

**LAWS OF THE REPUBLIC OF VANUATU
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**CHAPTER 206
TELECOMMUNICATIONS**

*Act 10 of 1989
Act 3 of 1992
Act 18 of 1993*



ARRANGEMENT OF SECTIONS

PART 1 – INTERPRETATION

1. Interpretation

PART 2 – (Repealed)

PART 3 – LICENSING OF TELECOMMUNICATION SYSTEMS

16. No person to run telecommunication system without licence
17. Modification of licence granted under section 16
18. Offence to run telecommunication system without licence
19. Exceptions to section 16
20. Control of import etc., of telecommunication apparatus shall be by rules made by the Minister
21. Acquisition of interest in land
22. Power of Minister to require information and to inspect
23. Annual report and audited statement of accounts of operator
24. Minister to inquire into complaints
25. Minister to be the sole authority to manage radio frequency spectrum
26. Enforcement of licence conditions

PART 4 – RADIO COMMUNICATION SERVICES

27. Control of Radio Communication Services

PART 5 – (Repealed)

PART 6 – (Repealed)

**PART 7 – TRANSFER OF ALL PROPERTY RIGHTS, ASSETS AND LIABILITIES
OF THE DEPARTMENT OF TELECOMMUNICATIONS**

32. Vesting of property of Telecommunications Department in a company
33. Transfer and vesting of contracts, rights, etc.
34. Vesting of assets and liabilities
35. Third party rights not to be prejudiced

PART 8 – PROVISIONS RELATING TO EMPLOYEES OF THE DEPARTMENT OF TELECOMMUNICATIONS

36. Employment by the company of certain employees of the Department of Telecommunications, etc.

PART 9 – RIGHT TO USE LAND FOR THE INSTALLATION AND MAINTENANCE OF TELECOMMUNICATION SERVICES

- 37. Acquisition of interest in land on behalf of an operator
- 38. Power of the operator to place and maintain telecommunication lines and posts
- 39. Resistance, etc, to exercise of lawful powers of the operator
- 40. Right to request removal or alteration of telecommunication line or post
- 41. Planting of trees or shrubs likely to injure telecommunication line
- 42. Provisions of this Act extended to telecommunication lines and posts established before coming into operation of this Act
- 43. Prime Minister may authorize interception

PART 10 – OFFENCES AND PENALTIES

- 44. Contraventions of provisions of the Act
- 45. Offences under section 18
- 46. Penalty for transmitting or receiving messages etc., without a licence
- 47. Fraudulent use of telecommunication service
- 48. Penalty for intentionally damaging or tampering with telecommunication installation
- 49. Penalty for tendering false or fabricated message to telecommunication officer etc.
- 50. Offences by an operator or telecommunication officer, etc.
- 51. Penalty for intruding into a telecommunication office or premises or obstructing telecommunication officer
- 52. Penalty for intrusion etc. with intent to learn contents of message
- 53. Wilful interception of telecommunication transmission
- 54. Interception and disclosure of message etc.
- 55. Penalty for attaching anything to telecommunication line, etc.
- 56. Transmission of unpaid message prohibited
- 57. Penalty for misconduct of telecommunication officer
- 58. Penalty for tendering obscene or indecent or seditious message
- 59. Penalty for causing annoyance by telephone calls
- 60. Penalty for retaining message delivered by mistake
- 61. Offence relating to telecommunication wire
- 62. Penalty for attempting to commit offences
- 63. General penalties
- 64. Offences committed by body of persons
- 65. Magistrate to grant search warrant in certain cases

PART 11 – GENERAL

- 66. Power of Minister to give general or special directions in the interest of national security etc.
- 67. Power of Minister to make rules
- 67A. Appointment of authorized officers
- 67B. Delegation

- 68. Power of Government to prohibit or restrict the use of telecommunications
- 69. Protection for action taken under this Act
- 70. Regulations
- 71. Repeal of Act No. 26 of 1982 [Cap. 153]

TELECOMMUNICATIONS

An Act to make new provisions with respect to the operation and control of telecommunications services and for matters connected therewith.

PART 1 – INTERPRETATION

1. Interpretation

"authorized officer" means a person appointed as such under section 67A;

"broadcasting" means radiocommunication of messages regardless of the fact that the messages may be or may not be capable of being conveyed by other telecommunication systems intended for general reception by the general public including radio and television broadcasting but does not include radiocommunication for reception by a particular class of the public or radiocommunication by which the intended recipient of the message is able by the same telecommunication apparatus which he receives the message is able to convey messages to the originator of the message;

"broadcasting – satellite service" means a radiocommunication service in which signals transmitted or retransmitted by space stations are intended for direct reception by the general public within the Republic. In the broadcasting – satellite service, the term "direct reception" shall encompass both individual reception and community reception;

"broadcast receiving apparatus" means an apparatus which is capable of receiving a broadcasting message and no more, the message being transmitted by means of radiocommunication or by wire for reception by the general public;

"broadcasting service" means a national radiocommunication service in which the transmissions are intended for direct reception by the general public within the Republic;

"message" means any communication sent or received or made by telecommunication or given to a telecommunication officer to be sent by telecommunication or to be delivered and includes any signal or combination of signals used for the broadcasting of music, conversation, speeches, lectures, stage performance, writing, facsimiles, images or pictures and the like;

"operator" means a person authorized by a licence under section 16 to run a telecommunication system;

"post" means a post, pole, bracket, standard, stay, strut, or other contrivance for carrying, suspending, or supporting a telecommunication line;

"Public International Telecommunication Service" means international telecommunication services, other than a broadcasting service or a broadcasting satellite service, for use by the general public and may include telephone, telegrams, telex, data, facsimile and any other telecommunication service established internationally which is available publicly, and also includes dedicated leased point-to-point services provided over the international network for the exclusive use of lessees;

"Public National Telecommunication Service" means national telecommunication services, other than a broadcasting service or a broadcasting satellite service, for use by the general public and may include telephone, telegrams, telex, data, facsimile or any other telecommunication service established nationally which is available publicly, and also includes dedicated leased point-to-point services provided over the national network for the exclusive use of lessees but does not include any international telecommunications which are reserved to Vanitel pursuant to the Vanitel Franchise;

"radiocommunication" means the emitting or receiving, over paths, which are not provided by any material substance constructed or arranged for that purpose, of electro-magnetic energy of anything falling within paragraphs (a) to (d) of the definition of "telecommunication system" in this Section;

"radiocommunication apparatus" means any telecommunication apparatus constructed or adapted for use in radiocommunication but does not include apparatus exclusively designed for the reception of sound transmissions from broadcasting stations;

"telecommunication" means any transmission, emission or reception of signs, signals, writings, images, sounds or intelligence of any nature by visual means or by wire or radio waves or any other electro-magnetic system;

"telecommunications apparatus" means any apparatus constructed or adapted for use –

- (a) in transmitting or receiving anything falling within paragraphs (a) to (d) of the definition of "telecommunication system" set out in this section which is to be or has been conveyed by means of a telecommunication system; or
- (b) in conveying, for the purpose of such a system, anything falling within those paragraphs;

"telecommunication installation" means any apparatus or equipment maintained for or in connection with a telecommunication service;

"telecommunications line" means any physical path connecting telecommunication apparatus with or without any casing, coating, tube or pipe enclosing the same, and any appliances and apparatus connected therewith for the purpose of fixing, insulating, protecting or earthing the same;

"telecommunication officer" means any person employed in a telecommunication system or telecommunication service and includes an operator in connection with a telecommunication service;

"telecommunication service" means any of the following, that is to say –

- (a) a service consisting of the conveyance by means of a telecommunication system of anything falling within paragraphs (a) to (d) of the definition of "telecommunication system" in this section;
- (b) 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 purpose of facilitating the use of a service falling within paragraph (a) above and provided by means of that system; and
- (c) 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.

"telecommunication system" means a system for the conveyance, through the agency of electric, magnetic, electro-magnetic which expression shall include optical electro-magnetic energy, electro-chemical or electro-mechanical energy, of –

- (a) speech, music and other sounds;
- (b) visual images;
- (c) signals serving for the impartation (whether as between persons and persons, things and things or persons and things) of any matter otherwise than in this form of sounds or visual images; or
- (d) signals serving for the actuation or control of machinery or apparatus;

"terminal equipment" means a device which translates a modulated signal to its originating signal format or receives directly the signal in its original format for purpose of use by end user directly connected to the device or connected to the device via a switched network;

"value added network" means a network which is connected to a licensed network to provide new services or enhance facilities using the licensed network on a dedicated or shared (switched) basis;

"Minister" means the Minister responsible for telecommunications in Vanuatu.

PART 2 – (Repealed)

PART 3 – LICENSING OF TELECOMMUNICATION SYSTEMS

16. No person to run telecommunication system without licence

(1) Subject to section 19, no person shall operate a telecommunication system in Vanuatu except under the authority of a licence granted in accordance with subsection (2) of this section by the Minister.

(2) The Minister may, subject to the provision of subsection (6), grant the licence referred to in subsection (1).

(3) Every application for a licence to operate a telecommunication system shall be in writing and shall be made to the Minister.

(4) *(Repealed)*

(5) Before the grant of a licence the Minister shall satisfy himself that the applicant is capable of providing the telecommunication services it has applied to provide.

(6) Subject to the other provisions of this section, in the case of an application for a licence to operate a telecommunication system to provide Public International Telecommunication Service or in the case of an application for a licence to operate a telecommunication system to provide Public National Telecommunication Service, the Minister shall grant such licence with the prior approval of the Council of Ministers, subject to such terms and conditions as may be determined by the Council of Ministers and published in the Gazette:

Provided that at one time in Vanuatu there shall be no more than one telecommunication system in operation to provide Public International Telecommunication Service and no more than one telecommunication system in operation to provide Public National Telecommunication Service.

(7) A licence granted under this section –

- (a) shall specify the period for which the licence is granted;
- (b) shall fix the fees payable for the licence;
- (c) shall be in writing and unless previously revoked in accordance with any term in that behalf contained in the licence shall continue in force for such period as may be specified therein;
- (d) shall set out the terms and conditions subject to which the licence is granted;
- (e) shall require the provision of such telecommunication services as are specified in the licence.

(8) The terms and conditions referred to in paragraph (d) of subsection (7) –

- (a) may authorize the connection to any telecommunication system to which the licence relates of –
 - (i) any other telecommunication system specified in the licence or of a description so specified; and
 - (ii) any apparatus so specified or of a description so specified; and
- (b) may authorize the provision by means of any telecommunication system to which the licence relates of any telecommunication service specified in the licence or of a description so specified; and
- (c) may include –

-
- (i) such conditions (whether relating to the running of a telecommunication system to which the licence relates or otherwise) as appear to the Minister to be requisite or expedient;
- (ii) conditions requiring a payment to the Minister on the grant of the licence or payments during the currency of the licence or both on the grant and during the currency of the licence;
- (iii) conditions requiring any person authorized by the licence to run a telecommunication system to furnish to the Minister, in such manner and at such times as may be reasonably required by the Minister, such documents, accounts, estimates, returns or other information as the Minister may require in the performance of its duties under this Act;
- (iv) conditions requiring any person authorized by the licence to operate a telecommunication system not to show undue preference to, or to exercise undue discrimination against a particular person or persons of any class or description as respects any service provided, connection made or permission given;
- (v) conditions requiring any person authorized by the licence to run a telecommunication system to publish in such manner and at such times as are specified in the licence a notice specifying the charges and other terms and conditions that are to be applicable to the services provided, connection made or permission given;
- (vi) conditions requiring any person authorized by the licence to operate a telecommunication system to ensure that an adequate and satisfactory information system which may include billing information, tariff information, directory services and directory inquiry services are made available to users;
- (vii) conditions requiring any person authorized by the licence to operate a telecommunication system –
- (a) to comply with directions given by the Minister in relation to the national transmission plan, signalling plan, switching plan, numbering plan and the charging plan to which an operator shall design and maintain his network and conditions requiring approval from the Minister in the event of any departure from any of the aforesaid plans;
 - (b) to keep the Minister informed of the practices followed by them in the routing of national and international traffic; and
 - (c) to ensure that compensation is paid to persons affected by the running of underground cables or overhead lines;
- (viii) conditions requiring any person authorized by the licence to run a telecommunication system –
- (a) to comply with any direction given by the Minister to such matters as are specified in the licence or are of a description so

specified;

(b) except with the consent of the Minister to do or not to do such things as are required to be done or not to be done in the licence or are of a description so specified;

(c) to refer for determination by the Minister such questions arising under the licence as are specified in the licence or are of a description so specified;

(ix) conditions requiring any person authorized by the licence to run a telecommunication system to adopt a just and reasonable system of tariffs and pricing;

(x) conditions requiring the connection to any telecommunication system to which the licence relates or permit the connection to any such system and such apparatus as are specified in the licence or are of a description so specified;

(xi) conditions requiring an operator to develop and publish a plan to restore service during emergencies;

(xii) conditions specifying acceptable economic criteria in accordance with which the Minister shall approve tariff adjustments proposed by an operator.

(9) A licence granted under this section shall be published in such manner as the Minister may decide.

(10) All sums paid as fees under this section for the grant of a licence shall be paid into the Public Fund.

17. Modification of licence granted under section 16

(1) The Minister may, subject to subsection (2), modify any condition of a licence granted under section 16.

(2) The Minister may, subject to subsection (3), recommend to the Council of Ministers, the modification of any condition of a licence granted under subsection (6) of section 16, and such recommendation if approved by the Council of Ministers may be duly effected by the Minister.

(3) The modification of a licence under subsections (1) or (2) shall be on such terms and conditions as may be mutually agreed upon between the Minister and the operator.

18. Offence to run telecommunication system without licence

(1) A person who operates a telecommunication system in Vanuatu without the licence required under section 16(2) shall be guilty of an offence.

(2) A person who holds a licence under section 16(2) to run a telecommunication system in Vanuatu shall be guilty of an offence if –

(a) there is connected to the system –

(i) any other telecommunication system; or

(ii) any apparatus,

which is not authorized by the licence to be so connected; or

(b) there are provided by means of the system any telecommunication service which is not authorized by the licence to be so provided.

19. Exceptions to section 16

(1) Notwithstanding section 16 and subject to subsections (2) and (3), no licence shall be required –

(a) for the use of any telecommunication system by the Vanuatu Broadcasting and Television Corporation established under the Broadcasting and Television Act [Cap. 214] or the holder of a licence under that Act; or

(b) to run a telecommunication system –

(i) in the case of which the only agency involved in the conveyance of things thereby conveyed is light and the things thereby conveyed are so conveyed as to be capable of being received or perceived only by the eye;

(ii) which is not connected to another telecommunication system where all the apparatus comprised therein is situated either –

(a) in a single premises in single occupation; or

(b) in a vehicle, vessel, or hovercraft or in two or more vehicles, vessels, aircraft or hovercraft mechanically coupled together;

(iii) where a single individual runs such system and –

(a) all the apparatus comprised therein is under his control; and

(b) everything conveyed by it within the meaning of paragraphs (a) to (d) of the definition of the expression "telecommunication system" is conveyed solely for his own domestic purposes; or

(c) for the provision of value added network services over a telecommunication system run by the operator; or

(d) for the connection of approved terminal equipment to the public switched network of an operator; or

(e) for a person who carries on a business to run a telecommunication system for the purposes of that business where that telecommunication system is not connected to another telecommunication system and in

respect of which the following conditions are satisfied, namely –

- (i) that no person, other than the person carrying on the business, is concerned in the control of the apparatus comprised in that system;
 - (ii) that, in so far as sounds or visual images are conveyed by that system, they are not so conveyed for the purpose of their being heard or seen by persons, other than the person carrying on the business or any employees of his engaged in the conduct of that business;
 - (iii) that in so far as such signals are mentioned within the meaning of paragraphs (a) to (d) of the definition of the expression "telecommunication system" are conveyed by the system are not conveyed for the purpose of imparting matter, other than to the person carrying on the business, any employees of his engaged in the conduct of that business or things used in the course of the business and controlled by him;
 - (iv) that, in so far as such signals as are mentioned in paragraph (d) of the definition of the expression "telecommunication system" are conveyed by the system, they are not conveyed for the purpose of actuating or controlling machinery or apparatus used otherwise than in the course of that business; and
 - (v) that nothing falling within the meaning of paragraphs (a) to (d) of the definition of the expression "telecommunication system" is conveyed by the system by way of rendering a service to another; or
- (f) for a person to run a telecommunication system through which he renders service to others where everything conveyed is within the meaning of paragraphs (a) to (d) of the definition of the expression "telecommunication system"; or
- (g) for the use of telecommunication systems or telecommunication apparatus by the Vanuatu Police Force and Vanuatu Mobile Force and any other services directly employed by the Government for national security in the performance of their official duties; or
- (h) for the use of telecommunication systems or apparatus on board any warship or aircraft in the service of any foreign state; or
- (i) for the use of any telecommunication system or apparatus in any foreign civil aircraft registered outside Vanuatu, if such system or apparatus and the members of the crew of the aircraft who use such system or apparatus have been specially licensed in accordance with the requirements of any international convention for the time being in force as to the installation or use of such system or apparatus in aircraft.

(2) (a) Where a telecommunication system referred to in paragraphs (e) and (f) of subsection (1) extends beyond the boundaries of the location of such a system every person who on the date of operation of this Act is running such a system or on or after that date proposes to run system shall as a condition to running that system:

(i) be required to obtain a licence from the Minister for the type of telecommunication system being operated, or proposed to be operated, the location of the system and its boundaries;

(ii) be required to comply with any provision of this Act or any regulations or rules made thereunder in respect of such system.

(b) A person who runs a telecommunication system in contravention of the provisions of paragraph (a) shall be guilty of an offence and may be prohibited by the Minister from running such a system.

(3) (a) Where there is agreement between a person who is running a telecommunication system referred to in sections 19(1)(b)(iii), 19(1)(e) or 19(1)(f) and an operator, for the interconnection of their telecommunication systems, such persons prior to interconnection shall obtain a licence from the Minister for the interconnection.

(b) A person who fails to comply with the provisions of paragraph (a) shall be guilty of an offence and may be prohibited by the Minister from continuing to operate such system.

(4) The operator, may if he so desires, request the Minister to monitor an interconnection referred to in subsection (3) in the interest of operational efficiency and technical standards and the Minister shall where so requested take appropriate measures to comply with such request.

20. Control of import etc., of telecommunication apparatus shall be by rules made by the Minister

The regulation, control or prohibition of the import, sale, hire or lease of any telecommunication apparatus shall be in such form and manner and subject to such terms and conditions as may be determined by rules made by the Minister.

21. Acquisition of interest in land

The Minister may, with the consent of the Minister who is responsible for land matters acquire any interest in or over any land, for the purpose of any of his functions under this Act.

22. Power of Minister to require information and to inspect

The Minister may –

(a) for the purpose of enabling the Minister after consulting the Prime Minister to ascertain the financial viability and true condition of the affairs of an operator by notice in writing require such operator to furnish to the Minister within such period as may be specified in the notice –

(i) all books and accounts of such operator deemed necessary by the Minister for inspection; and

(ii) all such information, whether technical, financial or otherwise as may be required by the Minister for the aforesaid purposes:

Provided however that a person specified in paragraph (a) shall not be compelled for any such purpose to produce any document which he could not be compelled to produce in civil proceedings before a Court.

(b) for any purpose concerned with any matter pertaining and relevant to the exercise of its powers, functions or duties under this Act require a person –

(i) to furnish to the Minister at a time and place specified in the notice any document specified or described in the notice which is in his custody or control;

(ii) to produce for inspection any book, return, account or record in his possession or control:

Provided however that a person specified in paragraph (b) shall not be compelled for any such purpose to produce any document which he could not be compelled to produce in civil proceedings before a Court.

23. Annual report and audited statement of accounts of operator

(1) As soon as may be after the end of its financial year every operator shall prepare a report giving a true and fair account of its activities, and of its income and expenditure during the year together with an audited statements of accounts for that financial year and shall forward such account to the Minister.

(2) *(Repealed)*

24. Minister to inquire into complaints

(1) Where a subscriber to a telecommunication service or a member of the public makes a complaint to the Minister in relation to the telecommunication service provided by an operator the Minister may make such investigation as is deemed necessary by the Minister and shall take such remedial measures as the circumstances of the case may require.

(2) In the course of any investigation under subsection (1) the Minister may direct such operator to take such steps as to the Minister appears necessary for the rectification of any cause or matter which gave rise to the complaint.

(3) Every complaint made under subsection (1) shall be in writing and shall set out clearly the reasons therefore.

25. Minister to be the sole authority to manage radio frequency spectrum

(1) The Minister shall be the sole lawful authority in Vanuatu to manage the radio frequency

spectrum and specifically the allocation and authorization of frequencies to users and shall have the power where it deems necessary to withdraw or suspend any such authorization.

(2) The Minister shall be the sole lawful authority to negotiate with the International Telecommunications Union or its affiliated bodies in all matters related to the frequency spectrum.

(3) No person shall utilize any radio frequency without the authority of the Minister.

26. Enforcement of licence conditions

(1) Where the Minister is satisfied that a person who is authorized by a licence under section 16 to operate a telecommunication system is contravening or has contravened any of the conditions of his licence the Minister may, subject to subsection (3), make an order for the purpose of securing compliance with that condition or may subject to subsections (2) or (3), revoke any such order.

(2) In the case of a licence issued under subsection (6) of section 16, no revocation under subsection (1) shall be made except with the approval of the Council of Ministers.

(3) Before making an order under subsection (1) the Minister shall give notice –

(a) stating that it proposes to make the order and setting out its effect;

(b) stating the relevant condition of the licence and the acts or omissions which, in its opinion, constitute or would constitute contraventions of it; and

(c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections to the proposed order may be made;

and shall consider any representations or objections which are duly made and not withdrawn.

(4) Before revoking an order made by the Minister under subsection (1), the Minister shall give notice –

(a) stating that it proposes to revoke the order and setting out its effect; and

(b) specifying the time (not being less than 28 days) from the date of publication of the notice within which representations or objections to the proposed revocation may be made by any person interested in such revocation,

and shall consider any representation or objection which is duly made and not withdrawn.

(5) A notice under subsection (2) or subsection (3), shall be given by publication in such manner as the Minister considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by such notice and by sending a copy of the notice to the operator affected by it.

(6) As soon as practicable after an order is made, under subsection (1) or subsection (3), the

Minister shall –

- (a) publish the order in such manner as he considers appropriate for the purpose of bringing the order to the attention of persons likely to be affected by it; and
- (b) serve a copy of the order on the operator affected by it.

PART 4 – RADIOCOMMUNICATION SERVICES

27. Control of radiocommunication services

(1) No person shall install or operate in Vanuatu or its territorial waters or in any ship or aircraft registered in, or under the law of Vanuatu, any radio apparatus without a valid licence issued by the Minister subject to such conditions and upon payment of such fees as the Minister may prescribe:

Provided that no licence shall be required for a foreign registered ship or aircraft to operate as a ship station which is covered by a valid licence for the appropriate class of operation in the country of registration of the ship or aircraft.

(2) The Minister shall have the right at any reasonable hours to inspect or cause to be inspected radiocommunication apparatus licensed under this section. If it is found that the conditions of the licence are not being complied with, the Minister may cancel the licence and make any order respecting the apparatus as he shall think fit.

(3) If the Minister has reason to believe that any radio apparatus for which a licence is required has been installed or is being operated in any place, ship or aircraft without a licence, the Minister may apply to the Magistrates' Court for a search warrant to enter and inspect such place, ship or aircraft and to seize any such apparatus.

(3A) In granting a search warrant under subsection (3), the Magistrates' Court may in such a warrant authorise a police officer or a public servant to enter and inspect such place, ship or aircraft on behalf of the Minister.

(4) If the Minister is satisfied that it is necessary in the public interest so to do, he may, with the prior approval of the Council of Ministers, by order prohibit (whether absolutely, or from time to time, or in certain circumstances) or restrict the use of any or all radio apparatus or radiocommunication, irrespective of whether a licence has or has not been issued under this section.

(5) Any person failing to comply with, or contravening any of the provisions of this section or any order made, or any condition of a licence issued, thereunder shall be guilty of an offence.

(6) If a person is convicted of an offence under this section, the court by which he is convicted, may, whether or not in addition to any other penalty, make such order as to the forfeiture or disposal of any apparatus seized in pursuance of subsection (3) as the court thinks fit.

PART 5 – (Repealed)

PART 6 – (Repealed)

**PART 7 – TRANSFER OF ALL PROPERTY RIGHTS, ASSETS AND LIABILITIES
OF THE DEPARTMENT OF TELECOMMUNICATIONS**

32. Vesting of property of Telecommunications Department in a company

(1) Notwithstanding subsection (1) of section 71, on such day as the Minister with the approval of the Council of Ministers by Order published in the Gazette may appoint (hereinafter referred to as the "transfer date"), all the property rights, assets and liabilities (other than those excluded by the agreement referred to in subsection (2)) to which the Department of Telecommunications was entitled or subject to immediately before the transfer date shall (subject to the provisions of this section) vest, in a company which is the operator licensed to provide Public National Telecommunication Service (hereinafter referred to as "the Company") being a company registered under the Companies Act [Cap. 191] for the purpose of providing telecommunication services.

(2) At any time before the transfer date, the Minister with the approval of the Council of Ministers, may enter into a written agreement with the Company, to the effect that the provisions of subsection (1) shall not be applicable in relation to any property, rights, assets and liabilities specified in that agreement.

33. Transfer and vesting of contracts, rights, etc.

Except as otherwise excluded by the agreement referred to in subsection (2) of section 32, with effect from the transfer date –

- (a) all contracts, leases or tenancy agreements entered into by, with or for the Department of Telecommunications and subsisting on the day immediately preceding the transfer date shall be deemed to be contracts, leases or tenancy agreements entered into by, with or for the Company;
- (b) all interests, rights, easements, obligations, debts and liabilities of the Department of Telecommunications subsisting on the day immediately preceding the transfer date shall be deemed to be the interests, rights, easements, obligations, debts and liabilities of the Company;
- (c) all installations, plant and equipment and other property installed and maintained or in the process of being installed and maintained and all matters and things of whatever description required or used to maintain or supply the telecommunication service of the Department of Telecommunications subsisting on the day immediately preceding the transfer date shall be transferred to and be vested in the Company;
- (d) the Company shall have the right to recover or receive any moneys that on the day immediately before the transfer date were due and owing to the Government in respect of or for or on account of the telecommunication system transferred under this Act to the Company or that would after the transfer date have become due to the Government if this Act had not been enacted.

34. Vesting of assets and liabilities

(1) Notwithstanding subsection (1) of section 71 and with effect from the transfer date, the property rights, assets and liabilities of the Department of Telecommunications shall vest in the Company without further authority and without the necessity for further acts except the making of such entries as may be required in any register kept in attendance with any laws.

(2) Entries under subsection (1) shall be made by an appropriate registrar on receipt of a direction in writing made by the Minister.

35. Third party rights not to be prejudiced

The transfer to the Company of all the property rights, assets and liabilities of the Department of Telecommunications (other than those excluded by the agreement referred to in subsection (2) of section 32) shall not in any way be deemed to affect prejudicially the rights of a third party to any contract or agreement subsisting between such third party and the Department of Telecommunications on the day immediately preceding the transfer date and every such contract or agreement shall be valid and enforceable for or against the Company after the transfer date as though every reference in every such contract or agreement to the Department of Telecommunications were a reference to the Company.

PART 8 – PROVISIONS RELATING TO EMPLOYEES OF THE DEPARTMENT OF TELECOMMUNICATIONS

36. Employment by the company of certain employees of the Department of Telecommunications, etc.

(1) An employee of the Department of Telecommunications –

(a) may be offered employment with the Company on new terms and conditions as may be mutually agreed upon by such employee and Company;

(b) may retire or be retired from service on such terms as may be determined in accordance with the law; or

(c) may be transferred within the Government Service on such terms and conditions as may be determined by the Public Service Commission.

PART 9 – RIGHT TO USE LAND FOR THE INSTALLATION AND MAINTENANCE OF TELECOMMUNICATION SERVICES

37. Acquisition of interest in land on behalf of an operator

(1) Where any interest in or over any land is required by an operator for any of its purposes and such operator has failed after negotiation with the holder of the interest to acquire such interest for the purposes for which it is so required it may report such fact to the Minister.

(2) Where a report under subsection (1) is made to the Minister, the Minister shall, if he considers it necessary or desirable so to do, and with the consent of the Minister responsible for land matters, acquire the interest for or on behalf of the operator.

38. Power of the operator to place and maintain telecommunication lines and posts

For the purposes of the establishment and maintenance of telecommunication services, the operator may from time to time place and maintain a telecommunication line under, over, along or across, and posts in or upon, any immovable property, and for that purpose it shall be lawful for any officer in the employment of the operator, and for the servants, workmen, and labourers employed by or under such officer –

- (a) at all times on reasonable notice, and with all necessary vehicles, machinery, tools and animals and other means, to enter upon any land and to put up thereon any posts which may be required for the support of any telecommunication line; and
- (b) to fasten or attach to any tree growing on such land or to any building or structure or thing thereon any bracket or other support for such line; and
- (c) to cut down any tree or branch which may in any way injure, or which is likely to injure, impede, or interfere with any telecommunication line; and
- (d) severally to do and perform all other acts, matters and things necessary for the purpose of establishing, constructing, repairing, improving, examining, altering, or removing any telecommunication line, or in any way connected therewith, or for performing any act, matter or thing under the provisions of this Act:

Provided that –

- (i) an operator shall not exercise the powers conferred by this section except with the written consent of the custom owner, after negotiation with him, of the property under, over, along, across, in or upon which any telecommunication line is placed;
- (ii) an operator shall not exercise the powers conferred by this section except for the purposes of a telecommunication service established or maintained by the operator or to be so established or maintained;
- (iii) an operator shall not acquire any right other than that of user only in the property under, over, along, across, in or upon which any telecommunication line or post is placed;
- (iv) except as hereinafter provided an operator shall not exercise those powers in respect of any property vested in or under the control or management of any local authority or statutory body without the permission of the head of such local authority or the board of directors or management of such statutory body, as the case may be; and
- (v) in the exercise of the powers conferred by this section an operator shall do as little damage as possible in respect of any property, and shall pay reasonable compensation to all persons interested for any damage or loss sustained by them by reason of the exercise of those powers, provided that such persons shall make application for such compensation to the operator within thirty days after the damage was sustained.

39. Resistance, etc. to exercise of lawful powers of the operator

If any person resists or obstructs, or threatens or attempts to resist or obstructs, the exercise of the powers conferred on an operator under section 38 he shall be deemed to have committed an offence under this Act:

Provided however that no person shall be deemed to have committed an offence under this section by reason only of the fact that such person being an owner refuses to give his written consent required under proviso (i) of section 38.

40. Right to request removal or alteration of telecommunication line or post

(1) Where, under the provisions of this Act, a telecommunication line or post has been placed by an operator under, over, along, across, in, or upon any property, and any person entitled to do so desires to deal with that property in such a manner as to render it necessary or convenient that the telecommunication line or post should be removed to any other part of that property or to a higher or lower level or altered in form, he may require the operator to remove or alter the line or post accordingly:

Provided that, if compensation has been paid to such person under paragraph (v) of the proviso to section 38 he shall, when making the request, tender to the operator an amount sufficient to defray the expenses of the removal or alteration.

(2) If an operator fails to comply with the request within a reasonable time, the person making it may appeal to the Minister in writing requesting the Minister to require the operator to remove or alter the line or post.

(3) Where after any such appeal as is referred to in subsection (2) the person making the request has failed to procure the removal or alteration of the line or post he may apply to the Magistrates' Court within the jurisdiction of which the property is situated to order the removal or alteration.

(4) The Court receiving an application under subsection (3) may in its discretion reject such application or make an order, absolutely or subject to conditions, for the removal of the telecommunication line or post to any other part of the property or to a higher or lower level, or for the alteration of its form.

41. Planting of trees or shrubs likely to injure telecommunication line

In any case where a telecommunication line has been placed under, over, along, or across any immovable property, no person who subsequent to the date on which such telecommunication line has been so placed plants any tree or shrub which may be likely in the future to injure, impede, or interfere with such telecommunication line, shall be entitled to receive any compensation should such tree or shrub or any branch thereof be cut down under the provisions of section 38.

42. Provisions of this Act extended to telecommunication lines and posts established before coming into operation of this Act

Every telecommunication line or post placed before the passing of this Act under, over, along, across, in, or upon any property for the purposes of telecommunications established or maintained by the Government, shall be deemed to have been placed in the exercise of the powers conferred by, and after observance of all the requirements of, this Act.

43. Prime Minister may authorise interception

(1) If the Prime Minister, having consulted the Attorney General, is satisfied that –

- (a) a telecommunication system is being or is likely to be –
 - (i) used by a person engaged in, or reasonably suspected of being engaged in, or being likely to be engaged in, activities prejudicial to the security of Vanuatu; or
 - (ii) used for purposes prejudicial to the security of Vanuatu; and
- (b) the interception of communications passing over the system will, or is likely to, assist in obtaining intelligence relevant to the security of Vanuatu, the Prime Minister may, by warrant under his hand, authorize communications passing over the telecommunication system to be intercepted in accordance with the provisions of this section.

(2) A warrant issued under subsection (1) shall –

- (a) include a description of the telecommunication system sufficient to identify it; and
- (b) specify the person authorized to act in pursuance of the warrant; and
- (c) specify the person to whom any intelligence obtained in pursuance of the warrant or any information which relates to the warrant, may be communicated to the exclusion of any other person; and
- (d) specify the period, not exceeding one month, during which the warrant shall remain in force, unless revoked by the Prime Minister before the expiration of the period so specified.

(3) Any person who –

- (a) communicates any information which relates to a warrant under subsection (1); or
- (b) communicates any intelligence obtained in pursuance of such warrant,

to any person, other than a person specified in the warrant as provided in subsection (2)(c), shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding ten years.

PART 10 – OFFENCES AND PENALTIES

44. Contraventions of provisions of the Act

Every person who contravenes or fails to comply with any provision of this Act or any regulation made under this Act shall be guilty of an offence.

45. Offences under section 18

(1) Every person guilty of an offence under subsection (1) of section 18 shall be liable on conviction to a fine not exceeding VT 500,000 or to imprisonment for a term not exceeding 2 years or to both such fine and imprisonment.

(2) Every person guilty of an offence under subsection (2) of section 18 shall be liable on conviction to a fine not exceeding VT 100,000 or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

46. Penalty for transmitting or receiving messages etc. without a licence

Every person who, knowing or having reason to believe that a telecommunication service has been installed or established or is maintained or worked in contravention of this Act or of any regulation made thereunder –

- (a) transmits or receives any message by such telecommunication service; or
- (b) performs any service incidental thereto; or
- (c) delivers any message for transmission by means of such telecommunication service; or
- (d) accepts delivery of any message sent thereby,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding VT 100,000 and in default of payment of such fine with imprisonment for a term not exceeding six months.

47. Fraudulent use of telecommunication service

Every person who dishonestly obtains a telecommunication service provided by an operator with intent to avoid payment of any charge applicable to the provision of that service shall be guilty of an offence and shall be liable on conviction to a fine not exceeding VT 200,000 and in default of payment of such fine to imprisonment for a term not exceeding 1 year.

48. Penalty for intentional damaging or tampering with telecommunication installation

Every person who, with the intention of –

- (a) preventing or obstructing the transmission or delivery of any message; or
- (b) interrupting or acquainting himself with the contents of any message; or
- (c) transmitting any message which he has no authority to transmit; or
- (d) committing mischief or any act of vandalism damages, removes or tampers with any telecommunication installation or telecommunication line, post or other thing whatsoever being part of or used in or about any telecommunication system or the working thereof,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding VT 500,000 or to imprisonment for a term not exceeding 2 years or to both such fine and imprisonment.

49. Penalty for tendering false or fabricated message to telecommunication officer etc.

Every person who transmit or causes to be transmitted or tenders or causes to be tendered to any telecommunication officer or to any person having official duties in connection with a telecommunication service for transmission by telecommunication or for delivery a message which he knows to be false or fabricated, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding VT 200,000, or to imprisonment not exceeding 1 year, or to both such fine and imprisonment. The burden of proving that he did not know any message to be false or fabricated shall lie on the person charged under this section.

50. Offences by an operator or telecommunication officer, etc.

Every telecommunication officer, or any person having official duties in connection with a telecommunication service, who –

- (a) wilfully destroys, secretes, alters or otherwise than in the course of his duty intentionally modifies or interferes with the contents of any message which he has received for transmission or delivery; or
- (b) wilfully, and otherwise than in obedience to any authority empowered to do so under this Act, omits to transmit, or intercepts or detains any message; or
- (c) otherwise than in pursuance of his official duty or as directed by a Court discloses the contents or any part of the contents of any message to any person other than the person to whom the message is addressed,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding VT 500,000 or to imprisonment for a term not exceeding 2 years or to both such fine and imprisonment.

51. Penalty for intruding into a telecommunication office or premises or obstructing telecommunication officer

Every person who –

- (a) without the permission of the telecommunication officer in charge, enters a telecommunication office of an operator; or
- (b) enters a fenced enclosure round such telecommunication office in contravention of any regulation or notice prohibiting such entry; or
- (c) refuses to quit such room or enclosure on being requested to do so by any officer or servant employed therein; or
- (d) wilfully obstructs or impedes any such officer or servant in the performance of his duty,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding VT 100,000, and, in default of payment of such fine, with imprisonment for a term not exceeding six months.

52. Penalty for intrusion etc. with intent to learn contents of message

Every person who does any of the acts mentioned in section 51 with the intention of unlawfully learning the contents of any message, or of committing any offence punishable under this Act, shall be guilty of an offence, and shall be liable on conviction to imprisonment for a term not exceeding 1 year in addition to the fine prescribed by section 51.

53. Wilful interception of telecommunication transmission

Every person who wilfully seeks to intercept and improperly acquaint himself with the contents of any telecommunication transmission not intended for general reception, shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding VT 200,000 or to imprisonment for a term not exceeding 1 year or to both such fine and imprisonment.

54. Interception and disclosure of message etc.

(1) Every telecommunication officer or any person having official duties in connection with a telecommunication system who otherwise than in the course of his duty –

- (a) intentionally intercepts a message sent by means of that system; or
- (b) where a message so sent has been intercepted, intentionally discloses to any person the contents of that message,

shall be guilty of an offence.

(2) Every telecommunication officer or any person having official duties in connection with the running of a telecommunication system who, otherwise than in the course of his duty, intentionally discloses to any person the contents of any statement of account specifying the telecommunication services provided for another person by means of that system shall be guilty of an offence.

(3) Subsection (1) shall not apply to any thing done in obedience to any direction or warrant given under the hand of the Prime Minister under this Act and paragraph (b) of that subsection and subsection (2) shall not apply to any disclosure in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings.

(4) Every officer or person guilty of an offence under this section shall be liable on conviction to a fine not exceeding VT 500,000 and, in default of payment of such fine with imprisonment for a term not exceeding 2 years.

55. Penalty for attaching anything to telecommunication line, etc.

Every person who climbs up a telecommunication post or attaches anything to any telecommunication line, post or other apparatus without authority, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding VT 200,000.

56. Transmission of unpaid message prohibited

Every telecommunication officer, or other persons having official duties connected with any office used as telecommunication office, who transmits or causes to be transmitted by telecommunication or delivers or causes to be delivered any message on which the charge prescribed by an operator has not been paid, thereby intending to defraud the operator, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding VT 500,000 or with imprisonment for a term not exceeding 2 years or to both such fine and imprisonment.

57. Penalty for misconduct of telecommunication officer

Every telecommunication officer, or other person having official duties connected with a telecommunication service who is guilty of an act of drunkenness, or while under the influence of drugs not medically prescribed or of carelessness, or other misconduct whereby the correct transmission or the delivery of any message is impeded or delayed, and every such officer who delays or defaults in the transmission or delivery of any message shall be guilty of an offence and shall be liable on conviction to a fine not exceeding VT 500,000 or with imprisonment for a term not exceeding 2 years or to both such fine and imprisonment.

58. Penalty for tendering obscene or indecent or seditious message

Every person who by himself or by his agent or servant tenders for transmission at any telecommunication office any message of an indecent, obscene, seditious, scurrilous, threatening, or grossly offensive character, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding VT 200,000 or to imprisonment for a term not exceeding 1 year, or to both such fine and imprisonment.

59. Penalty for causing annoyance by telephone calls

Every person who persistently makes telephone calls without reasonable excuse and for the purpose of causing annoyance or inconvenience to any telecommunication officer or any other person, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding VT 500,000, and, in default of payment of such fine, to imprisonment for a term not exceeding six months.

60. Penalty for retaining message delivered by mistake

Every person who fraudulently retains, or wilfully secretes, or makes away with or detains, a message which ought to have been delivered to some other person, or being required by a telecommunication officer to deliver up any such message, neglects or refuses to do so, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding VT 500,000 or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

61. Offence relating to telecommunication wire

(1) Whoever has in his possession, custody or control any telecommunication wire and is unable to establish that such wire has been acquired lawfully shall be guilty of an offence and shall be liable on conviction to a fine not exceeding VT 500,000 or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

(2) Any person who –

- (a) attempts to commit or does any act preparatory to the commission of; or
- (b) aids or abets another person to commit; or
- (c) conspires with another person in the commission of,

an offence under subsection (1) shall himself be guilty of that offence and shall be liable on conviction to the same punishment as is specified for a person convicted of an offence under subsection (1).

62. Penalty for attempting to commit offences

Whoever attempts to commit any offence punishable under this Act shall be guilty of an offence and shall be liable on conviction to the punishment herein provided for the offence.

63. General penalties

Every person guilty of an offence where no penalty is specifically provided under this Act, shall be liable on conviction to a fine not exceeding VT 200,000, and, in default of payment of such fine, to imprisonment for a term not exceeding 1 year.

64. Offences committed by body of persons

Where an offence under this Act or any regulation or rule made thereunder is committed by a body of persons, then –

- (a) if that body of persons is a body corporate, every person who at the time of commission of the offence was a Director, General Manager, Secretary or other similar officer of that body; or
- (b) if that body is not a body corporate, every person who at the time of commission of the offence was the president, manager, secretary or other similar officer of that body,

shall be deemed to be guilty of that offence unless he proves that such offence was committed without his knowledge or that he exercised due diligence to prevent the commission of such offence.

65. Magistrate to grant search warrant in certain cases

If a Magistrate is satisfied by information on oath that there is reasonable ground for believing that, in contravention of the provisions of this Act, or any rule made thereunder, any telecommunication apparatus has been installed, or established, or is maintained or worked, or that any telecommunication apparatus has been imported, sold, or offered for sale in any place or in any vehicle or on board any ship or aircraft within his jurisdiction, such Magistrate may grant a search warrant to any police officer authorizing that officer to enter and inspect the place, vehicle, ship, or aircraft, and to seize any apparatus which appears to that officer to be used or intended to be used for any telecommunication which appears to him to have been imported, sold, or offered for sale for the aforesaid purposes.

PART 11 – GENERAL

66. Power of Minister to give general or special directions in the interest of national security etc.

(1) The Minister, with the concurrence of the Council of Ministers, may issue from time to time to every operator general or specific directions in writing in the interests of national security or public order, or whenever necessary for the maintenance of supplies and services essential to the life of the community, or in the defence of the country.

(2) It shall be the duty of every operator to comply with any general or specific directions issued by the Minister under subsection (1).

67. Power of Minister to make rules

(1) The Minister may make rules in respect of all matters for which rules are required or authorized to be made under this Act.

(2) All rules made by the Minister shall be published in the Gazette and shall come into force on the date of publication or on such later date as may be specified therein.

(3) No rule made by the Minister shall have effect until it has been approved by the Council of Ministers.

67A. Appointment of authorized officers

The Minister may appoint any suitable person to be an authorized officer for the purposes of this Act.

67B. Delegation

The Minister may, in writing, delegate to an authorized officer any of his powers, duties and functions under this Act except –

- (a) this power of delegation; and
- (b) the exercise of powers referred to in sections 16, 17, 19, 20, 21, 23, 26, 66, 67 and 70.

68. Power of Government to prohibit or restrict the use of telecommunications

If on the occurrence of any public emergency or in the interest of public safety and tranquillity, it is expedient or necessary that the transmission and reception of messages by telecommunication should be prohibited or be subject to supervision and control, the Prime Minister may, by order made either generally and published in the Gazette or specially in respect of any telecommunication installed in any place in Vanuatu or in any ship in the territorial waters of Vanuatu or in any vehicle or aircraft in or over Vanuatu or the territorial waters thereof –

- (a) where prohibition is expedient or necessary prohibit the transmission or

reception of messages by telecommunication either generally or at any specified place or station or in any specified ship, vehicle or aircraft or by any specific telecommunication or by the operator or specified person or class of persons; or

- (b) where supervision and control are expedient or necessary –
 - (i) prescribe the conditions and restrictions subject to which messages may be transmitted or received by telecommunication either generally or by the operator or person in charge of any specified telecommunication; and
 - (ii) make such provision as he may deem necessary for the interception or the censoring of all or any specified class or description of messages submitted for transmission by, or transmitted or received by telecommunication.

69. Protection for action taken under this Act

No suit or prosecution shall lie against an authorized officer for any act which in good faith is done or purported to be done by such officer under this Act or any regulation or rule made thereunder.

70. Regulations

- (1) The Minister may make regulations in respect of any matter required by this Act to be prescribed or in respect of which regulations are authorized by this Act to be made.
- (2) *(Repealed)*

71. Repeal of Act No. 26 of 1982 [Cap. 153]

- (1) The Telecommunication Act No. 26 of 1982 [Cap. 153] is hereby repealed.
- (2) Notwithstanding the repeal of the aforesaid Act (repealed Act) –
 - (a) the agreement or any contract entered into by the Minister under the repealed Act with a company for or organization for or in respect of, the establishment, maintenance or operation of any international telecommunication system or telegraph service, shall be deemed to be a licence issued under this Act to operate a telecommunication system to provide Public International Telecommunication System and shall subject to such modification as may be made under section 17, remain in force until the expiry of the period of validity of such agreement or contract;
 - (b) every licence issued under the repealed Act as is in force on the date of operation of this Act, insofar as the conditions of such licence are not inconsistent with the provisions of this Act, shall remain valid until the date of expiry of the period of validity of that licence;
 - (c) every action or proceeding instituted by or against the Department of Telecommunications and pending under the provisions of the repealed Act in any Court, on the date of operation of this Act shall be deemed to be an action or proceeding instituted by or against the Company and every such action or proceeding may be proceeded with to completion and be enforced accordingly;

(d) every regulation or rule made under the repealed Act as is in force on the date of operation of this Act in so far as such regulation or rule is not inconsistent with the provisions of this Act, shall be deemed to be a regulation or rule made under this Act and may be amended or rescinded by regulations or rules made under this Act;

(e) any decree, order or award entered or made in favour of or against the Department of Telecommunications by any Court or other body in any action, matter, proceeding or thing shall, with effect from the date of operation of this Act be deemed to be a decree, order of award entered or made in favour of or against the Company.

Table of Amendments

1 Amended by Act 18 of 1993
Part 1 Repealed by Act 18 of 1993
16(3) Amended by Act 18 of 1993
16(4) Repealed by Act 18 of 1993
16(5) Amended by Act 18 of 1993
16(8) Amended by Act 18 of 1993
16(9), (10) Renumbered, amended by Act 18 of 1993
17(1) Substituted by Act 18 of 1993
17(2), (3) Amended by Act 18 of 1993
19(1) (a) Substituted by Act 3 of 1992
19(2), (3), (4) Amended by Act 18 of 1993
20 Amended by Act 18 of 1993
21 Amended by Act 18 of 1993
22 & heading Amended by Act 18 of 1993
23(1), heading Amended by Act 18 of 1993
23(2) Repealed by Act 18 of 1993
24(1), (2), heading Amended by Act 18 of 1993
25(1), (2), (3), heading Amended by Act 18 of 1993
26(1), (3), (4), (5), (6) Amended by Act 18 of 1993
27(1), (2), (3) Amended by Act 18 of 1993
27(3A) Inserted by Act 18 of 1993
Parts 5, 6 Repealed by Act 18 of 1993
37 (1) & (2) Amended by Act 18 of 1993
40(2) Amended by Act 18 of 1993
59 Amended by Act 18 of 1993
66(1), (2), heading Amended by Act 18 of 1993
67(1), (2), (3), heading Amended by Act 18 of 1993
67A, 67B Inserted by Act 18 of 1993
69 Substituted by Act 18 of 1993
70(2) Repealed by Act 18 of 1993
71(2) (a) Amended by Act 18 of 1993