

TELECOMMUNICATIONS LEGISLATION IN PACIFIC COUNTRIES: AN OVERVIEW

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*This paper gives an overview of the telecommunications legislation in Pacific countries, in the form of three charts. Chart 1 lists telecommunications legislation in the Pacific countries and comments on the status of the service provider, whether there is a provider monopoly, provision for a regulator and for universal service, as well as spectrum management matters. This chart builds on materials prepared for workshops of the ITU in the South Pacific in 2000 and 2003.** Chart 2 collates legislation on traditional ICT services, including spectrum management, broadcasting (radio and television) and telephone. Chart 3 collates legislation on contemporary ICT issues, including internet pornography, internet gaming, computer crimes, cyber security, spam, e-transactions, digital signatures and internet consumer protection. The legislation surveyed is, as far as the writer knows, that which is in force in the respective Pacific countries as at the end of 2008. Due to data availability reasons, the writer acknowledges that there may be omissions or errors, and welcomes information on new data.*

Dans cet article, l'auteur dresse sous forme de trois tableaux, la liste de l'ensemble des textes applicables jusqu'en 2008 en matière de droit de télécommunications dans le Pacifique. Dans un premier tableau sont répertoriées, sur la base des travaux des séminaires organisés par l'UIT en 2002 et 2003 dans le Pacifique, les différents droits en vigueur dans ces pays et est précisé la forme juridique des organismes chargés de fournir les services de télécommunication, s'il existe des situations de monopole, quels sont les organismes de régulation et d'attribution des fréquences dans chaque pays concerné. Le second tableau regroupe les textes généralement applicables en matière de nouvelles technologies de l'information pour la gestion des réseaux et fréquences radios, télévisées et téléphoniques. Le troisième et dernier tableau porte sur les mesures légales particulières prises pour lutter contre la pornographie sur Internet, les paris électroniques, spam, e-transactions etc.)

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** That data is available at the ITU website: www.itu.int/ITU-D/finance/work-cost-tariffs/events/tariff-seminars/suva-fiji-03/report.pdf.

CHART 1: THE LEGAL STRUCTURES FOR ICT

| Act | Name | Status of provider | Monopoly | Regulator | Universal Service/Technical | Spectrum Management |
|------------------|---|--|-----------------|---|--|--|
| Country | | | | | | |
| Cook Islands | Telecommunications Act 1989 | Company under Companies Act with statutory protection under Telecommunications Act (network) | No | No | “social responsibility” | Minister Register maintained by Telecom CI Ltd |
| Fiji Islands | Post and Telecommunications Decree 1989 | Commercial companies - domestic - international | No | Minister for technical, Commission for commercial | Yes | Minister |
| Kiribati | Telecommunications Act 2004 | - licensed providers - public telecommunications operators | No | Telecommunications Authority | “to as many people as practical in Kiribati at affordable prices” | Telecommunications Authority |
| Marshall Islands | Marshall Islands National Telecommunications Authority Act 1990 | Statutory corporation | No | Government | Yes | Radio Communication Act 1993 – stipulates frequency matters may be subject of regulation |
| Nauru | Telecommunications Act 2002 | Statutory corporation | Yes | Cabinet by regulations | “national service” “accessible to the public at an affordable cost” | Corporation The Republic may regulate |
| Niue | Communications Act 1989 | Public/private communications licence holder | No | Cabinet by regulations | “reliable and efficient telephone service at a reasonable cost” + Niue Telephone Regs 1968 | Director Telecom Niue Radio Regs 1972 |

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|------------------|--|---|-----|---|---|--|
| Papua New Guinea | Telecommunications Act 1996 | Commercial company [100% government] | No | Independent Commission under Consumer and Competition Commission Act 2002 | Yes | PANGTEL is technical regulator |
| Samoa | Telecommunications Act 2005 | Licensed holder – class or individual | No | A Regulator (and Office of the Regulator) appointed by Head of State | Regulator to propose, Minister to approve universal access policy and universal access fund to be established | Regulator |
| Solomon Islands | Telecommunications Act 1971 | Commercial company | No | Minister | None | Telecommunications Regulations 1971 |
| Tokelau | Tokelau Telecommunications Rules 1996 | Independent corporation | Yes | None | Duty of the Corporation | The Corporation – Tokelau Post Office Rules 1991 |
| Tonga | Tonga Communications Corporation Act 2000 | Government corporation – Tonga Telecommunication Commission TONFON – private company (operates, provides telephone service, TV services) | No | Minister | Duty of licensee | Communications Act 2000 Radio Communication Act |
| Tuvalu | Tuvalu Telecommunications Corporation Act 1993 | Statutory corporation - total government control | Yes | Minister by regulations | “operate as a business” revenue to meet expenditure and to derive a profit | Corporation operates and maintains system |

CHART 2: LEGISLATION ON TRADITIONAL ICT SERVICES

| Acts Country | Spectrum and General | Broadcasting | | Telephone |
|-------------------------|---|---|---|--|
| | | Radio | Television | |
| Australia | Australia Communications Authority Act 1997 | Broadcasting Service Act 1992 Radiocommunications Act 1992 | Television Broadcasting Services (Digital Conversion) Act 1998 | Telecommunications Act 1997 |
| Cook Islands | Telecommunications Act 1989 | Broadcasting Act 1989 (Amendment No 2 1997) Telecommunications Act 1989 | Broadcasting Act 1989 | Telecommunications Act 1989 (Amendment 1991, 1992, 1997) Cable and Wireless Limited (Limitation of Liability) Act 1989 Cable and Wireless pls (External Telecommunications Agreement) Termination and Compulsory Acquisition Act 1991 |
| Fiji | Posts and Telecommunications Decree 1989 (Part V) | Broadcasting (Chapter 105) Commission Amendment Decree 1987 | Fiji Audio-Visual Commission Decree 2000 Television Decree 1992 | Posts and Telecommunications Decree 1989 Commerce Act 1998 Fair Trading (Amendment) Act 1998 |

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|-------------------------|---|--|---------------------------------|---|
| Kiribati | Telecommunications Act 2004 | Broadcasting and Publications Authority ordinance Ca 6A (Amendment 1981, 1993, 1997) | | Telecommunications Act 2004 Telecom Kiribati Ltd (Special Provisions) Act 1988 |
| Marshall Islands | Radio Communication Act 1993 | Radio Communication Act 1993 [40 MIRC Ch3] | Radio Communication Act 1993 | Communications Regulations [40 MIRC Ch2] MI National Telecommunications Authority Act 1990 [40 MIRC Ch 1] Postal Service Act 1982 [40 MIRC Ch3] |
| Nauru | Telecommunications Act 2002 Wireless Telegraphy Regulations 1976 | Telecommunications Act 2002 Wireless Telegraphy Regulations 1976 | | Telecommunications Act 2002 |
| New Zealand | Radiocommunications Act 1989 Telecommunications Act 2001 | Broadcasting Act 1989 Radiocommunications Act 1989 | Television New Zealand Act 2003 | Telecommunications (Residual Provisions) Act 1987 Telecommunications Act 2001 Telecommunications (Interception Capacity) Act 2004 |

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|-------------------------|--|--|--|---|
| Niue | | Broadcasting Act 1989 (Amendment 1997) Communications Act 1989 Broadcasting Regulations 1989 Radio Regulations 1972 | Broadcasting regulations 1989 | Communities Amendment Act 2000 Telephone Regulations 1968 |
| Papua New Guinea | Radio Spectrum Act 1996 Radio Spectrum Regulations 1997 | Broadcasting Corporation Act 1973 | Television (Prohibition and Control) Act 1986 Telecommunication (Cable Television Service Fees) Regulation 2005 | Post and Telecommunication Corporation (Corporatisation) Act 1996 Post and Telecommunication Corporation (Home Ownership) Act 1990 Telecommunication Act 1996 Telecommunications Industry Act 2002 Telikom PNG Limited Act 1996 |
| Samoa | Telecommunications Act 2005 | Samoa Broadcasting Corporation Act 2003 | Broadcasting Corporation Act 2003 | Telecommunications Act 2005 |
| Solomon Islands | Telecommunication Regulations 1971 | | Television Act 1995 [Cap 116] (Amendment Act 1996) | Telekom (Limitation of Liability) Act 1989 [Cap 114] Telecommunications Act [Cap 115] Telecommunication Regulations 1971 |

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|----------------|--|---|--|---|
| Tokelau | Post Office Rules 1991 Part 2 | Post Office Rules 1991 Part 2 Tokelau Telecommunication Rules 1996 | | Tokelau Telecommunication Rules 1996 (also appears as Telecommunication Tokelau Corporation Rules 1996) |
| Tonga | Communications Act 2000 Radiocommunication (Amendment) Act 2000 Telegraph Act (Cap 99) and Telegraph (Amendment) Act 2000 Tongan Internet Corporation Register Act 2000 | Tonga Broadcasting Act 1989 Tonga Broadcasting Commission Act [Cap 100] (Amendment) Act 1993, 2000, 2003 Radiocommunication Act Private Experimental (Amateur) Radio Stations Regulations 1934 Radio Operator's Certificates Regulations 1961 | | Communications Act 2000 Tonga Communications Corporation Act 2000 |
| Tuvalu | Tuvalu Telecommunications Corporation Act 1993 | Tuvalu Telecommunications Corporation Act 1993 Tuvalu Media Corporation Act 1999 | | Tuvalu Telecommunications Corporation Act 1993 |
| Vanuatu | Telecommunications Act 1989 | Telecommunications Act 1989 Broadcasting and Television Act 1992 (Amendment Act 2003) | Telecommunications Act 1989 Broadcasting and Television Act 1992 (Amendment Act 2003) | Telecommunications Act 1989 (also Amendment Act 1993) |

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|-------------------------|---|---|---------------------------------|---|--|----------------------------------|----------------------------------|---|
| New Zealand | Films, Videos, and Publications Classification Act 1993 | Gambling Act 2003 | Crimes Act 1961 (s 249) | | Unsolicited Electronic Messages Act 2007 | Electronic Transactions Act 2002 | Electronic Transactions Act 2002 | Model Code for Consumer Protection in Electronic Commerce |
| Niue | | Financial Transactions Reporting Act 2006 | | | | | | |
| Papua New Guinea | Criminal Code Act 1974 s229J | Gaming Control Act 2007 ss 3, 234, 236 | | | | | | |
| Samoa | | Money Laundering Prevention Act 2007 | Telecommunication Act 2005 s 74 | Computer Services (Security of Information) Act 1980 (limited to Computer Services Ltd) | | | | |
| Solomon Islands | | | | | | | | |
| Tokelau | | | | Telecommunication Tokelau Corporation Rules 1996 | | | | |
| Tonga | Pornography Control Act 2002 | | Computer Crimes Act 2003 | Computer Crimes Act 2003 | | | | Tonga Communications Corporation Act 2000 |

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|----------------|---|---|--|-----------------------------|--|--|----------------------------------|----------------------------------|
| Tuvalu | Tuvalu Telecommunications Corporation Act 1993 | | | | | | | |
| Vanuatu | Penal Code (Amendment) Act 2003 Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (Ratification) Act 2006 | Vanuatu Interactive Gaming Act (No 16) 2000 (Amendment Act 2000, 20002) | | Telecommunications Act 1989 | | E-Business Act 2000 E-business Amendment Act 2007 Electronic Transactions Act 2000 Companies (E-commerce Amendment) Act 2000 International Companies (E-Commerce Amendment) Act 2000 | Electronic Transactions Act 2000 | Electronic Transactions Act 2000 |