting the following subsection:

“(2) If, under section 46(1) or section 47A(3), the Registrar cancels any records of management rights and, under section 47(1) or section 47B(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.”

15 Adjacent frequencies emission limits applying after creation of records of management rights under section 45(1) or section 47(1)

(1) The heading to section 41 is amended by omitting “**section 45(1) or section 47(1)**” and substituting “**section 45(1), 47(1), or 47B(1)**”.

(2) Section 41 is amended by repealing subsection (2) and substituting the following subsection:

“(2) If, under section 46(1) or section 47A(3), the Registrar cancels any records of management rights and, under section 47(1) or section 47B(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 frequen-

cies emission limits specified in the cancelled records of management rights as relating to those frequencies.”

16 Heading to Part 5 amended

The heading to Part 5 is amended by inserting “**and aggregations**” after “**Transfers**”.

17 New section 44 substituted

Section 44 is repealed and the following section substituted:

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

“(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.”

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

Section 45(2)(b) is amended by omitting “with” and substituting “within”.

19 Aggregation of management rights

The heading to section 46 is amended by adding “**with common boundary**”.

20 New record of management rights to be created for all rights to which request relates

The heading to section 47 is amended by inserting “**under section 46**” after “**request**”.

21 New sections 47A and 47B inserted

The following sections are inserted after section 47:

“47A Aggregation of current and successive management rights

“(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**); and
 - “(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**); and
 - “(c) the records of management rights of both the current management rights and the successive management rights have—
 - “(i) the same power floors; and
 - “(ii) the same protection limits; and
 - “(iii) the same adjacent frequencies emission limits; and
 - “(iv) spectrum licences relating to the same range of frequencies, with the same conditions applying to those spectrum licences; 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.
- “**47B New record of management rights to be created for all rights to which request under section 47A relates**
- “(1) The Registrar, upon cancelling any records of management rights under section 47A, 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.”

22 New section 57E inserted

The following section is inserted after section 57D:

“57E Matters relevant to radio engineer’s certificate under section 57D

A radio engineer issuing a certificate under section 57D—

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

23 Section 72A repealed

Section 72A is repealed.

24 Caveat against dealing with radio frequencies

Section 89(1)(b)(ii) is amended by inserting “spectrum” before “licence”.

25 Notice of harmful interference

- (1) Section 108(2)(a) is amended by omitting “subsections (3) to (7)” and substituting “subsections (5) to (7)”.
- (2) Section 108 is amended by inserting the following subsections after subsection (2):
 - “(2A) The claimant may, after the expiry of 10 working days from the date when the matter was referred to the Secretary under subsection (2), by notice in the prescribed form to the Secretary, request that the Secretary refer the matter to arbitration under section 109 if, within that 10-working-day period,—
 - “(a) the action specified in the notice given under subsection (1) has not been taken; and
 - “(b) the claimant continues to believe that the respondent’s transmissions have caused or contributed to, or are causing or contributing to, harmful interference in the protection area of the claimant, and that the action that is specified in the notice is justified; and
 - “(c) the claimant, the respondent, and the Secretary have not agreed on a method of reaching an agreement to deal with the harmful interference or to refer the matter to arbitration.
 - “(2B) Despite subsection (2)(a), if a claimant has made a request under subsection (2A), sections 109 to 109C apply.”

26 Reference to arbitration by Secretary

Section 109(1) is amended by omitting “section 108(6) or (7)” and substituting “section 108(2A), (6), or (7)”.

27 Matters relevant to arbitration

Section 109A is amended by repealing subsection (1) and substituting the following subsections:

- “(1) Article 28(4) of Schedule 1 of the Arbitration Act 1996 does not apply to matters referred to arbitration under section 108(5)(d) or section 109; instead, the arbitral tribunal’s decision must seek to balance the reasonable expectations, rights, and duties of the claimant and the respondent or other persons, without compromising public safety, and having regard to—
 - “(a) the costs and effects of possible alternative solutions; and

- “(b) the technical compatibility between the claimant’s receiver and the respondent’s transmitter as determined by—
 - “(i) the nature and characteristics of the rights described in the licences concerned; and
 - “(ii) the International Radio Regulations; and
 - “(iii) the ITU-R reports and recommendations; and
 - “(iv) Annex 10 to the Convention on International Civil Aviation; and
 - “(v) the International Convention for the Safety of Life at Sea; and
 - “(vi) the nature of the service operated or proposed to be operated under any licences concerned; and
 - “(vii) any relevant reference standards issued by the Secretary; and
 - “(c) which of the licences held by the parties to the dispute was registered or granted first; and
 - “(d) the desirability of minimising disruption to existing services; and
 - “(e) the terms of the licences concerned; and
 - “(f) any other matters prescribed by regulations made under this Act or that the arbitral tribunal considers relevant.
- “(1A) The arbitral tribunal must not have regard to the reception of radio waves by inappropriate receivers.”

28 Regulations

- (1) Section 116(1) is amended by repealing paragraphs (a) and (b) and substituting the following paragraphs:
- “(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):”.

- (2) Section 116(1) is amended by repealing paragraphs (e) and (f) and substituting the following paragraphs:
- “(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 Crown 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):”.

29 Commission of infringement offence

Section 128A(a) is amended by omitting “section 128 of”.

30 Regulations

- (1) Section 134(1) is amended by repealing paragraph (e) and substituting the following paragraph:
- “(e) 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 Secretary of—
- “(i) persons to conduct the examinations; and
- “(ii) persons to issue certificates; and
- “(iii) the content of the examinations; and
- “(iv) the conduct of the examinations:”.
- (2) Section 134(1) is amended by repealing paragraph (jb) and substituting the following paragraph:
- “(jb) prescribing the infringement fee (not exceeding \$2,000) for each infringement offence:”.
- (3) Section 134 is amended by inserting the following subsections after subsection (1):
- “(1A) Different fees and different forms may be prescribed for different infringement offences.

“(1B) The Governor-General may, by Order in Council, in accordance with a recommendation of the Minister, make regulations declaring receivers of any kind to be inappropriate receivers for the purposes of this Act.

“(1C) The Minister may only make a recommendation under subsection (1B) if the Minister is satisfied that the type of receiver concerned will or may compromise the optimal utilisation of the radio frequency spectrum.”

31 New section 134AA inserted

The following section is inserted after section 134:

“134AA Secretary may prescribe forms

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

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

32 Recovery of fees

Section 136 is amended by adding the following subsections:

“(3) If a rightholder does not pay any fee relating to a spectrum licence in accordance with regulations made under this Act 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 57A or 57B, the manager may cancel the licence to which the unpaid fees relate by presenting to the Registrar for the purposes of registration a notice in the prescribed form.

“(4) Every notice presented under subsection (3) must be accompanied by a statutory declaration from or on behalf of the manager that the rightholder has been served with a copy of the notice in relation to the spectrum licence.

“(5) The notice must specify—

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

Consequential amendments

- 33 Transitional rights of other licenceholders under Part 13**
Section 173(2) is amended by omitting “radio spectrum licence” and substituting “radio licence”.
- 34 Conditions to lapse if public funding ceases**
Section 176(1)(a) is amended by omitting “or licence” and substituting “or spectrum licence”.
- 35 Grant of radio licence**
Regulation 8(3) of the Radiocommunications Regulations 2001 is amended by revoking paragraph (a) and substituting the following paragraph:
“(a) the name and address of the licensee; and”.

Legislative history

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|-----------------|---|
| 24 October 2006 | Divided from Communications Legislation Bill
(Bill 34-2) as Bill 34-3B |
| 25 October 2006 | Third reading |
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