



**Tuvalu**

**TUVALU TELECOMMUNICATIONS  
CORPORATION ACT**

**2008 Revised Edition**

**CAP. 35.05**





Tuvalu

# TUVALU TELECOMMUNICATIONS CORPORATION ACT

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Tuvalu

# TUVALU TELECOMMUNICATIONS CORPORATION ACT

**AN ACT TO PROVIDE FOR THE ESTABLISHMENT, INCORPORATION  
AND MANAGEMENT OF THE TUVALU TELECOMMUNICATIONS  
CORPORATION AND FOR CONNECTED PURPOSES<sup>1</sup>**

Commencement [1st February 1994]<sup>2</sup>

## PART I - PRELIMINARY

### 1 Short title

This Act may be cited as the Tuvalu Telecommunications Corporation Act.

### 2 Interpretation

In this Act, unless the context otherwise requires —

“**Board**” means the Board of Directors of the Tuvalu Telecommunications Corporation established under subsection (1) of section 11 of this Act;

“**Chairman**” means the Chairman of the Board appointed under subsection (1) of section 12 of this Act;

“**Corporation**” means the Tuvalu Telecommunications Corporation established under subsection (1) of section 4 of this Act;

“**Deputy Chairman**” means the Deputy Chairman of the Board appointed under subsection (1) of section 14 of this Act;

“**Director**” means a Director of the Board;

“**General Manager**” means the General Manager of the Corporation appointed under subsection (2) of section 17 of this Act;

“**message**” means any communication sent, received, or made by telecommunication or given to a telecommunication operator to be sent by telecommunication apparatus;

“**radio communication**” means any telecommunication by means of radio waves;

“**radio communication station**” means any telecommunication station capable of being used or being adapted for radio communication;

“**telecommunication apparatus**” or “**apparatus**” means apparatus constructed or adapted for use —

- (a) in transmitting or receiving —
  - (i) speech, music and other sounds;
  - (ii) visual images;
  - (iii) signals serving for the impartation of any matter otherwise than in the form of sounds or visual images; or
  - (iv) signals serving for the actuation or control of machinery or apparatus, which is to be or has been conveyed by a telecommunication system; or
- (b) in conveying for the purposes of a telecommunication system, anything falling within items (i) to (iv) of paragraph (a) above;

“**telecommunication installation**” means —

- (i) a line; or
- (ii) any equipment, apparatus, structure, tower, antenna, tunnel, manhole, pit or pole intended for use, in connection with a telecommunication service;

“**telecommunication line**” means any wire, cable, tube or pipe or other similar thing which is designed or adapted for use in connection with the running of a telecommunication system, with any casing, coating, tube or pipe enclosing the same and any appliances and apparatus connected therein for the same; and includes any structure, post or other thing in, or, by or from which any telecommunication apparatus is or may be installed, supported, carried or suspended;

“**telecommunication operator**” means any person licensed under sub-section (2) of section 6 of this Act to run a telecommunication system within Tuvalu;

“**telecommunication service**” means —

- (a) a service consisting in the conveyance by means of a telecommunication system of—
  - (i) speech, music and other sounds;

- (ii) visual images;
  - (iii) signals serving for the impartation of any matter otherwise than in the form of sounds or visual images; or
  - (iv) signals serving for the actuation or control of machinery or apparatus,  
which is to be or has been conveyed by a telecommunication system;
- (b) a service consisting in the installation, maintenance, adjustment, repair, alteration, moving, removal or replacement of apparatus which is or is to be connected to a telecommunication system; and
- (c) a directory information service, that is to say, a service consisting in the provision by means of a telecommunication system of directory information for the purposes of facilitating the use of a service falling within paragraph (a) above and provided by means of that system;

“**telecommunication system**” means a system for the conveyance through the agency of electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy, or by means of fibre optic technology of —

- (i) speech, music and other sounds;
- (ii) visual images;
- (iii) signals serving for the impartation of any matter otherwise than in the form of sounds or images; or
- (iv) signals serving for the actuation or control of machinery or apparatus; and

“**vessel**” means a vessel of any description used in navigation.

### 3 Application

- (1) This Act binds the Crown.
- (2) This Act shall not apply to members of Her Majesty's Forces for Tuvalu in the lawful conduct of their duties and to any other body so specified by an order of the Minister.<sup>3</sup>

## PART II - ESTABLISHMENT, FUNCTIONS AND POWERS OF THE CORPORATION

### 4 Establishment of Corporation

- (1) There is established a Corporation to be called the Tuvalu Telecommunications Corporation.

- (2) The Corporation is a body corporate with perpetual succession and a common seal and is capable of —
- (a) subject to section 5 (restriction on alienation of native land) of the Native Lands Act, acquiring, holding and disposing of property of every description;
  - (b) suing and being sued in its corporate name; and
  - (c) doing and suffering all such acts and things as bodies corporate may lawfully do and suffer.

## **5 Functions of Corporation**

- (1) The Corporation shall carry on the business of supplying telecommunication services and establishing and developing telecommunication systems.
- (2) Without in any way limiting the generality of subsection (1) of this section, the Corporation shall establish, develop, conduct, work, operate and maintain telecommunication services and telecommunication systems in Tuvalu as a business and to that end to provide those services to such point within and outside Tuvalu as the Corporation shall see fit.

## **6 Corporation's sole right to supply telecommunication services systems**

- (1) Subject to subsection (2) of section 3 of this Act and subsection (2) of this section the Corporation shall have the sole and exclusive right to supply telecommunication services and to establish and develop telecommunication systems in Tuvalu in accordance with its functions and powers under this Act.
- (2) Where the Corporation is for any reasons unable to supply or provide a telecommunication service to any person in any part of Tuvalu or to establish and develop an appropriate telecommunication system for that person, it may in accordance with the regulations made by the Minister under this Act, licence a person as it may consider fit and suitable to supply or provide the service at a cost to be paid for by the person requiring the service and upon such other conditions as may be prescribed by regulations and contained in the licence.

## **7 Powers of Corporation relating to land**

- (1) In carrying out its functions and in the exercise of its powers under this Act, the Corporation and any person acting under its power and direction may do all or any of the following —
  - (a) enter upon and survey and take levels of any land or any part of that land and may do anything on that land for any purpose in connection with the supply of telecommunication services, the establishment of telecommunication systems and the placement of telecommunication



- installations or for the purpose of ascertaining whether the land would be suitable for use by the Corporation or any person acting under its power and direction for, or in connection with the establishment or running of the Corporation's telecommunication system; and
- (b) place telecommunication installations or other matter under, over, along or across, and posts in or upon, any land or any part of the land and in that connection may do all such works as may be considered necessary to facilitate such placement or maintenance or to ensure the proper working of telecommunication lines and connected matters.
- (2) The Corporation or any person acting under its powers and direction shall not exercise the powers specified in paragraphs (a) and (b) of subsection (1) of this section, except for the telecommunication system established and maintained by the Government which now vests with the Corporation under section 23 of this Act and the telecommunication system established and maintained by the Corporation after the coming into operation of this Act.
- (3) The Corporation shall not by virtue only of the exercise of any power granted by this section, obtain any right other than that of user only in any property.
- (4) Before doing any act in the exercise of the powers conferred by paragraphs (a) and (b) of subsection (1) of this section the Corporation shall, except in cases of emergency or urgency which involve risk of injury or damage to persons or property, give seven days' prior notice to the owner or occupier of the land which is, or is likely to be affected, stating as fully and as accurately as possible the nature and extent of the acts intended to be done, and such notice shall also be copied to the Kaupule responsible for the area the land subject of the notice is located.
- (5) The owner or occupier of the land to which a notice is being served under subsection (4) of this section may within seven days from the receipt of the notice appeal against the intended acts of the Corporation to the Minister whose decision on the matter shall be final.

## **8 Corporation's liability for compensation**

- (1) In exercise of its power under subsection (1) of section 7 of this Act, the Corporation shall do as little damage as may be and shall, subject to subsections (2) and (3) of this section, make full compensation for any damage or loss sustained by reason or in consequence of the exercise of such powers.
- (2) No compensation shall be payable for any act done in maintaining or repairing telecommunication installations and lines and connected matters and the system essential to the supply of telecommunication services, if compensation with respect to such acts has already been agreed and paid at the time the land was first used for such purpose.

- (3) Any dispute concerning the amount or application of compensation may be referred to a court of competent jurisdiction in accordance with the rules of that court for determination.

## **9 Additional Powers**

In addition to any other powers conferred on it by this Act the Corporation shall have power —

- (a) to do in Tuvalu either alone or jointly with any other organization or person, all things necessary or convenient to be done for or in connection with or consequential on any of its powers or functions;
- (b) to make such charges for its services under this Act as the Minister, on the advice of the Board, may approve; and
- (c) to undertake such other activities in furtherance of its functions as the Minister, may, after consultation with the Board, allow by order.

## **10 Ministerial directions**

- (1) In carrying out its functions and in exercising its powers under this Act the Corporation shall act in accordance with any policy directions (not inconsistent with this Act) in the national interest given to it from time to time in writing by the Minister.
- (2) The Minister in issuing such policy direction may take into account the views of the Board.

# **PART III - BOARD, MANAGEMENT AND EMPLOYEES OF THE CORPORATION**

## **11 Board**

- (1) There shall be a Board of Directors for the Corporation which —
  - (a) is the governing body of the Corporation with authority in the name of the Corporation, to perform and exercise the functions and powers of the Corporation under this Act; and
  - (b) shall, subject to this Act, be responsible for the policy, control and management of the Corporation.
- (2) It shall be the duty of the Board to ensure that the policy of the Corporation is directed towards the national interest.

## 12 Constitution of Board and eligibility as Directors

- (1) The Board shall comprise five members appointed by the Board and Minister, of whom —
  - (a) three shall be officers of the Government, as Government representatives, one of whom shall be appointed as Chairman of the Board; and
  - (b) two shall be persons from outside of Government appointed amongst persons appearing to the Minister to have the experience or special knowledge, profession or skill that will be beneficial to the Corporation.
- (2) Directors shall be appointed for a period to be determined by the Minister but shall be eligible for reappointment.
- (3) No person shall be eligible for appointment as a Director, who —
  - (a) is a member of Parliament;
  - (b) is an officer or employee of the Corporation;
  - (c) has been declared bankrupt or insolvent by a court in Tuvalu or elsewhere and has not received his discharge;
  - (d) is insane or of unsound mind; or
  - (e) has been convicted anywhere of an offence involving dishonesty.
- (4) A Director may resign by giving notice in writing to the Minister.
- (5) The Minister shall by notice terminate the appointment of a Director if —
  - (a) the Director is without the prior written permission of the Chairman absent from three consecutive meetings of the Board;
  - (b) in relation to the Director any circumstances arise which, if the person were not Director, would make the person ineligible for appointment under subsection (3) of this section.
- (6)
  - (a) Except for the Directors appointed under paragraph (a) of subsection (1) of this section the Minister, after consultation with the Board, may for any reason other than those specified in paragraphs (a) and (b) of subsection (5) of this section by notice terminate the appointment of any Director but shall inform the Director of the reasons for so doing;
  - (b) A Director shall not be compensated for loss of office.
- (7) Directors shall be paid by the Corporation such fees and allowances as may be determined by the Board and approved by the Minister.<sup>4</sup>

### **13 Acting Directors**

- (1) If the Minister is satisfied that a Director of the Corporation is incapacitated by illness, absence, or other sufficient cause from performing the duties of Director, the Minister may appoint a person to act for that Director during that period of incapacity.
- (2) An acting Director appointed under subsection (1) of this section is, while acting as such, deemed for all purposes to be a Director of the Corporation.

### **14 Chairman and Deputy Chairman**

- (1) The Minister shall appoint a Deputy Chairman of the Board Deputy Chairman to assist the Chairman appointed under paragraph (a) of subsection (1) of section 12 of this Act and both appointments shall be for such periods as the Minister determines but the appointments shall cease immediately on the Chairman or Deputy Chairman ceasing to be a Director.
- (2) The Chairman or Deputy Chairman may resign that appointment by giving notice in writing to the Minister.
- (3) The Minister may by notice terminate the appointment of the Chairman or Deputy Chairman but shall disclose the reasons for so doing.

### **15 Meetings of Board**

- (1) The Board shall meet as often as the business of the Board Corporation may require but not less frequently than once in every 2 months.<sup>5</sup>
- (2) Board meetings shall be at such times and places as the Board shall determine or as the Chairman, or, if the Chairman is absent the Deputy Chairman, shall direct.
- (3) The Chairman or if the Chairman is absent the Deputy Chairman, shall be chairman at meetings of the Board and in the absence of both from any meeting or any part of a meeting one of the Directors shall be appointed by the Board at or during the meeting to be chairman of that meeting or part of a meeting.
- (4) Three Directors shall form a quorum at a meeting of the Board.
- (5) Each Director shall have one vote.
- (6) Questions arising at a Board meeting shall be resolved by a simple majority of the votes of the Directors present and voting except that in the event of an equality of votes, the Chairman of the meeting or part of a meeting shall have a second or casting vote.

**16 Disclosure of interest**

- (1) Where a Director has any interest, direct or indirect, in interest any matter before the Board that Director shall fully disclose that interest to the Board —
  - (a) at any meeting during the course of which that Director becomes aware of the relevant facts; or
  - (b) at the first meeting after that Director becomes aware of the relevant fact.
- (2) A Director who has disclosed an interest in any matter before the Board in accordance with subsection (1) of this section, shall not take part in any further deliberation or in any decision of the Board on that matter:

Provided that the holding of any such interest by a Director shall not disqualify the Director for the purpose of constituting the quorum at any meeting or part of a meeting.

**17 General Manager**

- (1) The Chief Executive of the Corporation shall be the General Manager.
- (2) The General Manager shall be appointed by the Board with the approval of the Minister.
- (3) The General Manager shall hold office for a period not to exceed three years on such terms and conditions as may be determined by the Board, subject to the approval of the Minister.
- (4) The General Manager is eligible for reappointment on such terms and conditions as the Board may decide, subject to the approval of the Minister.
- (5) The General Manager shall be paid by the Corporation such salary and allowances as are determined by the Board and approved by the Minister.

**18 Functions, duties and responsibilities of General Manager**

- (1) The General Manager shall be responsible to the Board for the effective operation of the day to day activities of the Corporation including supervision and direction of the employees of the Corporation.
- (2) In exercise of the functions of the General Manager under this Act the General Manager shall act in accordance with such directions from time to time, received from the Board.
- (3) The whole of the General Manager's services shall be devoted to the Corporation and the General Manager shall not while holding office, without the approval of the Minister —
  - (a) receive any remuneration from any office or any employment other than with the Corporation; or

- (b) hold any other office or employment, whether for remuneration or not, except as a nominee of the Corporation.

## **19 Acting General Manager**

Where the General Manager is prevented by illness, absence from Tuvalu or any other cause from carrying out the functions of General Manager, the Board with the approval of the Minister may appoint an Acting General Manager who shall act and perform the functions of the General Manager until the General Manager is able to resume the office or a new General Manager is appointed in the event that the General Manager is for any reason permanently not able to resume that office.

## **20 Authority to act on behalf of Corporation**

The Board may by written resolution authorise a Director, the General Manager or another officer of the Corporation to act, enter into contracts and to sign instruments and documents for and on behalf of the Corporation.

## **21 Appointment of employees of the Corporation**

- (1) The Board shall appoint, employ or dismiss such permanent employees of the Corporation as may be reasonably necessary for the purposes of or in connection with the business of the Corporation on such terms and conditions as the Board may determine.
- (2) The General Manager, shall appoint, employ or dismiss such temporary and casual employees of the Corporation as may be reasonably necessary for the purposes of or in connection with the business of the Corporation on such terms and conditions as the General Manager may determine.
- (3) All employees of the Corporation appointed in accordance with subsections (1) and (2) of this section shall be under the administrative control of the General Manager subject to any directions given by the Board.
- (4) The Board may provide for the training, career development and discipline of the employees of the Corporation.

# **PART IV - FINANCIAL PROVISIONS**

## **22 Funds and resources of the Corporation**

The funds and resources available for the purpose of resources of the enabling the Corporation to perform its functions under this Corporation Act shall consist of —

- (a) moneys appropriated from time to time by Parliament for the purpose and paid to the Corporation;
- (b) rights, interests, and assets of the Government vested in the Corporation by section 23 of this Act;
- (c) all moneys received by the Corporation for goods or services provided under this Act;
- (d) moneys derived from the sale of, or dealing with property vested in or acquired by the Corporation;
- (e) moneys derived as income from investment by the Corporation;
- (f) all moneys borrowed by the Corporation under this Act;
- (g) moneys paid to the Corporation by way of grants, subsidies, donations, loan, rent and repayment of principal or interest;
- (h) accumulations of income derived from any money or property of the Corporation; and
- (i) any other moneys and any property lawfully received by, or made available to, the Corporation under and for the purposes of this Act.

### **23 Vesting of Government assets etc in Corporation**

At the commencement of this Act, the rights, interests, assets and liabilities of the Government formerly managed by the Telecommunications Authority shall be transferred to and vested in the Corporation.

### **24 Conduct of business on commercial principles**

The Corporation shall conduct its business in accordance with prudent commercial principles and shall ensure as far as possible that its revenue is sufficient both to meet its expenditure properly chargeable to revenue and to derive a profit.

### **25 Profits**

- (1) The net profits of the Corporation in any financial year shall be determined by the Board after allowing for the expenses of operation during that year and making such provisions for depreciation, repayment of any advances, a credit to the reserve fund under subsection (1) of section 26 of this Act, and such contingencies and other purposes as are usually made by telecommunication authorities.
- (2) The net profits of the Corporation in any financial year shall be allocated as the Board, with the approval of the Minister, determines.

**26 Reserve fund**

- (1) The Corporation shall have a reserve fund which shall consist of such sums as are placed to the credit of the reserve fund as the Board, with the approval of the Minister, determines.
- (2) There may be transferred from time to time from the reserve fund to the working capital of the Corporation such sums as the Board, with the approval of the Minister, determines.

**27 Financial year**

- (1) The financial year of the Corporation shall end on 31st December in each year.
- (2) The Minister may amend subsection (1) of this section by order.

**28 Estimates**

- (1) For each financial year the Board shall prepare and submit to the Minister for approval, not later than the end of November of that year or by such other date as the Minister directs, estimates of the income and expenditure of the Corporation, including its capital budget, for the coming financial year and for any longer period required by the Minister.
- (2) The Board shall cause to be kept all proper books and records of account of income, expenditure, assets and liabilities of the Corporation.

**29 Annual reports and accounts etc<sup>6</sup>**

- (1) The Board shall as soon as practicable after the end of each financial year and in any event not later than six months from the end of the financial year, prepare —
  - (a) a report on the operations of the Corporation during that year; and
  - (b) accounts and financial statements, in the appropriate forms, in respect of that year.
- (2) The report prepared under subsection (1) shall —
  - (a) include details of the financial performance and effectiveness of the Corporation as judged by performance measures that are relevant to the telecommunications industry in Tuvalu and are prescribed by the Minister by notice; and
  - (b) be submitted to the Minister as soon as practicable after it is prepared.
- (3) The initial performance measures referred to in paragraph (2)(a) shall be prescribed by the Minister by notice no later than 31 August, 1996.



**29A Corporate Plans<sup>7</sup>**

- (1) The Board shall prepare corporate plans.
- (2) The first corporate plan —
  - (a) shall be for a period of not less than 3 years and not more than 5 years; and
  - (b) shall be prepared and submitted to the Minister no later than 30 September, 1996.
- (3) Each subsequent corporate plan shall be for a period of not less than 3 years and not more than 5 years, beginning immediately after the period of the previous corporate plan.
- (4) The Board may review and revise a corporate plan at any time.

**29B Contents of Corporate Plans<sup>8</sup>**

Each corporate plan prepared under section 29A shall —

- (a) set out the objectives of the Corporation;
- (b) outline the overall strategies and policies that the Corporation will follow to achieve its objectives and discharge its functions;
- (c) include a forecast of the revenue and expenditure of the Corporation, including capital expenditure;
- (d) include such performance indicators and targets as the Board considers appropriate;
- (e) summarise aid-funded assistance received and planned; and
- (f) include such other matters as may be prescribed by the Minister.

**29C Presentation of Corporate Plans to Minister<sup>9</sup>**

- (1) As soon as practicable after the Board prepares or revises a corporate plan it shall submit a copy of the corporate plan to the Minister.
- (2) Not later than 90 days after receipt of a corporate plan the Minister may direct the Board to review and revise the corporate plan in accordance with government policies and priorities as communicated by the Minister to the Board.

**29D Notification of certain matters<sup>10</sup>**

If the Board forms the opinion that matters have arisen which may —

- (a) prevent, or significantly affect, the achievement of the objectives in a corporate plan;

- (b) significantly affect the strategies and policies that are to be followed under the corporate plan; or
- (c) prevent or significantly affect the forecasts of revenue and expenditure under a corporate plan,

the Board must immediately notify the Minister of its opinion and of the reasons for that opinion.

### **30 Audit**

- (1) The Auditor-General shall inspect and audit and report at least once in every financial year to Parliament on the accounts finances and property of the Corporation.
- (2) The Auditor-General shall satisfy himself that —
  - (a) the accounts of the Corporation have been properly prepared in accordance with generally accepted international accounting principles taking into consideration the requirement for good stewardship and developing practices with respect to the reporting of public finances; and
  - (b) that expenditure has been incurred with due regard to economy and the avoidance of waste.
- (3) The Auditor-General, in his report as required by subsection (1) of this section, shall state —
  - (a) whether the accounts and statements have been properly prepared in accordance with the books and records of the Corporation and give a true view of the financial operations and the current financial position of the Corporation;
  - (b) whether the books and records of the Corporation have been properly kept and contain information adequate for the purposes of the audit;
  - (c) whether the financial affairs of the Corporation have been properly conducted; and
  - (d) all other matters arising out of the accounts and statements which he considers should be made known to Parliament.

### **31 Grants, loans, subsidy**

The Corporation may request the Government to make subsidy grants, loans or to agree to a subsidy scheme for the purposes of —

- (a) establishing, developing, working and maintaining any telecommunication systems in the outer islands of Tuvalu and in areas where the provision of such service would be uneconomical; and

- (b) defraying or contributing towards any expenses or losses incurred by the Corporation in matters covered under the preceding paragraph.

### **32 Difficulties and uncertainties in operation**

- (1) If it appears to the Minister expedient for the purpose of removing any difficulties or uncertainties arising out of the operation of the Corporation, the Minister may —
  - (a) request the Government to take suitable measures including the appropriation of funds by Parliament for the purposes of the Corporation to enable the Corporation resolve its difficulties or uncertainties; or
  - (b) by order, direct that all of the Corporation's property of whatever description and kind as may be specified in the order shall from an appointed day vest, or as the case may be, be deemed to have vested in the Government and the Government shall from the appointed day be responsible for the carrying out of the functions of the Corporation and exercise its powers as specified in this Act.
- (2) The vesting of the property of the Corporation in the Government under paragraph (b) of subsection (1) of this section shall not extinguish any claims, rights and liabilities of the Corporation against or to any person or of any person against or to the Corporation.

## **PART V - OFFENCES AND PENALTIES**

### **33 Offences and penalties**

Any person who —

- (a) dishonestly obtains a service provided by a means of a telecommunication system with intent to avoid payment of any charge applicable to the provision of that service;
- (b) sends by means of a telecommunication system, a message or other matter that is grossly offensive or of an indecent, obscene or menacing character;
- (c) sends by means of a telecommunication system, a message that that person knows to be false, for the purpose of causing annoyance, inconvenience or needless anxiety to another;
- (d) intentionally modifies or interferes with the content of a message sent by means of a telecommunication system;
- (e) intentionally intercepts a message sent by means of a telecommunication system;

- (f) intentionally discloses the content of a message intercepted in accordance with paragraph (e) above;
- (g) for whatever purpose, damages, removes, tampers with, touches or interferes with any telecommunication apparatus or telecommunication line being part of or used in or about any telecommunication system;
- (h) wilfully obstructs a telecommunication operator and other employees of the Corporation in the performance of their duties;
- (i) alters any message received by that person for transmission or delivery;
- (j) impedes or delays the correct transmission or the delivery of any message through drunkenness, carelessness or other misconduct;
- (k) fraudulently retains or detains a message which ought to have been delivered to some other person or neglects or refuses to deliver up any such message;
- (l) with intent to deceive forges or alters a message;
- (m) assists the working of an unlicensed radio communication station or telecommunication system;
- (n) contravenes the provision of subsection (1) of section 6 of this Act,

shall be guilty of an offence and shall be liable to imprisonment for two years or to a fine of \$1,000.

### **34 Compensation**

Where a person is convicted of an offence under the preceding section the court may, in addition to any penalty which may be imposed, order that person to pay full compensation for any damage that the person had done, and that order may be enforced as if it were a judgment in a civil action or suit.

## **PART VI - MISCELLANEOUS**

### **35 Repeal of Cap 100**

- (1) The Telecommunications Act is repealed.
- (2) Regulations made under the Telecommunications Act now repealed shall continue to be in force as if they were made under this Act, until substituted by new Regulations made by the Minister under section 38 of this Act.

### **36 Public emergency**

If at any time a period of public emergency is declared by the Head of State under subsection (1) of section 35 of the Constitution and it appears to the Minister that the

Government should have control over the transmission and reception of messages, the Minister may, during the continuance of the emergency, make such orders as may appear desirable with respect to the possession, sale, purchase, construction and use of any telecommunication installation in Tuvalu.

### **37 Corporation not liable**

- (1) No liability shall be incurred by the Corporation in respect of any action or demand which may be brought or made by any person in consequence of any damage arising from anything done by the holder of any licence granted under subsection (2) of section 6 of this Act or by the licensee's agent.
- (2) No claim or demand shall arise by reason of anything lawfully done by the Corporation and the Minister or any person authorised in their behalf in carrying out the provisions of this Act.
- (3) No claim or demand against the Corporation shall arise by reason of any error in or omission from any message, or delay in the transmission of any message or for any delay in the delivery or for the non-delivery of any message or omission to send or receive any message from whatever cause the error, omission, delay or non-delivery shall arise:

Provided that the omission, delay or non-delivery was caused by factors beyond the control of the Corporation or that the Corporation through its employees had taken all reasonable steps under the circumstances or that the Corporation and any person acting under its power and direction is not guilty of carelessness or other misconduct.

### **38 Regulations**

- (1) The Minister may make regulations, not inconsistent with this Act, prescribing all matters, whether general or to meet particular cases, which are required or permitted to be prescribed, or which are necessary or convenient for carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1) of this section, regulations may be made for or in respect of all or any of the following purposes, matters and things —
  - (a) the running of telecommunication systems;
  - (b) the secrecy of telecommunications;
  - (c) the provision of telecommunication services, in particular the manner in which such services shall be offered and performed, and the payment of necessary fees;
  - (d) the period during which and the conditions subject to which messages and papers relating thereto, shall be preserved;

- (e) the licensing and fees of dealers in telecommunication apparatus and the sale, transfer or use of telecommunication apparatus;
- (f) the conduct of examinations for telecommunication operators, the content thereof and the issue of certificates of competence;
- (g) the issue, variation and withdrawal of approvals in respect of radio communication stations and apparatus for connection to any telecommunication system licensed under this Act;
- (h) the issue, variation and withdrawal of approvals in respect of contractors for relevant operations in connection with any telecommunication system;
- (i) the issue, suspension and revocation of authorities to fill positions in respect of radio communications;
- (j) fees and other charges for any matter permitted or matters required to be done by the Minister or by a person acting on the Minister's behalf;
- (k) the form of any licence, notice, approval, certificate, authority or other written document required or permitted to be issued by or to the Minister or any person acting on the Minister's behalf under this Act;
- (l) the conditions under which telecommunication apparatus may be worked in Tuvalu and in vessels and aircrafts;
- (m) the periods during which telecommunication apparatus may not be worked;
- (n) the control of electrical interference in relation to the working of apparatus;
- (o) the fees to be paid for licences;
- (p) the duties of a radio operator;
- (q) the control, management and conditions to govern the supply of telephone services;
- (r) the fees payable for the supply of telephone services to the consumers; and
- (s) generally for matters related or connected with matters and things specified in paragraphs (a) to (r) of this subsection.

**ENDNOTES**

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<sup>1</sup> Act 4 of 1993

Amended by Act 2 of 1996, commencement 15 April 1996, (by Act 4 of 2009)

Amended by Act 4 of 2008 in force 26 August 2008 vide LN 8/2008

<sup>2</sup> LN 2/1994

<sup>3</sup> By LN 6/2003 the Tuvalu Media Corporation was excluded from the application of the Act for the purposes of providing television services

<sup>4</sup> Substituted by Act 4 of 2008

<sup>5</sup> Amended by Act 2 of 1996

<sup>6</sup> Amended by Act 2 of 1996

<sup>7</sup> Inserted by Act 2 of 1996

<sup>8</sup> Inserted by Act 2 of 1996

<sup>9</sup> Inserted by Act 2 of 1996

<sup>10</sup> Inserted by Act 2 of 1996