



PUBLIC CONSULTATION DISCUSSION PAPER

**PROPOSED AMENDMENTS TO THE NATIONAL
INFORMATION AND COMMUNICATIONS TECHNOLOGY
ACT OF 2009**

Issued on 2 April 2025

EXECUTIVE SUMMARY

The National Information and Communications Technology Policy of 2008 led to the enactment of the Papua New Guinea (PNG) National Information and Communication Technology (NICT) Act of 2009. The NICT Act provides the legal framework for the regulation, management, and promotion of the ICT sector in Papua New Guinea.

Considering rapid technological advancements, evolving market dynamics, and the need to align with the best international practices, a comprehensive review of the Act is necessary to ensure its continued effectiveness and relevance.

Since the enactment, there has been rapid technological advancement forcing a changing market dynamic that has resulted in the sector and Government lagging the pace of change. Therefore, there is a need to review the Act to ensure it is up-to-date and effective in promoting growth in the sector.

The Government in partnership with the National Information and Communications Technology Authority, is interested in finding out from stakeholders within the ICT sector their views on the following key points:

- a) What do firms in the industry feel are the most pressing issues they are facing, in terms of sector policy, laws, and regulations, which affect their ability to innovate and thrive in delivering ICT services and products to the market?
- b) What specific issues, topics, or clauses do the industry and others feel are missing from the Act and should be added to a new revision?
- c) What issues or topics are currently covered, but need to be revised or expanded, and in what ways?

This initial Public Consultation will:

- a) Provide industry, insight into proposed changes that NICTA would like to introduce through repeal or amendment; and
- b) Seek the views of industry on specific topics with a view to better understanding what issues and concerns the industry has and to ensure that these issues or topics are covered in the revision of the Act.

Views on Data Governance/Data Protection, e-safety, Digital Government, Digital Transformation, or Cybersecurity are also welcomed in this consultation and will pave the way for an overarching ICT sector Act. NICTA aspires to be forward thinking, and these are emerging issues that the Government is prioritizing.

The review of the National ICT Act also welcomes comments on internet related issues as they directly relate to communications, broadcasting, spectrum, or technology issues and consumer protection issues. These will be taken into consideration, so there is a clear demarcation of roles for relevant government agencies responsible for policy development, regulation and the implementation of such policies. This will promote better coordination and collaboration among agencies, as well as ensure that there is no overlap or duplication of responsibilities.

Overall, the review of the National ICT Act 2009 will aim to modernize and update the legal framework for the Communications (Telecom/ICT) and Broadcasting sector in Papua New

Guinea, so that it can effectively address the challenges and opportunities presented by emerging technologies and market dynamics.

In this regard, industry consultations will greatly assist NICTA to make a comprehensive analysis of the current legal framework with a view to improving and promoting efficient and competitive growth.

The review will be guided by the principles of transparency, inclusiveness, and evidence-based decision-making, and will be undertaken with the aim of promoting sustainable competition as a mechanism to drive the long-term development of the sector in PNG.

PROPOSED AMENDMENTS TO THE NATIONAL ICT ACT

Proposed amendments to the Act are contained in **Annexure A**. For purpose of this Discussion Paper, summary of these are as provided in the below:

No.	Section	Proposed Amendment
1.	Section 29 - Application of <i>Public Finances (Management) Act</i> 1995.	Harmonization of NICT Act with current Public Finance Management Act (PFMA) provisions.
2.	Section 33 - Application of money received by NICTA.	Proposing provision/s to exempt NICTA from application of the Non-Tax Revenue Administration Act of 2022.
3.	Section 38 - Accounts and audit.	Proposing provision/s to allow NICTA to seek the assistance of an independent auditor to conduct annual audits when necessary.
4.	Section 11 - Government Policy.	Proposing to introduce specific qualifiers to prevent abuse.
5.	Section 40 - Independence.	Proposing to introduce higher qualifications to protect the independence of NICTA from political influence.
6.	Section 254(a)	Proposal to remove constitution of the ICT Appeals Panel from the ICCC and consequently from Department of Treasury.
7.	Part XIII of the Act relates to the establishment of the Appeals process and Appeals Panel.	Proposal to remove constitution of the ICT Appeals Panel from the ICCC and consequently from Department of Treasury. Proposal to review the wording under certain provisions that indicate a timing to appeal (example, 20 days
8.	Section 271 - NICTA to prosecute offences.	Proposal to bring back prosecution functions of NICTA.
9.	Section 89(2) - Universal Access and Service Fund	Proposal to harmonize this provision with the PFMA and allow for interest earned on investment of fund money, to remain with NICTA.
10.	Section 92 - Composition of the UAS Board.	Proposal to increase private sector representation or allow for proxies to vote at meetings.
11.	Section 108(6) and (7) - UAS Projects.	Proposal to amend and allow for projects to be “deemed approved” by the Minister is a response has not been received in writing to reject or approve the projects.
12.	Section 109 - Competitive selection process.	Proposals to free up the process to allow for ‘pay or play’ model to be introduced.
13.	New Part on Emergency Services	Proposing new provision/s to regarding Emergency Services and the role of ICT

		operators and authorities in national emergencies.
14.	New Part on Cybersecurity and Resilience	NICTA welcomes feedback from industry on whether or not NICTA can and should perform these functions.

INVITATION TO MAKE SUBMISSIONS

NICTA invites all stakeholders and members of the public to make submissions on the proposed amendments to the NICT Act of 2009 as contained in **Annexure A**.

Stakeholders that will be directly affected by the changes are especially encouraged to make **written** submissions directly to NICTA.

In addition to the proposed amendments contained in Annexure A, NICTA's specific questions that submissions may address are again repeated below:

- a) What do firms in the industry feel are the most pressing issues they are facing, in terms of sector policy, laws, and regulations, which affect their ability to innovate and thrive in delivering ICT services and products to the market?
- b) What specific issues, topics, or clauses do the industry and others feel are missing from the Act and should be added to a new revision?
- c) What issues or topics are currently covered, but need to be revised or expanded, and in what ways?
- d) Do the proposed amendments alleviate a few concerns that you may have as industry participants?

Submissions should be addressed to NICTA at submissionICT@nicta.gov.pg and be received no later than **9 May 2025, 5:00pm**

Should you require further information or clarification in relation to this consultation, please contact Ms. Kimberly Kanimba, Corporate Secretary, NICTA on 303 3200 or via email kkanimba@nicta.gov.pg.

ANNEXURE A

PROPOSED AMENDMENTS TO NATIONAL ICT ACT OF 2009

	What is the current law?	What is wrong with the current law?	Why do we need to change the law?
1.	Section 29 - Application of <i>Public Finances (Management) Act</i> 1995.	<p>Section 29 refers to Part VIII of the PFMA, and certain sections of Part VIII have been repealed already.</p> <p>Section 29 refers to Section 59 of the PFMA which has been repealed.</p>	Section 29 needs to be updated to reflect amendments made to the PFMA.
2.	Section 33 - Application of money received by NICTA.	We were advised by the Department of Finance that the Non-Tax Revenue Act (NTR Act) supersedes our legislation and so Section 33 does not apply anymore.	This provision needs to be updated to reflect those changes in government policy where NICTA is subject to remitting funds to the consolidated revenue fund, with a view to exempting NICTA from being subject to the NTR Act or alternatively to amend section 36(2)(b) which provides for payment of surplus funds into the CRF.
3.	Section 38 - Accounts and audit.	<p>The law is silent on whether or not NICTA can engage a private accounting firm to audit its books.</p> <p>The understanding is that pursuant to Section 214 of the Constitution and Section 3 of the Audit Act, the Office of the Auditor-General is responsible for auditing all public accounts and monies held by public bodies.</p>	<p>We would like the Act to expressly give NICTA the option to source a reputable accounting firm to conduct annual audits for purposes of reporting and to comply with Section 214 of the Constitution and Section 3 of the Audit Act, the audit report of the private accounting firm can then be reviewed and cleared up by the Auditor-General.</p> <p>We have been experiencing delays in having our accounts audited due to delays on the part of the Auditor-General to send in a team to audit our accounts since</p>

		By virtue of Section 2 of the PFMA, any monies generated by NICTA is considered to be public money given that NICTA is defined as a public body also under Section 2 of the PFMA.	2018. We would like to deal with this situation with a legislative amendment that allows us to source an audit from a private accounting firm.
4.	Section 11 - Government Policy.	Section 11 intention was to demarcate and restrict the role of the Minister to policy matters, however this particular provision remains ambiguous and problematic for the following reasons:	Set the qualification to which government involvement is necessary or defined.
5.	Section 40 - Independence.	Despite the broad and firm statement on the independence of NICTA under Section 40, Section 11 (Policy), Section 129 (Declaration recommendations by the Minister), Section 130 (Declaration by the Minister) and Section 160 (Retail Services Determination by the Minister) still vest powers with the Minister.	<p>The provisions in their present state reduce the independence of NICTA as a regulator and invites undue political interference on matters that are clearly defined under the Act as core functions of NICTA..</p> <p>NICTA's independence should be strengthened and reinforced in a new Act, to grant greater autonomy from the Minister, DICT, and Prime Minister, to minimize political influence on decisions. This section and others can be improved in this respect.</p> <p>For transparency issues, all meetings with the CEO, heads of divisions and board members should be documented and published</p>

6.	Section 254(a)	<p>This to creates a dual role for the Regulators (ICCC/NICTA) and may potentially harm any decisions or recommendations by NICTA.</p> <p>There is a high risk that ICT panel may not be constituted on time to deal with any disputed matters. Such delays than decisions are deemed to be accepted. Given the time limit imposed under this section it may be unfair for some appeal matters raised on merits</p>	<p>This section needs to be amended to limit the dual role of the regulator and improves the efficiency of the ICT Panels to deal with the substantive matter. The involvement of ICCc through the establishment of ICT Panel is not justified.</p>
7.	Part XIII of the Act relates to the establishment of the Appeals process and Appeals Panel.	<p>From past experiences in making wholesale declarations and retail determinations, NICTA has found issue with the Appeals process, in particular, the review sought by the Applicant on NICTA's decisions relating to Subsection 256 (c) and (d) of the Act.</p>	<p>NICTA has faced issues with the current provisions that administer the Appeals process including the manner and timing in which NICTA makes recommendations to the Minister. Hence, the case study presented here provides strong evidence and case for this section of the Act to be reviewed to address the confusion and regulatory ambiguity caused under the current regime.</p>
8.	Section 271 - NICTA to prosecute offences.	<p>This provision was repealed in 2016 as a consequential amendment from the Cybercrime Act of 2016 and now the prosecution functions of NICTA has been parked with the Police.</p>	<p>We need to bring this function back to NICTA so we can prosecute offences in-house. The Police are understaffed and will delay prosecutions.</p>
9.	Section 89(2) - Universal Access and Service Fund.	<p>89 The UAS Fund has already been established, so the new revision to the Act needs to acknowledge its existence and refer to the UAS Policy, including its Objectives.</p>	<p>This section of the act cannot be performed effectively, because the NICT Act contradicts the PFMA on the issue of interest earned and return on investments.</p> <p>In practice, BSP trust accounts do not earn interest, or if they do those interests are not being paid into the UAS Trust Fund.</p>

		<p>Current law is not consistent with PFMA Amended Act 2016 Section 12 investment of Public Funds (7) investments of any money standing to the credit of any trust fund, the Consolidated Revenue Fund (CRF) or any general revenue fund shall be made in accordance with the written authority of the Finance Departmental Head subject to the terms and conditions specified in the written authority.</p> <p>The written authority in this case being the UAS Trust Instrument outlines that any interest earned on the account should be paid into the CRF.</p>	
10.	Section 92 - Composition of the UAS Board.	<p>No provision for proxy to vote;</p> <p>Chairman same for both NICTA and UAS.</p> <p>Less presentation from the private sector- private sector drives the industry</p>	<p>Meetings are not effectively attended, or lack of quorum</p> <p>Agendas are not effectively debated because the same Chairman sits on the Board of both the UAS and NICTA Board.</p> <p>The proxies attend but have no voting rights and therefore decisions are deferred.</p> <p>Private sector representation is not enough to represent the interests of private sector who are the contributors to the fund.</p>
11.	Section 108(6) and (7) - UAS Projects.	<p>All projects for that year are rejected</p> <p>All the hard work put into preparation are wasted</p>	<p>To cater for the project for that year. Projects are development for the country and not implementing results in delayed development.</p> <p>At the end of that sixty (60) day period instead of a deemed rejected regime, we are proposing a deemed approved regime on all UAS Projects identified in the UAS Project report.</p> <p>Consequently, we are suggesting the removal of subsection (7). The new UAS policy says that the budget and projects do not have to be approved in advanced for the budget to be approved. So Act should be changed</p>

12.	Section 109 - Competitive selection process.	Only allows for competitive bidding leaving no other options to deploy projects	<p>To allow more options for projects to be deployed</p> <p>NICTA to consider.</p> <ul style="list-style-type: none"> a) allow for Licensees to propose option for “PAY or PLAY,” whereby investment in designated UAS areas can offset some portion of UAS Fund contribution, subject to NICTA verification. b) or allocate a service provider to deploy (without the competitive bid process) c) allow new or smaller ICT service providers to provide service at the UAS designated area d) reserve resources for the last mile like spectrum to be free or be used by any service operators – e) fast deployment in case of emergency, all required resource must be at our disposal,
13.	New Part on Emergency Services	Not contained in the act and should be added	<p>This section can include provisions regarding Emergency Services and the role of ICT operators and authorities in national emergencies. It would identify and describe the obligations of licensed operators with respect to ensuring secure networks and data, cooperation with authorities, provision of information, and other matters. The Lagatoi Declaration calls for the creation and development of ICT tools for better environmental management and disaster response, including early warning systems, environmental monitoring using IoT devices, and enhanced data analysis for climate change adaptation strategies. So, the new amendments should reference these tools. Specifically, the action plan speaks of the creation of redundancy plans and resources in the event of disaster, specifically for digital infrastructure. So, the NICT Act should reference this as well.</p> <p>This section of the Act could address various aspects of emergency telecommunications and disaster preparedness. It would identify the</p>

		<p>responsibilities of telecom operators to cooperate with national authorities during designated emergencies, and the scope of Government and NICTA authorization to require such cooperation. It could also include certain required reporting and also maintaining and rebuilding of networks during the emergency. It will only get more apparent as climate changes increases.</p> <p>This includes provision of emergency telephone numbers and response units that callers can access at any time free of charge to report an emergency or if they have an emergency.</p> <p>It could also include the use of different ICT tools to respond to emergency and disaster response, including early warning systems, environmental monitoring using IoT devices, and enhanced data analysis for climate change adaptation strategies.</p> <p>Possibly some language could be used only during the duration of the national emergency and following applicable law and procedures</p> <p>The role of broadband digital networks and technologies in addressing emergency and disaster situations is increasingly important. Access to critical information and communication capabilities before, during, and after various types of emergencies and disasters represents a vital lifeline and source of support and response for Government, citizens, and especially First Responders.</p>
--	--	---

14.	New Part on Cybersecurity and Resilience	Needs to be added to the Act	<p>This proposed new section would address issues relating to cybersecurity, Data Privacy and Data Protection in PNG, including NICTA's potential role in supporting and enforcing laws and regulations in this area.</p> <p>Although primary responsibility for cybersecurity resides with the National Cyber Security Agency. NICTA plays an integral role in ensuring that the Mobile Operators and other licensed providers maintain a high level of cyber security in all their ICT infrastructure.</p> <p>This section in the Act will provide NICTA with powers to mandate cyber resilient infrastructure. It can also include provisions relating to Critical Infrastructure, and Data Protection, and the role of ICT operators and authorities in national emergencies.</p> <p><u>Obligations of Licensed Operators</u></p> <p>This Division would identify and describe the obligations of licensed operators with respect to ensuring secure networks and data privacy/protection, cooperation with authorities, provision of information, and other matters.</p> <p><u>Coordination with Cybersecurity and Data Protection Authorities</u></p> <p>This Division should address NICTA's role in cooperating with designated national cybersecurity authorities, and with Data Protection Authorities and with any laws or regulations relating to cybersecurity, such as the Cybersecurity policy of 2021, The Cybersecurity Strategy 2024, the forthcoming</p>
-----	--	------------------------------	---

			Cybersecurity legislation, the forthcoming data protection legislation, the laws and regulations relating to National Security Agency
--	--	--	---