

Broadcasting Act 1989

COOK ISLANDS

BROADCASTING ACT 1989

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1989, No. 28

An Act to establish a Cook Islands Broadcasting Corporation and to define its functions and powers

(22 December 1989)

BE IT ENACTED by the Parliament of the Cook Islands in session assembled, and by the authority of the same, as follows:

PART I
PRELIMINARY

1. Short Title and commencement - (1) This Act may be cited as the Broadcasting Act 1989.

(2) This Act shall come into force on a day to be appointed by the Minister and notified by publication in the Gazette.

2. Interpretation - (1) In this Act, unless the contrary intention appears -

"advertisement" means any programme which draws the attention of the public, or a segment thereof, to a product, service, person, organisation or line of conduct in a manner which appears to be calculated to promote or oppose, directly or indirectly, that product, service, person, organisation or line of conduct;

"board" means the board of directors of the corporation appointed pursuant to section 11;

"broadcasting" means the transmission of sound or visual images intended for direct reception by the general public;

"broadcast licence" means either a radio or a television broadcasting licence granted under section 27 of this Act.

"community announcement" means an announcement relating to a community event or activity, or to public health or education;

"Corporation" means the Cook Islands Broadcasting Corporation established pursuant to Section 6 of this Act;

"election" means a general election of a member or members of Parliament and includes a by-election;

"encoding", or "encoded form" means the transmission of matter in a form whereby the signal is intentionally modified before transmission so that an ordinary domestic television receiver capable of receiving the relevant transmission frequency cannot render the transmission into an intelligible form without the use of a device specifically designed for that purpose;

"licensee" means the holder of a broadcasting license issued pursuant to this Act;

"Minister" means the Prime Minister or such other Minister as the Prime Minister may from time to time pursuant to the Constitution charge with the responsibility of administering this Act;

"programme" means any matter transmitted as part of a television service or radio service including an advertisement;

"radio-service" means - a service which primarily consists of the transmission of sound for direct reception by the general public;

"reception installation" means an apparatus designed to receive transmissions, by means of electric or electro-magnetic energy, either with or without artificial guide, consisting of sounds (including speech and music) and visual images, but does not include any apparatus designed solely to receive transmissions intended for direct reception by the general public;

"satellite" means an apparatus placed in geostationary orbit relative to the earth of the reception and re-transmission of electro-magnetic energy, either with or without artificial guide, consisting of sounds (including speech and music) and visual images, but does not include any apparatus designed solely to receive transmissions intended for direct reception by the general public;

"television service" means a service which primarily consists of the transmission of sound and visual images intended for direct reception by the general public;

"temporary permit" means a permit granted under section 32;

"transmission installation" means an apparatus designed to transmit sounds (including speech and music) or visual images, by means of electric or electromagnetic energy, either with or without artificial guide, but does not include any apparatus which transmits sounds or visual images only within a single property boundary and only by means of a continuous artificial guide.

3. Act to bind the Crown - This Act shall bind the Crown.

4. Prohibition on provision of television or radio service - No person other than the Corporation shall operate a transmission installation for the purpose of providing:

(a) A television service; or

(b) A radio service except as authorised by a radio broadcast licence or a temporary permit.

5. Prohibition on re-transmission of satellite signals - (1) The holder of a television licence shall not retransmit television signals transmitted by a satellite except as authorised by the licence.

(2) The Corporation shall not re-transmit television signals transmitted by a satellite except as authorised in writing by the Minister.

PART II COOK ISLANDS BROADCASTING CORPORATION

6. Cook islands Broadcasting Corporation - (1) There is hereby established the Cook Islands

Broadcasting Corporation.

(2) The Corporation -

- (a) shall be a body corporate, with perpetual succession;
- (b) shall have a common seal; and
- (c) may sue and be sued under its corporate name.

(3) The common seal of the Corporation shall be judicially noticed in all courts and for all purposes.

7. Functions and powers of the Corporation - (1) The functions of the Corporation are to provide a national Radio and Television broadcasting service to the Cook Islands, which -

- (a) services as far as practicable, all the people of the Cook Islands;
- (b) contributes to the development of national unity;
- (c) preserves and stimulates pride in the indigenous and traditional cultural heritage of the Cook Islands; and
- (d) broadcasts a variety of programmes which inform, educate and entertain.

(2) The Corporation shall have power to do all things necessary or convenient to be done in connection with the performance of its functions, and without limiting the generality of the foregoing, shall have the power -

- (a) to enter into contracts;
- (b) to acquire, hold and dispose of real or personal property;
- (c) to occupy, use and control any land or building;
- (d) to erect buildings and structures and carry out works;
- (e) to appoint agents and attorneys, and to act as agents for other persons;
- (f) to engage persons to perform services for the Corporation;
- (g) accept gifts, devises and bequests made to the Corporation, whether on trust or otherwise, and to act as trustee of moneys or other property vested in the corporation on trust; and
- (h) with the prior approval of Cabinet to borrow money whether by overdraft, loan or otherwise and on terms and conditions approved by Cabinet; and
- (i) do anything incidental to any of its powers.

8. Objective of Corporation to be successful business - It shall be an objective of the Corporation to operate as a self-funding operation and, to this end, to be an organisation that exhibits a sense

of social responsibility by having regard to the interests of the community in which it operates and by endeavouring to accommodate or encourage these when able to do so.

9. Broadcasting fees - (1) For the purpose of providing funds to enable it to exercise its powers and functions under this Act, the Corporation may charge fees, to be known as broadcasting fees, in accordance with regulations made under this Act.

(2) Any broadcasting fee that is not paid in accordance with regulations made under this Act may be recovered from the person liable at the suit of the corporation in any Court of competent jurisdiction.

(3) The Corporation may from time to time enter into agreements or arrangements, on such terms and conditions as thinks fit with any person to collect or assist in collecting broadcasting fees.

(4) Where -

(a) a member of the general public is not entitled to receive a television transmission except upon payment of a fee;

(b) the sound or visual image is transmitted in an encoded form,

those facts shall not, by themselves, be taken that the sound and visual images are not, in reception by the general public.

10. Government policy - (1) In the exercise of its functions and powers the Corporation shall have regard to the general policy of the Government in relation to broadcasting as communicated to the Corporation from time to time in writing by the Minister, and shall comply with any directions given by the Minister to the Corporation in writing pursuant to any such policy.

(2) Nothing in sub-section (1) shall authorise the Minister to give a direction in respect of -

(a) a particular programme;

(b) the gathering or presentation of news or the preparation or presentation of current affairs programmes;

(c) contracts for the provision of programmes;

(d) the staffing of the Corporation.

(3) Any direction given by the Minister under subsection (1) shall be included in the Annual Report provided to the Minister pursuant to Section 29.

11. Board of Directors - (1) The Corporation shall be governed by a Chairman, a Deputy Chairman and not less than one but not more than 4 other directors.

(2) It shall be the duty of the Board of Directors -

- (a) to ensure that the functions of the Corporation are performed efficiently with the maximum benefit to the people of the Cook Islands;
- (b) to maintain the independence and integrity of the Corporation;
- (c) to ensure that the gathering and presentation by the Corporation of news and information is accurate and impartial according to the recognised standards of objective journalism; and
- (d) to ensure that the Corporation does not contravene or fail to comply with any of the provisions of this Act or any directions given to the Corporation under Section 10.

12. Appointment and tenure of Directors - (1) The Chairman, Deputy Chairman and other directors, other than the General Manager, shall be appointed in writing by the Minister and shall hold office for a duration not exceeding 2 years as is specified in the instrument of appointment and shall be eligible for re-appointment.

(2) The validity of anything done by, or in relation to, a person purporting to act under subsection (1) shall not be called into question on the ground that the occasion for the appointment had not arisen, that there was a defect or irregularity in or in connection with the appointment, that the appointment had ceased to have effect, or that the occasion for the person to act had not arisen or had ceased.

(3) Any director may at any time be removed from office by the Minister for misbehaviour, physical or mental incapacity, bankruptcy, or neglect of duty proved to the satisfaction of the Minister.

(4) A director may at any time resign his or her office by writing addressed to the Minister.

(5) If any director dies or resigns or is removed from office the Minister may appoint a person to fill that office for the remainder of the term for which the first-mentioned director was appointed.

(6) The powers of the Board shall not be affected by any vacancy in its membership.

13. Meetings of the Board - (1) The Chairman shall convene such meetings of the Board as he considers necessary for the efficient performance of the Board's functions.

(2) Any 2 members of the Board may at any time request the Chairman in writing to convene a special meeting of the Board, and upon receipt of such a request, the Chairman shall convene a meeting.

14. Procedure at meetings - (1) At a meeting of the Board -

- (a) a quorum shall be constituted by a majority of the directors for the time being holding office;

- (b) the Chairman shall preside if he is present;
- (c) in the absence of the Chairman the Deputy Chairman shall preside;
- (d) in the absence of both the Chairman and Deputy Chairman the directors present shall elect one of their number to preside;
- (e) all questions shall be decided by a majority of the votes of the directors present; and
- (f) the director presiding shall have a deliberative vote and in the event of an equality of votes, a casting vote also.

15. Disclosure of interests - (1) A director who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Board.

(2) A disclosure under sub-section (1) shall be recorded in the minutes of the meeting of the Board and the director shall not -

- (a) be present during any deliberation of the Board with respect to that matter; or
- (b) take part in any decision of the Board with respect to that matter.

16. General Manager - (1) There shall be a General Manager of the Corporation who shall be the Chief Executive of the Corporation:

(2) The General Manager shall be appointed by the Board and shall hold office for such period and on such terms and conditions as are determined by the Board.

17. Remuneration - The Chairman, Deputy Chairman, and other directors shall be paid out of the funds of the corporation such remuneration and allowances as are prescribed by Order in Executive Council.

18. Delegation - (1) The Corporation may, either generally or as otherwise provided by the instrument of delegation, by writing under its common seal, delegate to a director, to the General Manager or to an officer or employee of the Corporation, all or any of its powers under this Act other than this power of delegation.

(2) A power so delegated when exercised by the delegate shall for the purposes of this Act deemed to have been exercised by the Corporation.

19. Staff - (1) The Board may employ such officers and employees as it considers necessary for the performance of its functions, on such terms and conditions as it may determine, and may at any time remove any such officer or employee from his office or employment.

20. Funds of the Corporation - The funds of the Corporation shall consist of -

- (a) Such funds as may be appropriated by Parliament for the purposes of the Corporation;
- (b) Broadcasting fees or other monies payable to the Corporation pursuant to regulations made under this Act or pursuant to any other enactment;
- (c) Money lawfully received by the Corporation for the purposes of the Corporation;
- (d) Accumulations of income derived from any such money.

21. Application of moneys - The funds of the Corporation shall be applied only -

- (a) in payment or discharge of the expenses, charges obligations, or liabilities incurred or undertaken by the corporation in or in connection with the performance of its functions or the exercise of its powers;
- (b) in making any other payments that are required by law to be made out of the moneys of the corporation.

22. Bank account - The Corporation shall open and maintain an account with a bank approved by the Minister and shall pay all moneys received by it into that account.

23. Estimates - The Corporation shall prepare estimates, in such form as the Minister directs, of its receipts and expenditure for each year ending on 31 March, and shall submit the estimates so prepared to the Minister not later than such date as the Minister directs.

24. Accounts and records - The Corporation shall cause to be kept proper accounts and records of the transactions and affairs of the Corporation and shall do all things necessary to ensure that all payments are correctly made and properly authorised and that adequate control is maintained over the assets of or in the custody of the Corporation and over the incurring of liabilities by the corporation.

25. Audit - The accounts and records of financial transactions of the Corporation shall be audited annually by auditors appointed pursuant to Article 71 of the Constitution and a report of the audit shall be furnished to the corporation and the Minister.

26. Annual Report - (1) The Corporation shall not later than the 30th September in each year, prepare and furnish to its operations during the year 31st day of March together with respect of that year in such form as the Minister a report on ended on the preceding financial statements in the Minister approves.

(2) The Minister shall within 14 days of receiving table in Parliament the Annual report received by him pursuant to subsection (1) if Parliament is then in Session, or if Parliament is not then in Session, within 14 days of the commencement of the next ensuing Session.

PART III LICENSING

27. Grant and renewal of and Radio Television licences - (1) Subject to the provisions of this Act, the Minister may grant to any person upon terms and conditions as the Minister may prescribe a radio broadcasting licence or a television broadcasting licence authorising a person to provide a radio broadcasting service or a television broadcasting service.

(2) The kind of service specified in the broadcasting licence may be -

- (a) A private radio broadcasting service;
- (b) A national radio broadcasting service;
- (c) A national television broadcasting service;
- (d) A community television service;
- (e) Such other service as may be prescribed.

(3) Subject to this Act, a broadcasting licence shall remain in force for such period not exceeding one year as shall be specified in the licence, commencing on the date specified in the licence.

(4) Subject to this Act, the Minister may renew a broadcasting licence granted under sub-section (1) for further periods of up to 1 year each.

28. Suspension or revocation of licence - The Minister may refuse to renew a licence, or may suspend a licence for such period as the Minister may determine, or revoke any licence issued pursuant to this Act if, in his opinion, it is in the public interest to do so, on any of the, following grounds -

- (a) The licensee has failed to provide a service appropriate to the general public of the Cook Islands;
- (b) The licensee has failed to comply with any condition of the licence, or with any provision of this Act relating to the operation of the transmission installation;
- (c) The licensee 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 the Cook Islands.

(2) No refusal to renew, suspension or revocation shall be valid unless the Minister has first given written notice of the intended refusal to renew, suspension or revocation as the case may be, together with particulars of the reasons therefor, and the licensee has been given a reasonable opportunity to be heard in relation to the matter.

29. Transfer of broadcasting licences - (1) A licensee shall not transfer the licence to another person or allow acquisition of shares in the licensee company by a person other than the licensee unless -

- (a) that other person is eligible to hold the licence; and
- (b) the Minister has consented to the transfer of the license or acquisition of shares in the licensee company.

(2) Any change in the legal or beneficial ownership of any of the shares in the capital of the licensee or any issue of new capital whereby in either case there shall be a change in the effective management or control of the licensee shall be deemed for the purposes of subsection (1) to be a transfer of a licence and shall in all respects be subject to the provisions of that subsection.

30. Surrender of broadcasting licence - (1) A licensee may, by notice in writing to the Minister surrender a licence.

31. Licence conditions - (1) The Minister may, at any time, impose a condition or conditions on a broadcasting licence, and may from time to time vary or revoke any such conditions.

(2) No variation or revocation of a condition shall be valid unless the Minister has first given written notice of the intended variation or revocation as the case may be, together with particulars of the reasons therefor, and the licensee has been given a reasonable opportunity to be heard in relation to the matter.

32. Temporary permits - (1) Subject to this Act, the Minister may grant to a person a temporary permit authorising that person to operate transmission or reception installations for the purpose of

- (a) test transmissions;
- (b) transmissions relating to a special event; or
- (c) transmissions during an emergency.

(2) Subject to this Act, a temporary permit may remain in force for such period not exceeding 28 days as may be specified in the permit, commencing on the date specified in the permit.

(3) The Minister may, at any time, impose a condition or conditions on a temporary permit, and may vary or revoke any such conditions.

(4) The Minister may, at any time, cancel a temporary permit by notice in writing given to the holder of the temporary permit.

33. Specifications attaching to a broadcasting licence or permit - (1) Before the commencement of the currency of a broadcasting licence or temporary permit, the Minister, acting on the advice of the Director-General of Posts and Telecommunications, shall specify in every broadcasting licence or permit, the specifications of all the transmission and reception installations authorised to be used for the purposes of the broadcasting licence or permit.

(2) The specifications determined under sub-section (1) may relate to -

- (a) the design, site, installation, maintenance or operation (including operating power, constancy and frequency) of transmission and reception installations; and
- (b) such other matters of a technical nature as the Minister considers relevant.

PART IV COMMUNITY TELEVISION AND RADIO SERVICES

34. Interpretation - In this Part -

"community television broadcast licence" means a television licence for the provision of a community television service;

"community radio broadcast licence" means a radio license for the provision of a community radio service;

"licensee" means the holder of a community television licence or a community radio broadcast license as the case may be;

35. Grant of community television broadcast licences and community radio broadcast licences -

(1) Where in the opinion of the Minister the Corporation is for any reason unable to adequately cover a particular area of the Cook Islands, the Minister may, subject to this Act, grant to a person a community television broadcast licence or a community radio broadcast licence authorising that person to provide a community television service or a community radio service (as the case may require) in a particular area by means of a transmission installation of no greater operating power than is necessary to cover that particular area.

36. Limitation on expenditure of funds - Any funds derived by a licensee from the operation of a community television service shall not be expended otherwise than for or in connection with the provision, maintenance or improvement of that service.

PART V PROGRAMMES

37. General - (1) The Corporation or a licensee shall -

- (a) Not broadcast any advertisement unless authorised to do so under section 38;
- (b) Not broadcast programmes in an encoded form unless authorised to do so under section 39;
- (c) Have regard to any television programme guidelines issued by the Programme Advisory Committee.

(2) For the purpose of sub-section (1), "advertisement" does not include -

- (a) a community announcement; or
- (b) a programme promotion,

transmitted without charge.

38. Advertisements - (1) The Minister may, by notice in writing, authorise the Corporation or a broadcast licensee to transmit advertisements.

(2) An authorisation given under sub-section (1) may authorise the transmission of advertisements at any time, or may specify periods of the day, days of the week, or days of the year when advertisements are not to be transmitted.

39. Encoding of programmes - The Minister may, by notice in writing, authorise the Corporation or a broadcast licensee to transmit programmes in an encoded form.

40. Programme Advisory Committee - (1) There is established by this Act a Programme Advisory Committee consisting of not less than 3 members nor more than 5 members appointed by the Minister.

(2) The Programme Advisory Committee shall -

- (a) advise the Corporation and licensees on all aspects of the services authorised by their licences, including the nature and diversity of programmes, the suitability and the scheduling of programmes for the Cook Islands, and the hours of transmission of the services; and
- (b) in consultation with the Corporation and licensees, prepare and subsequently publish a set of programme guidelines.

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

- (a) material offensive to community standards the people of the Cook Islands;
- (b) the depiction of sexual activities, violence and the use of drugs;
- (c) the amount of time to be assigned for cultural, educational, informational, religious, news, documentary and current affairs programmes;
- (d) the amount of time to be assigned to programmes produced in the Cook Islands;
- (e) the classification of programmes as suitable for transmission at various times of the day.

(4) Where the Minister has authorised the transmission of advertisements, programme guidelines may also include reasonable 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.

(5) The members of the Programme Advisory Committee shall be appointed, hold office and be remunerated in the same manner in all respects as if they were Directors of the Corporation.

PART VI MISCELLANEOUS

41. Provision of information - (1) The Corporation shall not later than the 30th September in each year, submit to the Minister, an annual return in the form approved by the Minister, providing such details of the Corporation's operations during the year ended on the preceding 31st March as the Minister may consider necessary for the proper administration of this Act.

(2) For the purposes of subsection (1), the Minister may require the submission of an audited profit and loss account and an audited balance sheet in respect of the Corporation's operations for the year ending on the previous 31st March (or such other date as the Minister may allow on application by the licensee);

(3) The Minister may, by notice in writing, require any licensee to supply to him within a specified period (not being less than 21 days after the receipt of the notice) such information in the licensee's possession or control relating to the programmes being broadcast by the licensee, and the licensee shall comply with the requirement.

42. Power to require certain transmissions - (1) Upon a direction issued in writing by the Minister, the Corporation or a licensee shall cause to be transmitted any programme the Minister considers to be in the national interest.

(2) The Corporation or a licensee shall not be obliged to make the service available under subsection (1) free of cost, or for more than one hour in any period of 24 hours.

(3) During any state of emergency declared under section 12 of the Hurricane Safety Act 1973, -

- (a) the provisions of subsection (2) shall, not apply; and
- (b) the Corporation or a licensee shall make the service available to authorised officers of the Government to transmit such matters as the Minister considers necessary.

(4) The power of the Minister under sub-section (1) shall not include the power to require the Corporation or a licensee to transmit any programme or other matter that is promoting or opposing -

(a) a candidate in an election;

(b) a particular point of view in relation to an issue or matter that is being submitted to the electorate.

43. Particulars of programmes - (1) Notwithstanding anything in any other enactment, no person shall publish or cause to be published any written information or other written material relating to particulars of programmes, including times of broadcast, intended to be broadcast by the Corporation, except with the consent of the Corporation and on such terms and conditions as the Corporation may impose.

44. Offences - (1) Every person who contravenes any provision of this Act commits an offence and is liable upon conviction, to a fine not exceeding \$5,000.00 and in the case of a continuing offence, for a further fine not exceeding \$200 or every day or part of a day during which the offence continues.

(2) If any body corporate commits an offence against this section, every director and every other, person concerned within the management of the body corporate also commits the offence if it is proved that the offence occurred with his authority, permission, or consent.

45. Forfeiture - (1) Where a person is convicted of an offence under this Act, the Court may in addition to any other penalty order that any transmission or reception installation used in connection with that offence be forfeited to the Crown.

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

46. Regulations - The Queen's Representative may by order in Executive Council make regulations providing for -

(a) Advertising standards and conditions;

(b) Programme guidelines;

(c) The fees which may be charged for the grant or renewal of a television licence;

(d) The payment from time to time of public broadcasting fees of amounts specified in the regulations by persons who own possess, hire or use television receiving equipment and any such requirements, and the amount of the fines that may be imposed in respect of such offences (which fines shall be an amount not exceeding \$1,000);

(e) Such matters as are contemplated by or necessary for giving effect to the provisions of this Act and for its due administration.

47. Transitional - (1) All real and personal property of every description vested in -

(a) the Broadcasting and Newspaper Corporation established by section 3 of the Broadcasting and Newspaper Corporation Act 1970-71; and

(b) the company incorporated at Avarua, Rarotonga on the 23rd day of October 1989 and known as Cook Islands Broadcasting Limited,

shall without further conveyance or assignment than this section vest in the Cook Islands Broadcasting Corporation established by this Act, subject to all charges encumbrances estates and interests affecting that property.

(2) Notwithstanding any of the provisions of the Companies Act 1955 of New Zealand as applied in the Cook Islands by the Companies Act 1970-71, the company named in paragraph (b) of subsection (1) is hereby dissolved.

48. Repeals - The Cook Islands Broadcasting and Newspaper Corporation Act 1970-71 is repealed.

This Act is administered by the Cook Islands Broadcasting Corporation.