

COMMUNICATIONS ACT 1989

1989/131 – June 1989

| | | |
|----|--|---------------------------------|
| 1 | Short title | |
| | PART 1 TELECOMMUNICATIONS | PART 2 POSTAL SERVICES |
| 2 | Objectives and obligations | 19 |
| 3 | Interpretation | 20 |
| 4 | Control of transmission installations | 21 |
| 5 | Control of reception installations | 22 |
| 6 | Public communications service licence | 23 |
| 7 | Private communications service licence | 24 |
| 8 | Radio communications licence | 25 |
| 9 | Grant of public communications service licences | 26 |
| 10 | Grant of private communications service licences and radio communications licences | 27 |
| 11 | Schedule of transmission and reception installations | 28 |
| 12 | Programmes of public communications service | 29 |
| 13 | Programme Advisory Committee | 30 |
| 14 | Power of Cabinet to require certain transmissions | |
| 15 | Forefeiture | PART 3 ELECTRONIC ADDRESSING |
| 16 | Director may give directions | 30A |
| 17 | Exemptions | 30B |
| 18 | Regulations (Part 1) | 30C |
| | | 30D |
| | | 30E |
| | | 30F |
| | | PART 4 REPEAL AND SAVINGS |
| | | 31-32 [Spent] |

To make provisions in respect of communications within Niue and between Niue and elsewhere

| | | |
|---|---|--|
| 1 | <p>Short title This is the Communications Act 1989.</p> | |
| | PART 1 TELECOMMUNICATIONS | |
| 2 | <p>Objectives and obligations (1) In the administration of this Part the Cabinet and the Director shall have regard to the objectives of –</p> | |

- (a) Facilitating the development of communications both within Niue and between Niue and elsewhere;
- (b) Providing within Niue public communications services of a kind and quality appropriate to the social, cultural, educational and economic needs of Niue;
- (c) Ensuring that effective means exist to control and supervise the programmes transmitted by any public communications service within Niue so that they benefit the Niuean community; and
- (d) Providing the people of Niue with a reliable and efficient telephone service at a reasonable cost.

(2) In the administration of this Part the Cabinet and the Director shall, so far as practicable, act in accordance with any applicable standards, rules and regulations set by international agreements binding upon Niue.

3 Interpretation

In this Part –

“Cabinet” includes any person authorised by the Cabinet to exercise a power of the Cabinet under this Part;

“Director” means the person for the time being carrying out the duties of the head of the Telecommunications Department of the Government;

“operate”, in respect of any transmission or reception installation, does not include the operation of an ordinary telephone handset;

“radiocommunications transmitter” means a transmission installation designed to transmit electromagnetic energy without continuous artificial guide;

“radiocommunications receiver” means a reception installation designed to receive electromagnetic energy without continuous artificial guide;

“reception”, in respect of a reception installation, includes interception;

“reception installation” –

- (a) Means an apparatus designed to receive by means of electric or electromagnetic energy either with or without –
 - (i) sounds (including speech and music);
 - (ii) visual images;
 - (iii) any other signals for the purpose of communications, or for the actuation or control of machinery or apparatus; but
- (b) does not include an installation designed solely to receive signals intended for direct reception by the general public;

“transmission installation” –

- (a) Means an apparatus designed to transmit, by means of electric or electromagnetic, either with or without artificial guide –
 - (i) sounds (including speech and music);
 - (ii) visual images;
 - (iii) any other signals for the purpose of communications, or for the actuation or control of machinery or apparatus; but
 - (i) does not include an installation which –
 - (I) is not a radiocommunication transmitter;
 - (II) is confined within a single property boundary; and
 - (III) is not connected to the Niue telephone system; or
 - (ii) an aerial and lines which are not used except to receive a signal intended for direct reception by the general public and to distribute that signal free of charge without alteration.

4 Control of transmission installations

(1) Subject to subsection (2), a person shall not operate a transmission installation unless authorised to do so by the licence granted under this Part.

(2) Subsection (1) does not apply to –

- (a) A person acting on behalf of the Government in accordance with general or specific authorisation given by the Cabinet or by a person authorised by the Cabinet to give that authorisation;
- (b) A member of the crew of a foreign registered vessel or aircraft operating a transmission installation on board the vessel or aircraft under any directions of the Director; or
- (c) A person operating a transmission installation in circumstances where that person reasonably believes it necessary to do so because an emergency exists.

(3) A person who operates a transmission installation contrary to the provisions of this Part or contrary to the provisions of any licence granted under this Part is guilty of an offence and is liable on conviction to a fine not exceeding 2 penalty units or to imprisonment for a term not exceeding 3 months, or to both such fine and imprisonment.

5 Control of reception installations

(1) Subject to subsection (2), a person shall not operate a reception installation with intent to receive signals (other than signals intended for direct reception by the general public) emanating from outside Niue unless authorised to do so by a licence granted under this Part.

(2) Subsection (1) does not apply in relation to a person acting on behalf of the Government under a general or specific authorisation given by the Cabinet or by a person authorised by the Cabinet to give that authorisation.

(3) A person who operates a reception installation contrary to this Part or contrary to the provisions of any licence granted under this Part is guilty of an offence and is liable on conviction to a fine not exceeding 1 penalty unit or to imprisonment for a term not exceeding 3 months, or to both such fine and imprisonment.

6 Public communications service licence

(1) A public communications service licence authorises the licensee to operate a service the primary purpose of which is the transmission of sound or visual images, or both, for direct reception by the general public.

(2) Where –

- (a) A member of the general public is not entitled to receive sound or a visual image except upon payment of a fee to a licensee; or
- (b) Sound or a visual image is transmitted in an encoded form,

that fact shall not, by itself, be taken to indicate that the sound or visual image was not intended for direct reception by the general public.

7 Private communications service licence

A private communications service licence authorises the licensee to operate a service, the primary purpose of which is the transmission of sound or visual images, or both, and the direct reception of those sound or visual images, or both, by persons within a specified group of persons (other than the general public).

8 Radiocommunications licence

A radiocommunications licence authorises a person to operate one or more of the following, namely –

- (a) A radiocommunications transmitter;
- (b) A radiocommunications receiver;
- (c) A radiocommunications transceiver.

9 Grant of public communications service licences

(1) The Cabinet may grant public communications service licences.

(2) The Cabinet may grant a licence under subsection (1) for any period not exceeding 5 years and may renew such a licence for further periods each not exceeding 5 years.

(3) A licence granted under subsection (1) is subject to such conditions as are specified in it.

(4) The Cabinet may revoke, or vary any condition specified in a licence granted under subsection (1) and may make such a licence subject to additional conditions.

(5) The Cabinet may refuse to renew a licence granted under subsection (1) or may revoke such a licence if, in its opinion, the licensee –

- (a) Has failed to comply with any condition of the licence or with any law relating to the operation of the transmission installation; or
- (b) Is no longer a suitable person to hold the licence or no longer has the financial, technical or management capability to provide a service appropriate to the general public of Niue.

(6) The Cabinet may either generally or in any particular case authorise another person to exercise all or any of its powers under this section.

10 Grant of private communications service licences and radiocommunications licence

(1) The Director may grant –

- (a) Private communications service licences; and
- (b) Radiocommunication licences.

(2) The Director may refuse to grant a licence under subsection (1) if, in his opinion –

- (a) The applicant has insufficient training to operate the relevant transmission or reception installation; or
- (b) In the case of a private communications service licence, any person within the specified group of persons referred to in section 7 has insufficient training to operate the relevant transmission or reception installation.

(3) The Director may grant a licence under subsection (1) for a period of 1 year and may renew such a licence for further periods of 1 year.

(4) A licence granted under subsection (1) is subject to such conditions as are specified in it.

(5) The Director may revoke or vary any condition specified in a licence granted under subsection (1) and may make such a licence subject to additional conditions.

(6) The Director may refuse to renew a licence granted under subsection (1) or may, at any time, revoke such a licence if, in his opinion, the licensee has failed to comply with any condition of the licence or with any provision of this or any other law relating to the operation of the transmission or reception installation.

(7) The Cabinet may, within 28 days of the Director taking any action under this section, review that action.

(8) Where the Cabinet, after reviewing any action of the Director, decides that no action or different action should have been taken, the decision shall have effect and the action of the Director shall cease to have effect.

11 Schedule of transmission and reception installations

(1) Before a public or private communications service licence is issued, the Director shall prepare a schedule for the licence setting out the specifications of all the transmission or reception installations to be used to provide the service authorised by the licence.

(2) A public or private communications service licence authorises the licensee to operate transmission or reception installations complying with the specifications set out in the schedule to the licence for the purpose of the service authorised by the licence but for no other purpose.

(3) The Director may, after giving the licensee reasonable notice of his intention to do so, vary a schedule to a public or private communications service licence.

12 Programmes of public communications service

(1) The licensee under a public communications service licence –
(a) Shall not transmit any advertisement unless authorised to do so in writing by the Cabinet; and

(b) Shall comply with any programme guidelines issued by the Programme Advisory Committee established under section 13.

(2) For the purpose of subsection (1) “advertisement” does not include –

(a) A community announcement; or

(b) Programme promotion,

transmitted without charge.

13 Programme Advisory Committee

(1) There is established by this Act a Programme Advisory Committee consisting of not less than 3 members nor more than 6 members appointed by the Cabinet.

(2) The Programme Advisory Committee shall –

(a) Advise licensees under public communications services licences on all aspects of the services authorised by their licences, including the nature and diversity of their programmes, the suitability of programmes for Niue, the hours of transmission of the services, and the amount of any fee which may be charged for the reception of the services; and

(b) In consultation with licensees under public communications service licences, prepare and subsequently publish a set of programme guidelines for public communication services.

(3) Programme guidelines may, in addition to other matters, include guidelines in respect of –

(a) Material offensive to community standards of behaviour in Niue;

(b) The depiction of sexual activities, violence and the use of drugs;

(c) The amount of times to be assigned for educational, informational and religious programmes; and

(d) The classification of programmes as suitable for transmission at various times of the day.

(4) For the purposes of subsection (3) (a) and (b), the Programme Advisory Committee may in consultation with the Censor of Films appointed under the Film and Public Entertainment Act 1979, apply the same guidelines as those applied by the Censor of Films.

(5) Where the Cabinet has authorised the transmission of advertisements, programme guidelines may also include guidelines in respect of –

- (a) The content of advertisements;
- (b) The products which may or may not be advertised; and
- (c) The amount of transmission time allocated to the transmission of advertisements.

14 Power of Cabinet to require certain transmissions

(1) When required to do so by the Cabinet, the licensee under a public communications service licence shall make the service available to transmit any programme or other matter the Cabinet considers to be in the national interest.

(2) A licensee shall not be obliged to make his service available under subsection (1) for more than 3 hours in any period of 24 hours.

(3) During any period of national emergency proclaimed under section 2 of the Public Emergency Act 1979 –

- (a) The limitation referred to in subsection (2) shall not apply; and
- (b) The licensee under any public or private communications service licence or radiocommunications licence shall make the service or his radiocommunications transmitter, as the case may be, available to authorised officers of the Government to transmit such matter as the Cabinet considers necessary.

(4) The power of the Cabinet under subsection (1) does not include power to require a licensee to transmit any programme or other matter that could reasonably be interpreted as promoting or opposing –

- (a) The election of a candidate as a member of the Assembly; or
- (b) A particular point of view in relation to an issue or matter that is being submitted to the electorate in an election of members of the Assembly.

15 Forfeiture

(1) Where a person is convicted of an offence under this Part the court may order that any transmission or reception installation used in connection with that offence be forfeited to the Government.

(2) Any transmission or reception installation forfeited to the Government under subsection (1) becomes the property of the Government which may retain the installation or dispose of it in such manner as it thinks fit.

16 Director may give directions

(1) Subject to compliance with any direction given to him by the Cabinet, the Director may give a person directions in respect of all or any of the following, namely –

- (a) The technical standards and requirements of any transmission or reception installation;
- (b) The frequencies, power and location of any radiocommunication equipment;
- (c) The location of any line, pole or associated equipment used in connection with the provisions of a public or private communications service, and situated outside land owned or occupied by the licensee.

(2) A person who fails to comply with a direction given to him under subsection (1) is guilty of an offence and is liable on conviction to a fine not exceeding 0.5 penalty units.

17 Exemptions

(1) Subject to subsection (2), the Director may exempt a reception or transmission installation or reception or transmission installation within a specified class of reception or transmission installation from all or any of the provisions of this Part.

(2) Subsection (1) does not apply to or in respect of any transmission installation used for or in connection with the transmission of sound or visual images, or both, intended for direct reception by the general public.

18 Regulations (Part 1)

The Cabinet may make regulations for carrying out this Part and without in any way limiting the generality of the foregoing such regulation may provide for –

- (a) The charges which may be levied for services provided by the Government;
- (b) The fees which may be charged for the grant or renewal of a licence under this Part;
- (c) Periodic fees which may be payable in respect of a licence under this Part;
- (d) The prevention of harmful interference with any transmission installation or any signals transmitted to, from, or within Niue;
- (e) The conditions upon which persons may subscribe to the Niue telephone system;
- (f) The conditions upon which any private communication service may be connected to the Niue telephone system; and
- (g) Penalties, not exceeding 1 penalty unit for any breach of the regulations.

PART 2 POSTAL SERVICES

19 Obligation

In the administration of this Part the Cabinet, the Niue Post Office and the Postmaster shall, so far as practicable, act under any applicable standards, rules and regulations set by international agreements binding upon Niue.

20 Interpretation

In this Part –

“Niue Post Office” means that Department of Government established to conduct postal services both within Niue and between Niue and elsewhere and includes –

- (a) The officers and employees of that Department;
- (b) Any person authorised by the Postmaster to collect or deliver postal articles for fee or commission on behalf of the Niue Post Office; and
- (c) Any casual or contract staff of the Niue Post Office;

“postal article” means any article transmissible by post, including a letter, postcard, packet or package, or a telegram which is to be conveyed or otherwise dealt with in the manner of a posted letter;

“Postmaster” means the person for the time being carrying out the duties of the office in the public service having the designation Postmaster.

21 Control on carriage of postal articles

(1) Subject to subsection (2), a person commits an offence if he carries or conveys or causes to be carried or conveyed a postal article for reward.

(2) Subsection (1) does not apply –

(a) To the Niue Post Office; or

(b) To a person acting under an agreement with the Niue Government or the Niue Post Office for the carriage of postal articles within Niue or between Niue or elsewhere.

22 Control of creation of postage stamps

(1) Subject to subsection (2), a person is guilty of an offence if he creates a Niue postage stamp.

(2) Subsection (1) does not apply in relation to –

(a) The Niue Post Office; or

(b) A person acting with and under the authorisation of the Cabinet.

23 Stealing postal articles

A person is guilty of an offence if he steals a postal article in the possession of the Niue Post Office.

24 Delay and interference with postal articles

(1) A person is guilty of an offence if he unlawfully opens a postal article in the possession of the Niue Post Office.

(2) An officer, employee or person acting on behalf of the Niue Post Office is guilty of an offence if, contrary to his duty, he –

(a) Opens or procures or suffers to be opened a postal article in the possession of the Niue Post Office; or

(b) Wilfully delays or detains a postal article in the possession of the Niue Post office or procures or suffers such a postal article to be delayed or detained.

(3) A person who receives from the Niue Post Office a postal article not intended for him is guilty of an offence if he wilfully opens, keeps, detains or destroys the postal article.

25 Divulging contents of postal articles

(1) Subject to subsection (2), an officer, employee or person acting on behalf of the Niue Post Office is guilty of an offence if he divulges to another person information from, or as to the contents of, a postal article that is or was in the possession of the Niue Post Office and that came to his knowledge in the course of his duty.

(2) Subsection (1) does not apply in respect of information an officer, employee or person is lawfully entitled or obliged to divulge.

26 Prohibited material

(1) A person is guilty of an offence if he posts a postal article knowing it to contain a prohibited material.

(2) For the purpose of subsection (1) “prohibited material” means –

(a) Explosive, dangerous or destructive substances or fluids;

(b) Noxious animals and other things;

(c) Indecent or obscene writings, pictures or articles;

(d) Sharp articles, fluids or other injurious thing when not properly packed.

27 Penalties

A person convicted of an offence under this Part is liable on conviction –

- (a) In the case of an offence under section 22 to a fine not exceeding 10 penalty units or to imprisonment for a term not exceeding 12 months or to both such fine and imprisonment;
- (b) In the case of an offence under sections 21, 23, 24 of 25 to a fine not exceeding 2 penalty units or to imprisonment for a term not exceeding 6 months or to both such fine and imprisonment; and
- (c) In the case of an offence under section 26 to a fine not exceeding 2 penalty units.

28 Lawful opening of postal articles

(1) The Postmaster may, when authorised to do so by the Cabinet, detain and open a postal article in the possession of the Niue Post Office which he reasonably believes to contain prohibited material as defined in section 26 (2).

(2) The Postmaster shall not open a postal article under subsection (1) unless he has given the sender and intended recipient of the article notice of his intention to open the article and a reasonable opportunity to be present when he does so.

(3) Subsection (2) does not apply in relation to as sender or intended recipient of a postal article who is not in Niue.

(4) If a postal article opened under this section is found to contain prohibited material the Postmaster may destroy the article or direct that it be forfeited to the Government, or direct that the article be returned to its sender.

(5) A person is not entitled to compensation in respect of any damage suffered by him as the result of the opening of a postal article under this section.

29 Insufficient postage

(1) The Niue Post Office may refuse to carry a postal article in respect of which insufficient postage has been paid.

(2) The Niue Post Office may refuse to deliver a postal article in respect of which insufficient postage has been paid except upon payment of any prescribed surcharge.

30 Regulations

(1) The Cabinet may make regulations for carrying out this Part and without in any way limiting the generality of the foregoing such regulations may provide –

- (a) For the prescription of fees for the carriage of postal articles; and
- (b) Penalties, not exceeding 1 penalty unit, for any breach of the regulations.

(2) Regulations made for the purposes specified in subsection (1) may be made by reference to regulations either as in force on a specified date or as in force in New Zealand and either with or without amendments of those regulations.

PART 3

ELECTRONIC ADDRESSING

30A Interpretation

In this Part –

“NITC” means the Niue Information Technology Committee;

“ccTLD” means country code Top Level Domain;

“.nu” means the ccTLD two letter code designated and applying to Niue;

“electronic addressing” means the use of any scheme for organising, distributing or assigning any type of symbolic reference, name, address, code which is pertinent to the transfer of information within and between information systems. Including but not exclusive to internet addressing schemes including those referred to by the ISO 3166;

“ISO 3166” means Standard 3166 of the International Organisation for Standardisation.

30B Objectives and obligations

(1) In the administration of this Part, Cabinet shall have regard to the objectives of –

- (a) Facilitating the development of Information Technology and electronic addressing both within Niue, between Niue and elsewhere;
- (b) The recognition that the ccTLD .nu is a National resource for which the prime authority is the Government of Niue;
- (c) Ensuring that effective means exist to control and supervise the information transmitted or made available by any appointed Manager of the Niue ccTLD.nu;
- (d) Ensure that the ccTLD .nu is managed consistent with the interests and matters of public importance of the Niuean community and consistent with the public policy objectives of the Government.

(2) In the administration of this Part the Cabinet shall, so far as practicable, act under any applicable standards, rules and regulations set by international agreements binding upon Niue.

30C Niue Information Technology Committee

(1) There is established by this Act the NITC consisting of not less than 3 members nor more than 6 members appointed by the Cabinet.

(2) The NITC shall be the only designated Registry Manager of the Niue ccTLD .nu.

(3) The NITC shall –

- (a) Advise Cabinet on all matters related to and associated with Information Technology and the management of the ccTLD .nu;
- (b) Be responsible for establishing and monitoring any and all contractual relationships entered into relating to the management of the ccTLD .nu;
- (c) When and where appropriate appoint technical and administrative advisors.

30D Appointed Manager/s of electronic addressing

(1) Cabinet on the advice of the NITC determine for the purposes of this Part, a specified person or association as an appointed manager of electronic addressing in relation to a specified kind of listed carriage services utilizing the ccTLD .nu.

(2) The appointment has effect accordingly.

(3) Cabinet must not make a re-appointment under subsection (1) in relation to a particular person or association unless –

- (a) The NITC recommends Cabinet to do so;
- (b) The NITC is of the opinion that the person or association is managing electronic addressing in accordance with the interests, principles and standards of the Niuean community and the public policy of the Government.

(4) The Cabinet may give written directions to the NITC in relation to its advisory role.

30E Cabinet may give directions to the Appointed Manager of electronic addressing

(1) The Cabinet may, by written notice given to an Appointed Manager of electronic addressing in relation to a particular kind of carriage service, directing manager to do, or refrain from doing, a specified act or thing relating to electronic addressing in connection with that kind of carriage service utilising the ccTLD .nu.

(2) The Cabinet may not give a direction under this section unless, in the opinion of the Cabinet, the issues pertaining to the electronic addressing is of public importance to the Niuean community.

(3) In determining whether the electronic addressing is of public importance the Cabinet must have regard to the extent to which the addressing is of significant social and/or economic importance to –

- (a) Service providers; and
- (b) End-users of carriage services.

(4) Subsection (3) does not, by implication, limit the matters to which Cabinet may have regard.

(5) Before giving a direction under this section, the Cabinet must consult the NITC.

(6) A person must comply with a direction under this section.

(7) A person or association who intentionally or recklessly contravenes subsection (6) is guilty of an offence punishable on conviction by a fine not exceeding US 5,000,000.

30F Delegation of powers

Cabinet may delegate all or part of its powers vested under this Act to the NITC.

PART 4
REPEAL AND SAVINGS

21-22 [Spent]