

**PAPUA NEW GUINEA**

***National Information and Communication Technology Act 2009.***

No. 8 of 2009.

Certified on: 11 FEB 2010

AN ACT

entitled

***National Information and Communications Technology Act 2009.***

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No. 8 of 2009.

AN ACT

entitled

***National Information and Communications Technology Act 2009,***

Being an Act -

- (a) to regulate the information and communications technology industry; and
- (b) to regulate radiocommunications and spectrum; and
- (c) to provide for the establishment of a National Information and Communications Technology Authority; and
- (d) to repeal the ***Telecommunications Act 1996*** and the ***Radio Spectrum Act 1996***, and for related purposes.

MADE by the National Parliament to come into operation -

- (a) in respect of Part I, Part II and Part XV — in accordance with a notice in the National Gazette by the Head of State, acting on advice, being the Commencement Date; and
- (b) in respect of the remainder—on 1 April 2010 or such later date in accordance with a notice in the National Gazette by the Head of State, acting on advice, being the Succession Date.

**PART I. — PRELIMINARY.**

***Division 1. — Compliance with Constitutional Requirements.***

## 1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the *Constitution*, namely –

(a) the right to liberty of the person conferred by Section 42 of the *Constitution*; and

(b) the right to freedom from arbitrary search of person or property and entry of premises, conferred by Section 44 of the *Constitution*; and

(c) the right to freedom of expression and publication conferred by Section 46 of the *Constitution*; and

(d) the right to peacefully assemble and associate and to form or belong to, or not belong to, political parties, industrial organisations and other associations conferred by Section 47 of the *Constitution*; and

(e) the right to freedom of choice of employment in any calling for which a person has the qualifications (if any) lawfully required conferred by Section 48 of the *Constitution*; and

(f) the right to reasonable privacy in respect of his private and family life, his communications with other persons and his personal papers and effects conferred by Section 49 of the *Constitution*; and

(g) the right of reasonable access to official documents conferred by Section 51 of the *Constitution*,

is a law that is made (pursuant to Section 38 of the *Constitution*) –

(h) taking account of the National Goals and Directive Principles (including, in particular, the goal that Papua New Guinea should, among other things, be economically independent and its economy basically self reliant and to achieve development primarily through the use of Papua New Guinea forms of economic organisation) and the Basic Social Obligations (including, in particular, the obligations to protect Papua New Guinea and to safeguard the national wealth, resources and environment in the interests not only of the present generation but also of future generations), for the purpose of giving effect to the public interest in public safety, public order, public welfare, and the development of underprivileged or less advanced groups or areas; and

(i) in order to protect the exercise of the rights and freedom of others; and

(j) to make provision for cases where the exercise of one such right may conflict with the exercise of another.

(2) This Act, to the extent that it creates or otherwise gives rise to rights, privileges, obligations

and duties that are not the same as between citizens, is intended to be a law for the special benefit, welfare, protection and advancement of members of underprivileged and less advanced groups and residents of less advanced areas for the purposes of Section 55 of the *Constitution*.

(3) For the purposes of Section 41 of the *Organic Law on Provincial and Local-level Governments* it is hereby declared that this Act relates to a matter of national interest.

(4) In so far as this Act involves a compulsory taking of possession of property or compulsory acquisition of an interest in or right over property within the meaning of Section 53 of the *Constitution* -

(a) the purposes and reasons for each such taking and acquisition are declared and described to be -

(i) to facilitate and maintain the efficient and economical provision of ICT services; and

(ii) the efficient management and regulation of radiocommunications and spectrum; and

(iii) to maintain the peace and good order in Papua New Guinea,

and each of those purposes and reasons is hereby also declared and described as -

(iv) a public purpose; and

(v) a reason that is reasonably justified in a democratic society that has a proper regard for the rights and dignity of mankind,

for the purposes of Section 53 of the *Constitution* and for the purposes of any other relevant law; and

(b) for the purposes of Section 53(2) of the *Constitution*, just compensation will be made on just terms for the compulsory taking of possession of property or the compulsory acquisition of an interest in or right over property in accordance with the terms set out in Section 58 of the *Constitution* and such terms shall constitute compensation procured (and accordingly made) by, and made on behalf of, the State in connection with each such taking and acquisition.

### ***Division 2. — Objective and Regulatory Principles.***

## **2. OBJECTIVE OF ACT.**

The objective of this Act is to ensure that the ICT industry contributes to the greatest extent possible to the long-term economic and social development of Papua New Guinea, by means that include –

(a) providing a regulatory framework consistent with the regulatory principles in Section 3 that promotes –

(i) the long-term interests of Papua New Guinea and its people, taking account of the National Goals and Directive Principles and the Basic Social Obligations of the *Constitution*; and

(ii) the efficiency and competitiveness of the ICT industry in Papua New Guinea; and

(b) ensuring that ICT services of social importance are supplied as efficiently and economically as practicable and supplied at performance standards that reasonably meet the social, industrial and commercial needs of Papua New Guinea and its people; and

(c) promoting the development of an ICT industry in Papua New Guinea that is efficient, competitive and responsive to the needs of Papua New Guinea and its people; and

(d) promoting and maintaining fair and efficient market conduct and effective competition between persons engaged in commercial activities connected with the ICT industry in Papua New Guinea, including by assisting the ICCC to achieve this; and

(e) promoting the development of the technical capabilities and skills of the ICT industry in Papua New Guinea; and

(f) providing appropriate community safeguards in relation to ICT activities and to regulate adequately participants in sections of the ICT industry in Papua New Guinea; and

(g) encouraging, facilitating and promoting industry self-regulation in the ICT industry in Papua New Guinea; and

(h) encouraging, facilitating and promoting sustainable investment in, and the establishment, development and expansion of, the ICT industry in Papua New Guinea, including via the exercise of facilities rights.

### **3. REGULATORY PRINCIPLES.**

To achieve the objective of this Act set out in Section 2, Parliament intends that the ICT industry in Papua New Guinea be regulated in a manner that recognises –

(a) the effectiveness of market forces in promoting consumer welfare, specifically that –

(i) to the extent that markets are competitive, primary reliance should be placed on commercial negotiations and the greatest practicable use of industry self regulation, subject to minimum regulatory requirements consistent with the

objective of this Act; and

(ii) to the extent that markets are not competitive, appropriate *ex ante* regulatory measures may be required to promote and maintain effective and sustainable competition; and

(b) that regulatory measures should be –

(i) proportionate and drafted to achieve results that are no more burdensome than necessary to achieve their stated regulatory objectives; and

(ii) based on sound economic principles and, to the extent feasible, should be technology-neutral to reflect the potential for convergence of technologies; and

(iii) administered in a transparent manner and, to the extent appropriate, should be the subject of prior public consultation (in accordance with Section 229 of this Act), published explanations and public clarifying guidelines; and

(iv) implemented within reasonable timeframes that recognise the need for ICT licensees to respond to dynamically changing market forces and the potential consumer detriment from protracted delay; and

(v) non-discriminatory in application such that, to the extent appropriate, similarly situated ICT licensees are treated on an equivalent basis subject to the recognition of legitimate differences; and

(vi) the subject of consultation with other relevant regulatory authorities in Papua New Guinea, where appropriate, to facilitate the development of a consistent regulatory policy in the public interest.

### ***Division 3. — Interpretation.***

#### **4. INTERPRETATION.**

Interpretation.

(1) In this Act, unless the contrary intention appears –

"access" has the meaning given by Section 125;

"access exemption" has the meaning given by Section 139;

"access provider" has the meaning given by Section 136;

"access seeker" has the meaning given by Section 125;

"accredited test house" means a test house in relation to which there is in operation an accreditation granted under regulations made under Section 191;

"aircraft" includes an airship and a balloon;

"any-to-any connectivity" means the ability of a retail customer connected to one network to send communications to, and/or receive communications from, a retail customer connected to another network, where those communications are conveyed in whole or in part via the two networks;

"apparatus" means any equipment or combination of equipment capable of effecting radiocommunications, whether by transmission or reception of radiocommunications or both;

"apparatus licence" means an apparatus licence issued under Part VIII of this Act;

"apparatus licensee" means the holder of an apparatus licence;

"applications licence" means a licence entitling the holder to supply one or more applications services;

"applications licensee" means the holder of an applications licence;

"applications service" means a service (for facilitating communications by means of guided and/or unguided electromagnetic energy) provided via one or more network services, but does not include such a service provided solely on the retail customer side of the network boundary;

"Bid Bond" means the bond described in Section 114;

"broadcasting service" means an applications service that supplies content to the general public;

"cabling licence" means a licence issued under Section 201 to perform customer cabling work and, to avoid doubt, a cabling licence is not an operator licence;

"cabling licensee" means the holder of a cabling licence;

"Censorship Board" means the Censorship Board established under the *Classification of Publications (Censorship) Act 1989*;

"Chairman" means the person appointed as chairman of NICTA under Section 13 of this Act;

"Chief Executive" means the person appointed as the chief executive of NICTA under Section 20 of this Act;

"class licence" means a licence authorising persons, upon registration, to supply certain ICT services, or to exercise facilities rights, identified in regulations made under Section 62;

"class licensee" means a holder of a class licence;

"Commencement Date" means the date of commencement of Part I, Part II and Part XV;

"communication" includes any communication (of content) -

(a) whether between persons and persons, things and things, or persons and things; and

(b) in any combination or form, including speech, music or other sounds, data, text, writing, signs, signals or images (animated or otherwise);

"competition objective" has the meaning given by Section 124;

"conditional access customer equipment" means customer equipment that consists of or incorporates a conditional access system that allows an operator licensee to determine whether a retail customer is able to receive a particular content service;

"connected" includes a connection other than by means of physical contact, such as a connection by means of radiocommunications;

"connection permit" means a permit issued under Section 192 for connection of customer equipment to a facility;

"the Consolidated Revenue Fund" has the meaning given by the *Public Finances (Management) Act 1995*;

"content" means information in any combination or form including speech, music or other sounds, data, text, writing, signals or images (animated or otherwise);

"content licence" means a licence entitling the holder to supply one or more content services;

"content licensee" means the holder of a content licence;

"content regulations" means the regulations made under Section 217; -

"content service" means –

(a) a broadcasting service; or

(b) an applications Service which also supplies content,  
as prescribed in the regulations;

"customer cabling" means a line that -

(a) is, or is intended to be, connected by a network licensee to a facility that is subject to a facilities right; and

(b) is customer equipment;

"customer equipment" means, unless the regulations specify otherwise -

(a) any equipment or element of physical infrastructure (including any apparatus, tower, mast, antenna or other structure or thing); or

(b) any system (whether software based or otherwise),

that is connected to a facility and is used, installed ready for use or intended only for use on the retail customer side of the network boundary;

"dangerous conduct" means conduct that -

(a) endangers the health or safety of any person; or

(b) compromises the security or integrity of communications sent via an ICT service; or

(c) compromises the security or integrity of a network or any facilities;

"declaration" means the declaration of a wholesale service under Sections 130 or 131;

"declaration criteria" has the meaning given by Section 128;

"declared service" means a wholesale service that has been declared under Sections 130 or 131;

"defence organisation" means -

(a) the Department of Defence or the Defence Force or any part of them; or

(b) an organisation or body of a foreign country (in whole or part), so far as the organisation or body -

(i) has functions corresponding to functions of, or of a part of, the Department of Defence or the Defence Force; and



(ii) is authorised to operate or train in Papua New Guinea;

"defence purposes" means any one or more of the following purposes -

(a) purposes connected with the activities of a defence organisation; or

(b) the operation of intelligence systems or command and control systems; or

(c) the operation or control of weapons systems, including any thing that, by itself or together with any other thing or things, is intended for defensive or offensive use in combat; or

(d) the collection or dissemination of information relevant to the security or defence of Papua New Guinea or of a foreign country that is allied to or associated with Papua New Guinea; or

(e) any other matter prescribed in the regulations as constituting a defence purpose;

"document" includes an electronic copy of a document such as email, computer data files and archived data copies of electronic records;

"efficiency objective" has the meaning given by Section 124;

"eligible corporation" means a body corporate that -

(a) is incorporated in Papua New Guinea; and

(b) holds a certificate under Sections 29 or 36E of the *Investment Promotion Act* 1992, if that body corporate is required by that Act to hold such a certificate;

"emergency services number" means a telephone number used by a retail customer to call the Police Force, a fire service, an ambulance service and/or any other emergency service in connection with an emergency;

"employee" means an employee of NICTA and includes a transferred employee;

"exercise a facilities right" means the act of constructing, maintaining, owning, operating and/or otherwise making available one or more facilities;

"existing licence" means a licence granted or issued under the *Telecommunications Act* 1996 or the *Radio Spectrum Act* 1996 and includes a Spectrum Usage Agreement and a Radio Dealers Licence;

"existing licensee" means the holder of an existing licence;

"facilities access service" means the supply of access to, or use of, a facility, but only to the extent that the facility may be used to supply a network service;

"facilities right" means the right to construct, maintain, own, operate and/or otherwise make available one or more facilities;

"facility" means any element or combination of elements of physical infrastructure (including any line, equipment, apparatus, tower, mast, antenna, tunnel, duct, pit, pole or other structure or thing) used principally for, or in connection with, the provision of a network service, but excluding any customer equipment;

"final determination" has the meaning given by Section 147;

"Fund Manager" means the fund manager referred to in Section 104;

"general pricing principles" has the meaning set out in Section 134;

"Government land" means all land other than -

(a) customary land that is not leased by the owners to the State; and

(b) land held by a person other than the State for an estate greater than a term of years; and

(c) land that is the subject of a State lease under the *Land Act* 1996;

"Government Policy" means the general policy of Papua New Guinea relating to ICT as approved or amended by the National Executive Council from time to time;

"guidelines" means guidelines made by NICTA under Part XI of this Act;

"holder" of a licence includes, in respect of a class licence, a person registered to undertake activities covered by that class licence;

"ICCC" means the Independent Consumer and Competition Commission established by the *Independent Consumer and Competition Commission Act* 2002;

"ICT" means information and communications technology;

"ICT Appeals Panel" means the appeals panel constituted under Section 255;

"ICT licence" means a licence issued under this Act in force under this Act;

"ICT licensee" means the holder of an ICT licence;

"ICT service" means –

- (a) a facilities access service; and/or
- (b) a network service; and/or
- (c) an applications service; and/or
- (d) a content service;

"Independent Expert" means the person appointed as the independent expert under Section 13 of this Act;

"individual licence" means an operator licence issued by NICTA pursuant to Section 56;

"individual licensee" means the holder of an individual licence;

"industry code" is a code developed under Division XI.6;

"industry standard" is a standard determined under Division XI.7;

"install" includes alter, move, remove or replace;

"interception" has the meaning given by the *Protection of Private Communications Act 1973*;

"interconnection" means the physical and/or logical linking of one network to another network to achieve any-to-any connectivity;

"interference" means the process of impairing the fidelity or discernment of radiocommunications;

"interim determination" has the meaning given by Section 146;

"International Arbitrator" has the meaning set out in Section 41(3)(c) of the *Independent Consumer and Competition Commission Act 2002*;

"ITU" means the International Telecommunications Union;

"ITU-R standards" means -

- (a) the current Radio Regulations of the ITU; and
- (b) any applicable reports and recommendations of the Radiocommunication Sector of the ITU,

to the extent adopted by Papua New Guinea;

"ITU-T recommendations" means the E500, E600 and E700 series of recommendations dealing with quality of service, telecommunications network management and traffic engineering promulgated by the International Telecommunication Union, as currently in force;

"Land Access Code" has the meaning set out in Section 75;

"line" means a wire, cable, optical fibre, tube, conduit, waveguide or other physical medium used, or intended for use, as a continuous artificial guide for or in connection with carrying communications by means of guided electromagnetic energy;

"low power device" means apparatus with limited transmitter output power, and operating on frequency bands allocated by NICTA, as specified in the radio spectrum regulations;

"maintain" includes adjust or repair;

"mandatory coverage areas" means the network coverage areas contained in a mandatory coverage obligation;

"mandatory coverage obligation" means an obligation on an existing licensee to provide network coverage as required by any declaration by the ICCC pursuant to Section 63(1)(c) of the *Telecommunications Act* 1996 in respect of all public mobile licences;

"mandatory instrument" means any of the following –

(a) any rules, industry codes (where registered under Section 224), or industry standards; or

(b) any ICT licences; or

(c) the national numbering plan; or

(d) any interim determinations, final determinations, or RIO (in respect of which an access provider has received a written notice under Section 142 (6)); or

(e) any retail service determination; or

(f) any directions from NICTA under Sections 140, 151, 153, 177, 186, 187, 244 or 246 of this Act; or

(g) any record keeping rules; or

(h) any order or directions of the ICT Appeals Panel under Section 261; or

(i) any desist orders under Section 280;

"market" means a market in the whole or any part of Papua New Guinea for goods or services as well as other goods or services that, as a matter of fact and commercial common sense, are substitutable for them;

"master", in relation to a vessel or an aircraft, means the person in charge or in command of the vessel or aircraft;

"Member" means the non-Executive Members and the Chief Executive (*ex officio*);

"mobile number portability" means number portability for numbers allocated to mobile networks;

"model terms" has the meaning set out in Section 133;

"modifications" includes additions, omissions or substitutions;

"national numbering plan" means the plan prepared under Section 184 in force from time to time;

"net revenues" means, in respect of an operator licensee, the gross revenues from the supply of ICT services by that operator licensee under its operator licence, less interconnection charges remitted to other operator licensees;

"network" means a combination of facilities used to supply network services;

"network boundary" means the network boundary determined by regulations for the purposes of this Act and, in the absence of such determination, is –

(a) the first equipment socket in a private residence; or

(b) the main distribution frame in a building; or

(c) a point agreed between the retail customer and the owner of the facility to which that retail customer is connected; or

(d) the customer equipment, in the case of the connection of that customer equipment to a network by means of radiocommunications;

"network licence" means a licence entitling the holder to a facilities right and/or to supply one or more facilities access services and/or to supply one or more network services;

"network licensee" means the holder of a network licence;

"network service" means a service for the carrying of communications, by means of guided and/or unguided electromagnetic energy, supplied between distinct geographic points at least one of which is located in Papua New Guinea, but does not include services provided solely on the retail customer side of the network boundary;

"NICTA" means the National Information and Communications Technology Authority established by this Act;

"non-discrimination obligation" has the meaning given by Section 136;

"non-Executive Members" means the members appointed to NICTA in accordance with Section 13;

"number", for the purposes of Part IX, includes a telephone number, letter, symbol or an internet domain name;

"number portability" refers to the ability of a retail customer of an operator licensee to transfer their number with them when they become the retail customer of another operator licensee;

"operator licence" means a network licence, an applications licence and/or a content licence, whether in the form of an individual licence or a class licence;

"operator licensee" means the holder of an operator licence;

"Panel of Experts" means the Panel of Experts constituted under Section 41 of the *Independent Consumer and Competition Commission Act 2002*;

"PANGTEL" means the Papua New Guinea Radiocommunications and Telecommunications Technical Authority, as constituted under the *Telecommunications Act 1996* prior to the Succession Date;

"party" means –

(a) in relation to an arbitration of an access dispute—a party to the arbitration, as mentioned in Section 145; or

(b) in relation to an interim determination or final determination—a party to the arbitration in which NICTA made the interim determination or final determination;

"Performance Bond" means the form of security, to be known as the Performance Bond, as described in Section 118;

"person" includes a partnership;

"pre-selection" means the ability of a retail customer connected to a network to require their communications to be routed to another network of the retail customer's choice including (without limitation) -

(a) the use of an override dial code by the retail customer to route a particular call to the network associated with the override dial code; and

(b) the programming of facilities to route certain types of communications made by that retail customer to the network preselected by that retail customer for those communications; and

(c) the ability of the retail customer to vary their pre-selection choice over time and to use override dial codes to override their pre-selection choice;

"price" includes a price range and includes multiple prices for a single service where that single service is sold at multiple prices;

"Project Agreement" means the agreement described in Section 115;

"protected name" means NICTA or "National Information and Communications Technology;"

"Authority" or "National ICT Authority";

"protected symbol" means the official symbol of NICTA, the design of which is set out in the regulations;

"public consultation" is the procedure set out in Section 229;

"public inquiry" means a public inquiry conducted in accordance with Division XII.3;

"public register" means a register maintained by NICTA for the purposes of transparency and good record-keeping;

"publish" includes publication on a website;

"radiocommunications" means –

(a) the transmission and/or reception of any communication of any nature; and

(b) any other emission of electromagnetic energy, whether or not that emission was intended to occur;

by means of electromagnetic waves of frequencies of up to 3,000GHz that are propagated in space without artificial guide;

"radiocommunications class licence" means a radiocommunications class licence issued under Part VIII of this Act;

"radiocommunications licence" means a spectrum licence, an apparatus licence and/or a radiocommunications class licence;

"radiocommunications licensee" means the holder of a radiocommunications licence;

"radio spectrum regulations" means regulations made under Section 165;

"receiver" means an electronic device capable of receiving and transforming radiocommunications to a useable form;

"record keeping rules" means any rules made under Section 251;

"registrant" means any person that has filed with NICTA a completed version of the appropriate class licence registration form, whether or not that form has been accepted or rejected;

"regulations" means any regulations made under this Act;

"regulatory principles" means the statement of Parliamentary intention set out in Section 3;

"related company" has the same meaning as in the *Companies Act 1997*;

"resale service" means a wholesale service acquired by an applications licensee that is capable of being resupplied by that applications licensee as a complete retail service without the applications licensee making any significant changes to the wholesale service;

"resident member" means a person (not being the International Arbitrator) appointed from the Panel of Experts to sit as a member of the ICT Appeals Panel;

"retail customer" means a person that is not a wholesale customer, including an operator licensee in circumstances where that operator licensee acquires an ICT service for that operator licensee's own personal use rather than to facilitate the supply of an ICT service by that operator licensee;

"retail regulation criteria" has the meaning set out in Section 158;

"retail service" means an ICT service that is supplied to a retail customer;

"retail service determination" means a retail service determination by the Minister under Section 160;



"RIO" means a reference interconnection offer as described in Section 141;

"rules" means rules made by NICTA under Part XI of this Act;

"service provider" means the holder of an applications licence or a content licence;

"service-specific pricing principles" has the meaning set out in Section 135;

"site" means -

(a) land; or

(b) a building or other structure on land;

"space station" means apparatus located on an object which is beyond, is intended to be beyond, or has been beyond the major portion of the earth's atmosphere and includes a satellite;

"spectrum" means the range of frequencies within which radiocommunications are capable of being made;

"spectrum licence" means a spectrum licence issued under Part VIII of this Act;

"spectrum licensee" means the holder of a spectrum licence;

"spectrum plan" means a spectrum plan made under Section 166;

"staff" means the staff of NICTA employed in accordance with Section 21;

"stakeholder" means an individual, entity or group in Papua New Guinea that is not necessarily an ICT licensee and may include, but is not limited to, a community group, an educational institution or a business, that intends to submit a proposal for consideration by the UAS Board under Section 108;

"successful bidder" means a person selected to receive funding from the Universal Access and Service Fund in order to undertake a UAS Project;

"Succession Date" means the date the remainder of this Act other than Part I, Part II and Part XV commences;

"telecommunications transmission tower" means –

(a) a tower; or

(b) a pole; or

(c) a mast; or

(d) a similar structure;

used to supply an ICT service by means of radiocommunications;

"this Act" includes any regulations made under this Act;

"town" means a place declared to be a town under the *Town Boundaries Act 1951* (Chapter 8);

"transferred employee" means an employee of either PANGTEL or the ICCC that will become an employee of NICTA as set out in Section 306;

"transition period" means the period ending on the date twelve (12) months after the Succession Date, or such further period, not exceeding six (6) months, as the Minister declares by notice published in the National Gazette;

"UAS Board" means the Universal Access and Service Board established under Section 91;

"UAS Project" means a project, consistent with the objective of the Universal Access and Service Fund, involving the exercise of facilities rights and/or the supply of ICT services, submitted to the UAS Board for consideration by a stakeholder or otherwise developed by the UAS Board, in the manner described in Division V.5;

"UAS Secretariat" means the UAS secretariat within NICTA established under Section 99;

"unauthorised broadcast" means the transmission otherwise than as authorised by or under this Act of radiocommunications intended for direct reception by the general public in Papua New Guinea;

"Universal Access and Service Fund" means the fund established in accordance with Section 89;

"Universal Access and Service Levy" means the levy described in Section 107;

"unsound mind" means of unsound mind within the meaning of any law relating to the protection of the person and property of persons of unsound mind;

"used" includes, only for the purposes of Part VIII –

(a) reserved for future use; and

(b) reserved for the prevention or control of interference to radiocommunications;

"vessel" includes all vessels used in navigation by water;

"wages policy of the National Executive Council" has the same meaning as in the *Salaries and Conditions Monitoring Committee Act 1988*;

"wholesale customer" means an operator licensee, but excluding circumstances where that operator licensee acquires an ICT service for that operator licensee's own personal use rather than to facilitate the supply of an ICT service by that operator licensee;

"wholesale service" means -

(a) an ICT service that is supplied to a wholesale customer; and

(b) for the purposes of Part VI of this Act only, includes -

(i) a service that facilitates the supply of such an ICT service (excluding intellectual property where it is not an integral but subsidiary part of that ICT service), where that service is supplied, or is capable of being supplied, by an operator licensee to a wholesale customer; and

(ii) the supply of access to, or use of, a site on which any facility is located, but only to the extent -

(A) that the site is owned, occupied or controlled by the network licensee that has the facilities right in respect of that facility; and

(B) that network licensee has a legal right (whether conditional or unconditional) to use that site; and

(C) the facility may be used to supply a network service.

(2) Any "simplified outline" in this Act has no legal effect and does not affect the interpretation of this Act.

#### *Division 4. — Application.*

### **5. ACT BINDS THE STATE.**

Except as otherwise provided, this Act binds the State.

### **6. EXTRA-TERRITORIAL APPLICATION.**

This Act applies both within and outside Papua New Guinea.

## **PART II — THE NATIONAL INFORMATION AND COMMUNICATIONS**

## **TECHNOLOGY AUTHORITY.**

### ***Division 1. — Simplified Outline.***

#### **7. SIMPLIFIED OUTLINE.**

The following is a simplified outline of this Part –

- (a) A body corporate known as the National Information and Communications Technology Authority (NICTA) is established with various functions and powers.
- (b) NICTA comprises four Members, being three non-Executive Members and the Chief Executive (*ex officio*).
- (c) NICTA is supported by its staff which comprises the Chief Executive and employees of NICTA. NICTA and its staff may be supported where necessary by external consultants.
- (d) NICTA meets at least once every two months and decisions are made by a majority vote.
- (e) NICTA is funded from a number of sources, including operator licensing fees, numbering fees and radiocommunications fees.
- (f) NICTA is subject to a range of obligations intended to ensure independence, transparency and accountability.

### ***Division 2. — Establishment, Functions and Powers of NICTA.***

#### **8. ESTABLISHMENT OF THE NATIONAL INFORMATION AND COMMUNICATIONS TECHNOLOGY AUTHORITY.**

- (1) There is established a body corporate called the "National Information and Communications Technology Authority" also known by its acronym "NICTA".
- (2) NICTA has –
  - (a) perpetual succession; and
  - (b) a common seal; and
  - (c) the ability to sue and be sued in its corporate name; and
  - (d) the ability to acquire, hold and dispose of property; and
  - (e) the ability to enter into legally binding contracts; and

(f) the functions assigned to it by or under this or any other Act; and

(g) the powers conferred on it by or under this or any other Act.

(3) All courts and persons acting in a judicial capacity shall take judicial notice of the seal of NICTA affixed to a document, and shall presume that it was duly affixed, until the contrary is proved.

(4) Subject to this Act, the Members are responsible for the management and control of the business and affairs of NICTA and for the performance of the functions and duties, and exercise of the powers and authorities, of NICTA under this Act.

## **9. FUNCTIONS OF NICTA.**

The functions of NICTA are –

(a) to give effect to the objective of this Act and the regulatory principles; and

(b) to provide advice to the Minister in the formulation of Government Policy in respect of any aspect of this Act or that otherwise promotes the objective of this Act; and

(c) to exercise all licensing and regulatory functions in relation to the ICT industry as are contemplated by this Act; and

(d) to oversee the performance of ICT licensees and their compliance with this Act and any mandatory instrument; and

(e) to assist the ICCC to investigate complaints regarding market conduct for the purposes of the ICCC enforcing compliance with laws relating to market conduct in the ICT industry in Papua New Guinea; and

(f) to develop and monitor a system for reviewing and responding to complaints by retail customers in relation to ICT services; and

(g) to consult, where appropriate, commercial, industrial and consumer organisations about any matter relating to the ICT industry or this Act; and

(h) to act as the duly appointed representative of the State at all international bodies or authorities which have the purpose of regulating or administering ICT services and radiocommunications; and

(i) to develop and monitor procedures for ensuring the safety and quality of ICT services and radiocommunications; and

(j) to make available to persons engaged in the ICT industry and other interested persons

general information for their guidance with respect to the carrying out of the functions, or the exercise of the powers, of NICTA under this Act; and

(k) to conduct research in relation to matters affecting the interests of consumers of ICT services; and

(l) to make available to the public general information in relation to matters affecting the interests of retail customers of ICT services; and

(m) to perform such other functions as are assigned to or conferred on NICTA under this Act or any other law.

## **10. POWERS OF NICTA.**

(1) NICTA has the power to do all things necessary or convenient to be done for, or in connection with, or otherwise incidental to, the performance of its functions or to enable it to achieve the objective of this Act.

(2) Without limiting Subsection (1), NICTA has such other powers as are conferred on NICTA by any other Act.

## **11. GOVERNMENT POLICY.**

(1) The Minister may notify NICTA in writing of any Government Policy.

(2) NICTA shall ensure that any Government Policy notified in accordance with Subsection (1) is published.

(3) Subject to this and any other Act, NICTA shall, in respect of Government Policy notified in accordance with Subsection (1) -

(a) ensure that the Government Policy is carried out; and

(b) not perform its functions or exercise its powers in a manner that is inconsistent with the Government Policy.

### ***Division 3. —Membership of NICTA.***

## **12. NICTA MEMBERS.**

NICTA consists of four Members being –

(a) three non-Executive Members, including the Chairman and the Independent Expert; and

(b) the Chief Executive (*ex officio*).

### **13. NICTA APPOINTMENTS COMMITTEE.**

(1) The non-Executive Members shall be appointed by the Head of State, acting with, and in accordance with, the advice of the NICTA Appointments Committee.

(2) The NICTA Appointments Committee shall consist of -

(a) the Prime Minister, who shall be the chairman of the NICTA Appointments Committee; and

(b) the Leader of the Opposition; and

(c) the Minister or, if the Minister is the Prime Minister, the Attorney General; and

(d) the Governor of the Central Bank.

(3) The NICTA Appointments Committee shall, by majority decision, appoint the non-Executive Members as follows -

(a) a Member, being the Chairman; and

(b) a second Member, being the Independent Expert; and

(c) a third Member,

as soon as practicable after the Commencement Date and thereafter as vacancies arise in these positions from time to time.

(4) The Minister shall ensure that any appointment of a non-Executive Member by the NICTA Appointments Committee is promptly notified in the National Gazette.

### **14. QUALIFICATIONS FOR APPOINTMENT.**

(1) The NICTA Appointments Committee shall not advise the Head of State to appoint a person as a non-Executive Member unless a majority of the members of the NICTA Appointments Committee are satisfied that the person -

(a) is a person of integrity, independence of mind and good reputation; and

(b) is a graduate of a university; and

(c) possesses sound knowledge of the ICT industry; and

(d) is eligible for appointment to NICTA in accordance with Section 15.

(2) In addition to the criteria set out in Subsection (1) –

(a) each non-Executive member shall be a part-time non-executive appointment; and

(b) the Chairman shall possess at least ten (10) years experience in one or more of the fields of management, law, economics, finance, engineering, public administration or commerce; and

(c) the Independent Expert shall –

(i) have international experience in the operation and administration of a telecommunications regulatory regime; and

(ii) subject to Subsection (3), not be a resident of Papua New Guinea; and

(iii) not be the Chairman.

(3) From the date five (5) years after the Succession Date, the NICTA Appointments Committee-

(a) shall, when appointing an Independent Expert assess whether it is desirable (having regard to the objective of this Act) that the Independent Expert meet the criteria specified in Subsection (2)(c)(ii); and

(b) may disregard that criteria if the NICTA Appointments Committee decides that it is not so desirable.

## **15. ELIGIBILITY FOR APPOINTMENT.**

A person is not eligible to be appointed as, or to remain, a Member if that person -

(a) has, or had within the last twelve (12) months, a direct or indirect financial or other interest in an existing licence or an ICT licence; or

(b) has, or had within the last twelve (12) months, direct or indirect financial or other interest in an existing licensee or an ICT licensee (including, but not limited to, any shares in an existing licensee or an ICT licensee, or status as an employee, consultant or advisor to an existing licensee or an ICT licensee); or

(c) is, or was within the last twelve (12) months, a member, or candidate for election as a member, of the National Parliament, a member of a Provincial Government or a member of a Local Government or a Local Government Authority; or

(d) is a Departmental Head; or

(e) is, or was within the last twelve (12) months, an office-holder, or candidate for election as an office-holder; in a registered political party; or



(f) is, or was within the last thirty-six (36) months, an adjudged insolvent or bankrupt; or

(g) is of unsound mind; or

(h) has a criminal record; or

(i) has, or had within the last twelve (12) months, any other interest which could, in the reasonable opinion of the NICTA Appointments Committee, conflict with the proper performance of his duties as a Member.

## **16. ADDITIONAL TERMS AND CONDITIONS OF APPOINTMENT.**

(1) A non-Executive Member –

(a) shall be appointed pursuant to a written instrument of appointment; and

(b) subject to Subsection (2), shall be appointed for a period not less than three (3) years and not exceeding five (5) years; and

(c) shall hold office on such terms and conditions as are determined by the NICTA Appointments Committee.

(2) Non-Executive Members shall be appointed for staggered terms to ensure their respective appointments do not expire at the same time.

(3) A non-Executive Member (who has not been removed from appointment pursuant to Section 19) is eligible for re-appointment by the NICTA Appointments Committee.

(4) The Chairman may grant leave of absence to another Member on such terms and conditions as the Chairman determines.

(5) The Minister may grant leave of absence to the Chairman on such terms and conditions as the Minister determines.

## **17. MEMBER RESIGNATION.**

A non-Executive Member may resign from office on the provision of ninety (90) days written notice to the Head of State.

## **18. VACANCY.**

(1) The office of a non-Executive Member will become vacant, if the Member holding such office –

(a) dies; or

(b) attains the age of seventy (70) years; or

(c) is found to have been unqualified for appointment by virtue of Section 14; or

(d) is found to have been ineligible for appointment, or is not eligible to remain a member of NICTA, by virtue of Section 15; or

(e) completes his tenure of office and is not reappointed in accordance with Section 16; or

(f) resigns from office in accordance with Section 17; or

(g) is removed from office in accordance with Section 19.

(2) A vacancy in the office of a non-Executive Member shall be filled as soon as possible and, in any event -

(a) subject to Subsections (2)(b) and (c), within ninety (90) days of the vacancy arising; and

(b) if the Member completes his tenure of office and is not reappointed, prior to, and with effect from, the expiration of his tenure; and

(c) if the Member resigns from office, prior to, and with effect from, the expiration of the notice period referred to in Section 17.

(3) If -

(a) a vacancy in the office of a non-Executive Member arises as a result of the expiry of the term of office of a Member; and

(b) the vacancy is not filled prior to the expiration of his tenure; and

(c) the Member whose term of office expired –

(ii) has advised the Head of State in writing that the Member is willing to be re-appointed; and

(iii) is eligible for re-appointment,

then, with effect from the expiration of his tenure, the Member shall be deemed to have been re-appointed to NICTA for a further term of three (3) years.

(4) The Chairman shall inform the Minister of the expiration of the tenure of a non-Executive Member no later than ninety (90) days before that expiration.

## **19. NICTA MEMBER REMOVAL.**

(1) The National Court, on the application of the Minister, may remove or suspend a Member of NICTA from office if he or she -

(a) is guilty of misconduct; or

(b) is incapable of performing satisfactorily the Member's functions; or

(c) materially contravenes or fails to comply with the requirements of this Act or any other Act conferring functions on NICTA.

(2) The Minister may only bring an application under Subsection (1) acting with, and in accordance with, the prior written authorisation of the National Executive Council.

(3) A non-Executive Member may only be removed or suspended from office as provided in Section 18 or under this Section.

### ***Division 4. — NICTA Chief Executive, Staff and External Consultants.***

## **20. CHIEF EXECUTIVE.**

(1) Subject to Subsection (2), a Chief Executive shall be appointed by the Head of State acting with, and in accordance with the advice of the NICTA Appointments Committee.

(2) The NICTA Appointments Committee shall not advise the Head of State to appoint a person as Chief Executive unless a majority of the members of the NICTA Appointments Committee are satisfied that the person possesses at least ten (10) years management experience and otherwise meets the criteria set out in Section 14(1).

(3) The Chief Executive shall be -

(a) primarily responsible for the execution of the policies, and the implementation of the decisions, of NICTA; and

(b) primarily responsible for the supervision and day-to-day management of the affairs of NICTA and its staff; and

(c) the head of the staff of NICTA.

(4) The Chief Executive may, in writing, delegate any of his powers and functions in his capacity as Chief Executive to any of the staff of NICTA, except this power of delegation.

(5) The Chief Executive may be appointed for a period not less than three (3) years and not exceeding five (5) years and is eligible for re-appointment.

(6) The salaries, allowances and benefits of the Chief Executive are as determined by the Parliament in accordance with a recommendation of the Salaries and Remuneration Commission.

## **21. STAFF.**

(1) NICTA may employ such suitably qualified persons as it considers necessary for the efficient performance of the functions of NICTA under this Act.

(2) To give effect to Subsection (1), the Chief Executive may -

(a) employ such persons to be the employees of NICTA as the Chief Executive thinks fit and necessary for the functions of NICTA; and

(b) in consultation with the other Members of NICTA, select and appoint such employees to be the senior management of NICTA as the Chief Executive thinks fit and necessary for the functions of NICTA.

(3) NICTA may enter into agreements or arrangements for the use of the services of any employee of a Department, statutory or other public body.

(4) The Chief Executive, senior management and other persons employed under this Section, constitute the "staff" of NICTA.

(5) Subject to Subsections (6) to (13), the terms and conditions of employment of any member of the staff of NICTA are as determined by NICTA.

(6) The Minister shall appoint an independent accountancy or consultancy firm of international repute and with expertise in human resources to act as the "independent salary auditor" for a three (3) year term. The cost of the independent salary auditor shall be paid by NICTA as if the firm had been engaged by NICTA and shall be included in NICTA's expenditure forecasts and accounts under Sections 31 and 38.

(7) Where NICTA proposes to determine or vary terms and conditions of employment of its staff, NICTA shall provide to the independent salary auditor its proposal together with an accompanying submission containing a statement of the proposed –

(a) salary and wages rates;

(b) terms and conditions of employment; and

(c) other benefits,

together with a statement and any supporting information as to why NICTA considers its proposal is reasonable having regard to the following criteria -

(d) the wages policy of the National Executive Council; and

(e) NICTA's requirements for personnel of sufficient expertise to perform its functions and exercise its powers; and

(f) the need for NICTA to compete with other areas of the ICT industry, including the private sector, for personnel of this expertise,

collectively referred to as the "employment criteria".

(8) On receipt of the proposal under Subsection (7), the independent salary auditor shall assess NICTA's proposal and form an opinion as to whether NICTA's proposal, or any part of it, is consistent with the employment criteria.

(9) The independent salary auditor shall provide NICTA with a report on its assessment under Subsection (8) and shall make any recommendations to NICTA that it considers appropriate to ensure that NICTA's proposal is consistent with the employment criteria.

(10) If the independent salary auditor forms the opinion that the terms and conditions proposed by NICTA are consistent with the employment criteria, NICTA may implement the proposed terms and conditions of employment.

(11) If the independent salary auditor forms the opinion that the terms and conditions proposed by NICTA, or any part thereof, are not consistent with the employment criteria, NICTA shall either –

(a) adjust the proposed terms and conditions in order to comply with the independent salary auditor's opinion; or

(b) by written submission signed by the Minister —

(i) provide a copy of the report provided by the independent salary auditor under Subsection (9); and

(ii) request that the National Executive Council review the proposed terms and conditions.

(12) Upon receipt of a written submission in accordance with Subsection (11)(b), the National Executive Council shall either confirm, amend or reject the opinion of the independent salary auditor and may give such directives in relation to the matter as it considers appropriate.

(13) The decision of the National Executive Council to confirm, amend or reject that opinion shall be final and shall bind NICTA.

(14) Prior to the period ending on the date three (3) years after the Succession Date NICTA shall not be declared a "public authority" for the purposes of Section 2 of the *Salaries and Conditions*

*Monitoring Committee Act 1988* and any declaration prior to that date has no legal effect for the purpose of that Act.

(15) Subject to Subsection (14), to the extent and for the duration that NICTA is declared to be a "public authority" for the purposes of the *Salaries and Conditions Monitoring Committee Act 1988* –

(a) Subsections (6) to (13) have no legal effect; and

(b) in exercising its powers and functions under the *Salaries and Conditions Monitoring Committee Act 1988*, the Salaries and Conditions Monitoring Committee shall take into account the employment criteria specified in Subsection (7).

## **22. EXTERNAL CONSULTANTS.**

NICTA may acquire services from external consultants from time to time, to assist NICTA with the efficient performance of its functions under this Act, on such terms and conditions as NICTA may reasonably determine.

### ***Division 5. — Powers and Procedures of NICTA.***

## **23. NICTA MEETINGS.**

(1) NICTA shall meet as often as the business of NICTA requires, but in any event at least once in every two (2) months.

(2) A meeting of NICTA may be convened by any Member.

(3) Notice of a meeting of NICTA shall be provided to each Member by the Member who wishes to convene the meeting.

(4) Subject to Subsection (8), meetings of NICTA shall be held at such places and at such times as the Chairman determines.

(5) At a meeting of NICTA -

(a) the Chairman shall preside; and

(b) in the absence of the Chairman the members present shall appoint one of their number to preside; and

(c) a quorum is constituted by three (3) Members, one of whom shall be the Independent Expert unless the position of the Independent Expert is vacant or the Independent Expert is on leave or is disqualified from taking part in a deliberation of NICTA in accordance with Section 25(3); and

(d) all Members present are entitled to vote; and

(e) matters arising shall be decided by a majority of the votes of Members present and voting; and

(f) in the event of an equality of votes on any matter, the Chairman, or in the Chairman's absence, the person presiding, has a casting vote as well as a deliberative vote.

(6) NICTA shall keep written minutes of all meetings.

(7) NICTA may otherwise regulate its own procedure.

(8) Meetings of NICTA may be held by teleconference or videoconference or by means of any other communication facilities that permit all those participating in the meeting to communicate with each other simultaneously and instantaneously.

## **24. DELEGATION.**

(1) NICTA may, by unanimous decision of all Members and subject to any regulations made for the purposes of this Section, delegate any of its functions and powers other than this power of delegation to –

(a) any Member; or

(b) any member of the staff.

(2) A delegation under Subsection (1) –

(a) shall be in writing; and

(b) shall be subject to such conditions and restrictions as are specified in the instrument of delegation; and

(c) may be specified to be restricted to a particular matter or class of matters; and

(d) is revocable at will by resolution of NICTA in writing; and

(e) does not affect or prevent the performance of a function or the exercise of a power by NICTA.

## **25. DISCLOSURE OF INTERESTS.**

(1) A Member shall, as soon as possible after the relevant facts have come to his knowledge, inform the other Members in writing of -

(a) any direct or indirect financial interest that the Member has or acquires in any existing

licence, existing licensee, ICT licence or ICT licensee; and

(b) any direct or indirect financial interest in a matter being considered or about to be considered by NICTA.

(2) A disclosure under Subsection (1) shall be recorded in the minutes of NICTA.

(3) A Member to whom Subsection (1)(b) applies -

(a) shall not take part in any deliberation or decision of NICTA in relation to that matter; and

(b) shall be disregarded for the purpose of constituting a quorum of NICTA for any such deliberation or decision.

(4) If the operation of Subsection (3) has the effect that NICTA is unable to proceed with the deliberation or decision of a matter, the Chairman (who shall not be that Member) may direct that the Member who has the relevant interest may take part, after the disclosure of that interest, in a deliberation or decision of NICTA in relation to the matter and may be counted for the purpose of constituting a quorum of NICTA for any such deliberation or decision.

(5) This Section does not apply to the extent that the interest of a Member is only as a result of the supply of goods and services that are available to the public on the same terms and conditions.

## **26. VALIDITY OF CONDUCT.**

Subject to the provisions of this Act, any act, decision or proceeding of NICTA is not invalid by reason of –

(a) a defect or irregularity in, or in connection with, the appointment or removal of a Member; or

(b) a vacancy in, or absence from, the office of a Member; or

(c) a failure by a Member to comply with Section 25.

## **27. IMMUNITY.**

A Member, officer, employee, or agent of NICTA is not personally liable for any thing done or omitted to be done in good faith in the performance or exercise, or purported performance or exercise, of a function or power under this or any other Act or in the course of carrying out the duties of NICTA.

## **28. AGREEMENTS WITH OTHER BODIES.**



(1) Subject to Subsection (2), NICTA may negotiate and enter into agreements with other regulatory bodies or authorities for the purpose of assisting NICTA to carry out its functions and to further the objective of this Act.

(2) Where NICTA has negotiated an agreement with as regulatory body or authority outside Papua New Guinea under Subsection (1), it shall be executed only in accordance with Subsection (3).

(3) The Minister, with the prior approval of the Head of State, acting on advice, may execute an agreement negotiated by NICTA with a regulatory body or authority outside Papua New Guinea.

### ***Division 6. — Finance and Reporting.***

#### **29. APPLICATION OF *PUBLIC FINANCES (MANAGEMENT) ACT 1995.***

(1) Subject to Section 109, Part VIII (other than Section 51) of the *Public Finances (Management) Act 1995* applies to and in relation to NICTA.

(2) For the purposes of Section 62(2) of the *Public Finances (Management) Act 1995*, NICTA is declared to be a trading enterprise.

(3) The sum of K200,000.00 is specified for the purposes of Section 59 of the *Public Finances (Management) Act 1995*.

(4) Subject to Subsection (1), the *Public Finances (Management) Act 1995* does not apply to or in relation to NICTA.

#### **30. NICTA BUDGET.**

(1) NICTA shall, by no later than three (3) months before the end of each fiscal year prepare, and submit to the Departmental Head of the Department responsible for financial management, a budget comprising –

(a) estimates of all funding proposed to be raised or received, itemised to an appropriate level; and

(b) estimates of proposed expenditure, itemised to an appropriate level,

by NICTA for the next fiscal year.

(2) NICTA shall publish the budget in the National Gazette and on its website and provide a copy of the budget to the Departmental Head of the Department responsible for communication and information.

#### **31. EXPENDITURE FORECASTS.**

(1) Within the budget prepared under Section 30, NICTA shall categorise its proposed revenue and expenditure in a manner that –

(a) provides a high degree of transparency in relation to NICTA's proposed expenditure within that year in undertaking its operator licensing, numbering, radiocommunications and UAS Secretariat functions; and

(b) identifies significant items of revenue and expenditure in separate line items with an explanation for that revenue or expenditure; and

(c) explains any instances of significant non-recurring expenditure for large capital items and the manner in which NICTA proposes to allocate such expenditure within its accounts; and

(d) explains the reason for any forecast material increases in expenditure relative to NICTA's actual expenditure in previous years; and

(e) identifies the sources of funding and the proposed level and allocation of any surplus.

(2) NICTA shall ensure that its expenditure forecasts are reasonable and reflect NICTA's estimate of the actual expenditure likely to be incurred by NICTA in the next fiscal year and its relevant attribution.

(3) NICTA shall have regard to NICTA's historical expenditure, and the attribution of that historical expenditure, when preparing its expenditure forecasts.

## **32. FUNDING OF NICTA.**

(1) The funds of NICTA shall consist of any monies appropriated by law for the purpose of giving effect to this Act and any monies received in accordance with law, from the following permitted sources –

(a) operator licensing fees, numbering fees and radiocommunications fees, but only to the extent permitted by Section 35; and

(b) charges or other fees payable to NICTA, as are authorised by this Act, in the performance by NICTA of its functions or the exercise of its powers under this Act; and

(c) fees, charges, rents, levies or other sums for commercial services, to the extent permitted by Section 37; and

(d) sums appropriated by the National Budget; and

(e) grants, donations or other contributions, including contributions from international organisations or from a government, government department, government instrumentality or a statutory entity of a country other than Papua New Guinea; and

(f) loans raised by NICTA.

(2) To the extent that NICTA receives revenue in any fiscal year that exceeds its expenditure, then –

(a) subject to Subsection (2)(b), NICTA shall pay that surplus into the UAS Fund; and

(b) NICTA may retain all or part of that surplus –

(i) as authorised by regulations; or

(ii) up to an amount equivalent to 10% of the amount received as revenue in that fiscal year.

(3) Any charges and fees owing to NICTA under this Act constitute a debt owed to NICTA and may, in addition to other available avenues, be recovered in a court of competent jurisdiction.

(4) The Head of State, acting on advice, may make regulations that prescribe –

(a) the time periods for payment of any charges or other fees payable under this Act; and

(b) the manner of calculation of any late payment charges; and

(c) the amount of any surplus contemplated by Subsection 2(b)(ii).

### **33. APPLICATION OF MONEY RECEIVED BY NICTA.**

Subject to Section 57 of the *Public Finances (Management) Act 1995*, the moneys of NICTA shall be applied only –

(a) in the payment or discharge of the expenses, obligations or liabilities incurred by NICTA in connection with the performance of its functions or exercise of its powers; and

(b) in the payment of any remuneration or allowances payable under this Act; and

(c) for such other purposes as are authorised by this Act or as are consistent with the functions of NICTA.

### **34. LIABILITY TO TAXATION.**

The revenue of NICTA is exempt from income tax for the purposes of the *Income Tax Act 1959*.

### **35. LICENSING FEES.**

(1) Subject to this Section, the Head of State, acting on advice, may make regulations prescribing

the fees payable by ICT licensees for ICT licences.

(2) The fees prescribed under Subsection (1) shall be prescribed with regard to the following general principles (without limitation) -

- (a) the principle of fee certainty, so that annual volatility in fees is minimised or the manner of calculation of fees is known in advance; and
- (b) the principle of cost recovery, so that NICTA ensures that the aggregate fees it proposes to recover from all ICT licensees are sufficient to recover its forecast ongoing expenditure; and
- (c) the principle of fee minimisation, so that NICTA endeavours to minimise the fees payable by ICT licensees, subject to the principle of cost recovery; and
- (d) the principle of non-discrimination, so that similarly situated ICT licensees undertaking the same activities are subject to similar fee structures; and
- (e) the principle of transparency, so that ICT licensees are informed of the rationale behind the fee structure proposed by NICTA; and
- (f) the principle of value recovery, so that a higher proportion of fees are recovered from those ICT licences that provide the greatest value to ICT licensees.

(3) The regulations made under Subsection (1) may include (without limitation) -

(a) in relation to operator licences –

- (i) the one-off fees payable by the applicant for an individual licence upon the filing of an individual licence application; and
- (ii) the one-off fees payable by a registrant upon the filing of a class licence registration form; and
- (iii) the manner of calculation of the annual fees payable by individual and class licensees; and

(b) in relation to numbering fees –

- (i) the manner of calculation of an annual charge to be levied on operator licensees as a numbering fee; and
- (ii) the manner of calculation of a standardised "per number" charge for identified types of numbers that may involve different fees for different types of numbers based on their relative scarcity, such that, for example, numbers with smaller numbers of digits are subject to higher "per number" charges; and

(c) in relation to radiocommunications licences –

(i) the one-off fees payable by the applicant upon the filing of a spectrum licence or apparatus licence application; and

(ii) the manner of calculation of the annual fees payable by a spectrum licensee and an apparatus licensee.

(4) ICT licensees, applicants and registrants shall pay to NICTA the fees prescribed by the regulations made under this Section as applicable.

(5) Any Universal Access and Service Levy imposed under Part V of this Act is not a fee to which this Section applies.

### **36. VALUABLE STATE RESOURCES.**

(1) For the purposes of this Section "valuable State resources" means –

(a) either –

(i) a group or type of numbers or spectrum that NICTA considers the demand for which is likely to exceed supply; or

(ii) satellite orbital slots; or

(iii) content licenses that are designated in regulations to be valuable State resources due to numerical limits on their allocation; or

(iv) such other things as are prescribed by the regulations to be a valuable State resource for the purposes of this Section; and

(b) in respect of which NICTA considers that an auction, tender, commercial negotiations, or market-based allocation process ("relevant allocation process") would allocate that valuable State resource more efficiently than under NICTA's standard allocation process.

(2) NICTA may allocate valuable State resources, in accordance with any procedures for the relevant allocation process as set out in the rules, subject to any regulations, but shall pay the proceeds of the relevant allocation process as follows –

(a) NICTA may retain an amount from those proceeds equal to the aggregate of –

(i) the reasonable costs that NICTA incurred in undertaking that relevant allocation process; plus

(ii) an amount equal to the standard charges that would have been recovered by NICTA for the allocation of the valuable State resource if NICTA had followed its standard allocation process; and

(b) NICTA shall pay all remaining proceeds of the relevant allocation process as follows –

(i) 50% into the Universal Access and Service Fund; and

(ii) 50% into the Consolidated Revenue Fund.

### **37. CHARGES FOR COMMERCIAL SERVICES.**

(1) Subject to the regulations, NICTA may set fees, charges, rents, levies or other sums (including their manner of calculation) for any of the following commercial services rendered by NICTA that relate to the ICT industry –

(a) making publications available to the public; and

(b) providing commercial consultancy services, on request, to any person; and

(c) any lease of assets held by NICTA.

(2) NICTA may only provide commercial consultancy services to a person under Subsection (1)(b) where such services do not give rise to a conflict of interest in respect of NICTA's powers and functions under this Act.

### **38. ACCOUNTS AND AUDIT.**

(1) NICTA shall –

(a) keep proper accounts and proper records in relation to such accounts; and

(b) prepare and furnish the reports and financial statements as required by the *Public Finances (Management) Act 1995*; and

(c) publish on its website copies of the reports prepared under Subsection (b).

(2) As part of its accounts, and reports under Subsection (1) NICTA shall -

(a) identify the difference between its actual funding and actual expenditure for the fiscal year; and

(b) identify significant items of revenue and expenditure in separate line items; and

(c) explain any instances of significant non-recurring expenditure for large capital items

and the manner in which NICTA has allocated such expenditure within its accounts; and

(d) explain the reason for any material increases in expenditure relative to NICTA's actual expenditure in previous years; and

(e) identify any material differences between –

(i) NICTA's forecasted revenue and expenditure in any category in its budget under Section 31; and

(ii) NICTA's actual revenue and expenditure in its reports under Section 38(1); and

(f) identify any funding shortfall or surplus and the extent to which any surplus has been retained by NICTA or paid to the Universal Access and Service Fund under Section 32(2).

### **39. PERFORMANCE AND MANAGEMENT REPORT.**

(1) NICTA's annual performance and management report required under Section 63 of the *Public Finances (Management) Act* 1995 shall include, for the preceding fiscal year, in addition to the matters required under that Act -

(a) a report on NICTA's operations; and

(b) full details of any disclosures under Section 25(1)(b); and

(c) a summary of NICTA's licensing activities; and

(d) details of ICT licence fees; and

(e) such other matters as are required under this or any other Act.

(2) NICTA shall publish copies of the annual performance and management report on its public register and otherwise make the report available to the public for inspection.

(3) The Minister shall cause the annual performance and management report to be laid before Parliament at the first meeting of the Parliament after its receipt by the Minister.

### ***Division 7. — Independence and Transparency.***

### **40. INDEPENDENCE.**

(1) Subject to this Act, NICTA shall be an independent, autonomous and impartial body and shall perform its functions without favour, prejudice or political or commercial interference.

(2) Subject to this Act, NICTA is not subject to direction or control by the Minister or any other person in the performance of its functions.

#### **41. TIMELY DECISION MAKING.**

(1) NICTA shall publish a statement setting out the standards that NICTA shall aim to meet with respect to promptness in –

(a) the carrying out of its different functions; and

(b) the transaction of business for purposes connected with the carrying out of those functions.

(2) NICTA shall have regard to any statement issued under Subsection (1) in the -

(a) carrying out of its functions; and

(b) transacting business for the purposes connected with the carrying out of its functions.

(3) This Section does not require standards to be set out with respect to anything which (apart from this Section) is required to be done by a time, or within a period, provided for by or under this or any other Act.

(4) NICTA may, if it thinks fit, at any time revise the statement issued under Subsection (1).

(5) Where NICTA revises a statement under this Section, it shall publish the revision as soon as practicable.

#### **42. CONSULTATION.**

In performing its functions and exercising its powers, NICTA shall, where it is appropriate and practical to do so, consult with –

(a) relevant government, commercial, industrial, consumer and standards bodies and organisations; and

(b) the ICCC; and

(c) other relevant bodies and organisations.

#### **43. PUBLIC REGISTER**

(1) Without limitation, subject to Section 44, NICTA shall publish in its public register (including on its website) the following information -

(a) copies of all regulations and mandatory instruments; and



- (b) the results of any public inquiries and any major studies or other similar activities undertaken by NICTA relevant to the ICT industry; and
- (c) a copy of the statement published under Section 41;
- (d) particulars of all current declarations and copies of all reports in relation to declaration inquiries under Part VI; and
- (e) copies of all service specific pricing principles and general pricing principles; and
- (f) a copy of the spectrum plan and any frequency band plans; and
- (g) particulars of numbers that have been allocated to operator licensees under Part IX and the names of the operator licensees to whom those numbers have been allocated; and
- (h) a consolidated copy of the national numbering plan as well as a copy of all variations to the national numbering plan; and
- (i) copies of permits issued under Part X for the connection of customer equipment, or types of customer equipment, including a copy of all permits; and
- (j) copies of all requests made under Section 225; and
- (k) copies of any document furnished or written submission given to NICTA in relation to a public inquiry; and
- (l) copies of all reports from public inquiries published under Section 235; and
- (m) copies of all information relating to investigations as specified in Section 243; and
- (n) any other information required by the regulations to be included in the public register.

(2) Without limitation, subject to Section 44, NICTA may publish such other information in its public register (including on its website) as NICTA considers will assist it to fulfil its powers or functions, or to promote the objective of this Act and the regulatory principles.

(3) NICTA shall endeavour to –

- (a) publish information under Subsection (1) within a reasonable timeframe after that information is created or received by NICTA; and
- (b) ensure that its public register contains an accurate and up to date record of the information identified in Subsection (1).

#### **44. CONFIDENTIAL INFORMATION.**

(1) If a person gives information to NICTA, the person may, at the time of giving the information, request that the information be excluded from publication because of its confidential nature.

(2) Subject to Subsection (3), if such a request is made NICTA may, if it is satisfied that it is necessary or desirable to do so because of the confidential nature of the information, exclude the information from publication.

(3) NICTA may exclude information (including the content of any mandatory instruments) from publication if it is satisfied that it is necessary or desirable to do so for any reason other than the confidential nature of the information, including if -

(a) the disclosure of the information would prejudice the fair trial of any person; or

(b) NICTA is satisfied that such disclosure would involve the unreasonable disclosure of any personal information about any individual.

(4) Notwithstanding Subsections (2) and (3), where information that is subject to a request for confidentiality is provided to NICTA and NICTA determines, after considering any representations from interested persons, that in NICTA's opinion the disclosure of the information is in the wider public interest, NICTA may publish that information.

(5) NICTA may share with the ICCC any information it receives that is relevant to the ICCC's functions in the ICT industry, irrespective of the confidentiality of that information. However, if a request has been made by a person under Subsection (1) in respect of that information and NICTA is satisfied that it is necessary or desirable to exclude such information from publication, then -

(a) NICTA shall inform the ICCC, at the time of such sharing, of that request and that NICTA is satisfied that it should be excluded from publication; and

(b) ICCC shall not publish such information except with the written consent of NICTA or the party who gave the information to NICTA.

(6) Subject to this Section, except for the purpose of the performance of his duties or the exercise of his function or when lawfully required to do so by any court or under the provisions of any written law, a Member, officer, employee or agent of NICTA shall not disclose any information relating to the affairs of NICTA or of any person which has been obtained by him in the performance of his duties or the exercise of his functions.

(7) A person who contravenes Subsection (6) is guilty of an offence.

#### **45. CODE OF ETHICS.**

(1) NICTA shall adopt a code of ethics which includes (without limitation) guidelines regulating

the receipt of gifts by the Members and staff.

(2) NICTA shall have regard to the code of ethics adopted pursuant to Subsection (1) in fulfilling its functions and shall require its staff to follow the code of ethics.

### **PART III. — OPERATOR LICENSING.**

#### ***Division 1. — Simplified Outline.***

#### **46. SIMPLIFIED OUTLINE.**

The following is a simplified outline of this Part -

(a) Persons who satisfy the eligibility criteria are entitled to –

(i) a facilities right, pursuant to a "network licence"; and/or

(ii) supply a facilities access service, pursuant to a "network licence"; and/or

(iii) supply a network service, pursuant to a "network licence"; and/or

(iv) supply an applications service, pursuant to an "applications licence"; and/or

(v) supply a content service, pursuant to a "content licence".

(b) The three types of operator licenses may be issued in two distinct forms, namely an individual licence or a class licence.

(c) Regulations may identify the categories of activities that will be subject to an individual licence or class licence.

(d) Regulations may exempt certain activities from the requirement to hold an individual licence or class licence.

(e) Individual licences are issued pursuant to an application and award process set out in rules issued by NICTA. Class licences are subject to a registration process.

#### ***Division 2. — Licensing Framework.***

#### **47. LICENSING.**

(1) NICTA may, in accordance with this Part, issue operator licences.

(2) Subject to any regulations, NICTA shall, as soon as practicable after the Succession Date make, and thereafter keep updated, rules setting out –

(a) the process and procedures for issuing or registering, amending, transferring and renewing an operator licence; and

(b) the documentation that applicants, or registrants in the case of class licences, shall include with their applications or registrations; and

(c) the terms and conditions for granting special temporary authorisations for testing purposes, demonstrations and research and development.

(3) An operator licence does not confer any right to receive a radiocommunications licence.

(4) Nothing in this Part shall be construed to allow an operator licensee to begin its activities in contravention of any other Part of this Act.

#### **48. OPERATOR LICENCE ELIGIBILITY.**

Only the following persons shall be eligible to apply for and be a holder of an individual licence, or to register for and be a holder of a class licence under this Act –

(a) an eligible corporation; or

(b) any individual who is a citizen of Papua New Guinea,

who is not ineligible to be an ICT licensee under Subsection 304(2).

#### **49. NETWORK LICENCE.**

(1) Subject to Section (3), no person shall exercise a facilities right, or supply any facilities access service, or supply any network service, unless they hold a network licence, that is an individual licence or a class licence, that authorises them to do so.

(2) A network licensee shall comply with the terms and conditions of its network licence.

(3) Notwithstanding Subsection (1), the Head of State, acting on advice, may make regulations that identify (without limitation) the procedure, circumstances and consequences associated with NICTA exempting a person, by way of a published declaration, from any obligation under this Act to hold a network licence, where a network licensee has agreed to assume all obligations under this Act that would apply to that person if they were to hold such a network licence.

#### **50. APPLICATIONS LICENCE.**

(1) Subject to Section 53, no person shall supply an applications service, unless they hold an applications licence, that is an individual licence or a class licence, that authorises them to do so.

(2) An applications licensee shall comply with the terms and conditions of its applications licence.

## **51. CONTENT LICENCE.**

(1) Subject to Section 53, no person shall supply a content service, unless they hold a content licence, that is an individual licence or a class licence, that authorises them to do so.

(2) A content licensee shall comply with the terms and conditions of its content licence.

## **52. TRANSFER OF LICENCE RIGHTS.**

(1) No operator licence nor any rights under it may be ceded, transferred, assigned, encumbered (subject to Subsection (3), or otherwise disposed of ("relevant action") without the prior written consent of NICTA, which consent may be made subject to such terms and conditions as NICTA may impose.

(2) For the purposes of Subsection (1), the following shall constitute a transfer of an operator licence –

(a) any transfer of shares which would result in the direct or indirect ownership of more than one quarter of the issued voting share capital of the operator licensee changing hands; or

(b) any change in ownership of the operator licensee's issued voting share capital that results in a change to the composition of one-quarter of the licensee's board of directors.

(3) An operator licence may be encumbered where that encumbrance is in favour of a reputable financial institution and the encumbrance is granted as security for financial accommodation provided by that financial institution to the operator licensee in the ordinary course of that financial institution's business.

## **53. LICENCE EXEMPTIONS.**

(1) The Head of State, acting on advice, may make regulations identifying the type of ICT services and facilities rights that are exempt from the requirement for an operator licence.

(2) The fact that any activities are exempt from operator licensing requirements under this Act shall not affect the requirement for persons undertaking such activities to comply with all other applicable provisions of this Act.

### ***Division 3. — Individual Licences.***

## **54. CATEGORIES OF INDIVIDUAL LICENCES.**

(1) The Head of State, acting on advice, may make regulations identifying -

(a) the type of ICT services and facilities rights that will be subject to an individual

licence; and

(b) whether those ICT services, or facilities rights, relate to the –

(i) exercise of facilities rights and/or the supply of one or more facilities access services or network services, being an individual licence that is a network licence; or

(ii) supply of one or more applications services, being an individual licence that is an applications licence; or

(iii) supply of one or more content services, being an individual licence that is a content licence.

## **55. TERMS AND CONDITIONS OF AN INDIVIDUAL LICENCE.**

(1) NICTA shall make rules setting out the standard terms and conditions, and any special terms and conditions, for individual licences.

(2) All individual licences shall include the standard licence conditions set out in rules made under Subsection (1).

(3) Special terms and conditions only apply to those individual licences to which they are specified to apply in the rules.

## **56. GRANT OF INDIVIDUAL LICENCE.**

(1) Subject to Section 48, any person may apply for an individual licence in the manner prescribed in the rules referred to in Subsection (4).

(2) Subject to Subsection (3) and compliance with the rules referred to in Subsection (4), NICTA shall issue an individual licence to any applicant -

(a) fulfilling the eligibility requirements in Section 48; and

(b) whom NICTA is satisfied is financially and technically capable of meeting its legal obligations under this Act as well as the obligations in the individual licence.

(3) NICTA shall refuse an application for an individual licence where the grant of the individual licence would be inconsistent with any Government Policy notified in accordance with Section 11(1).

(4) NICTA shall make rules setting out -

(a) the procedure to be followed for –

(i) the application for an individual licence under this Section; and

(ii) the grant of an individual licence under this Section; and

(iii) the renewal of an individual licence under Section 57; and

(b) the time frames within which NICTA will endeavour to process applications for individual licences; and

(c) the criteria that NICTA will consider when assessing whether -

(i) an applicant for an individual licence; or

(ii) an individual licensee seeking renewal of an individual licence, is financially and technically capable of meeting its legislative and regulatory obligations as well as the obligations in the individual licence.

(5) Any procedure in the rules referred to in Subsection (4) shall be non-discriminatory and transparent.

#### **57. RENEWAL OF AN INDIVIDUAL LICENCE.**

(1) Subject to any rules made under Section 56(4) and the terms of an individual licence, an individual licence may be renewed on its expiry.

(2) NICTA shall renew, upon application by the individual licensee, an individual licence pursuant to Subsection (1), for a term to be agreed upon between NICTA and the individual licensee concerned -

(a) where the individual licensee continues to fulfil the eligibility requirements set forth in Section 48; and

(b) if NICTA is satisfied that the individual licensee continues to be financially and technically capable of meeting its legislative and regulatory obligations as well as the obligations to be set forth in the individual licence concerned.

(3) If an application to renew has not been received by NICTA within the time period specified in the individual licence, then that individual licence shall expire in accordance with its terms.

#### **58. VARIATION OF AN INDIVIDUAL LICENCE.**

(1) An individual licence may be varied during its term in either of the following ways -

(a) as agreed in writing between NICTA and the individual licensee; or

(b) subject to Subsections (2) and (3), by NICTA in its sole discretion.

(2) Prior to varying an individual licence, NICTA shall –

(a) issue a notice in writing to the individual licensee setting out -

(i) the reasons for the proposed variation; and

(ii) the details of the variation; and

(iii) the period during which the individual licensee may make submissions to NICTA, in writing in relation to the proposed variation, being at least thirty (30) days from the date on which NICTA serves the notice on the individual licensee; and

(b) give due and proper consideration to any such submission; and

(c) issue a direction in writing to the individual licensee setting out the details and effective date of the variation.

(3) Any variation of an individual licence agreed or determined by NICTA shall be consistent with this Act.

#### **59. SURRENDER OF AN INDIVIDUAL LICENCE.**

An individual licensee may, at any time, by written notice, surrender an individual licence to NICTA in accordance with the requirements set out in the individual licence or the rules.

#### **60. SUSPENSION OR REVOCATION OF AN INDIVIDUAL LICENCE.**

(1) NICTA may, by notice in writing, suspend or revoke an individual licence granted under this Act in any of the following circumstances -

(a) the individual licensee requests NICTA in writing that suspension or revocation occur; or

(b) the individual licensee –

(i) enters into receivership or liquidation; or

(ii) takes any action for its voluntary winding-up or dissolution; or

(iii) enters into any scheme of arrangement (other than in any such case for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by NICTA); or

(iv) is the subject of any order that is made by a competent court or tribunal for its



compulsory winding-up or dissolution; or

(c) the individual licensee has failed to comply with any of the provisions of this Act or a mandatory instrument; or

(d) the individual licensee has ceased to fulfil the eligibility requirements set forth in Section 48.

(2) The suspension or revocation of an individual licence under this Section does not affect any obligation of the holder of the individual licence to do an act, or refrain from doing an act, where the obligation arose before the suspension or revocation, under this Act or any mandatory instrument.

(3) A suspension or revocation of an individual licence under this Section takes effect on a date specified in the notice under Subsection (1), being at least twenty (20) days after the date of the notice.

(4) A suspension of an individual licence under this Section may -

(a) be for a specified period; or

(b) continue until the fulfilment of a specified condition; or

(c) continue until further order of NICTA.

(5) Before NICTA acts under Subsection (1)(c) or (d), NICTA shall –

(a) notify the individual licensee in writing of the proposed action specifying the reasons for the proposed action; and

(b) allow the individual licensee at least thirty (30) days within which to –

(i) rectify the circumstances giving rise to NICTA's right to suspend or revoke the individual licence; and

(ii) make submissions to NICTA in relation to the proposed action; and

(c) take into account –

(i) whether the individual licensee has rectified the circumstances giving rise to NICTA's right to suspend or revoke the individual licence; and

(ii) any submissions made by the individual licensee; and

(iii) whether the proposed action is appropriate with regard to the objective of the Act and the regulatory principles.

(6) When the suspension or revocation of an individual licence has taken effect, NICTA shall, as soon as practicable publish the suspension or revocation decision and its reasons for that decision, including in at least one national daily newspaper.

## **61. EFFECT OF SUSPENSION, REVOCATION, SURRENDER OR EXPIRY OF INDIVIDUAL LICENCE.**

(1) Where –

- (a) the suspension or revocation of an individual licence under Section 60 has taken effect; or
- (b) the surrender of an individual licence under Section 59 has taken effect; or
- (c) an individual licence has expired,

the individual licensee shall immediately cease to undertake any act in respect of which the individual licence was granted.

(2) Notwithstanding Subsection (1), NICTA may authorise the individual licensee, in writing, to continue providing any ICT service, or to exercise any facilities rights or part thereof, or undertake any other act in respect of which the individual licence was granted, for such duration as NICTA may specify in the authorisation, in its absolute discretion, for the purpose of permitting the licensee to cease its activities in a manner that mitigates any adverse consequences to any persons to whom the individual licensee supplies services.

### *Division 4. — Class Licences.*

## **62. CATEGORIES OF CLASS LICENCES.**

The Head of State, acting on advice, may make regulations identifying -

- (a) the type of ICT services or facilities rights that will be subject to a class licence; and
- (b) whether those ICT services, or facilities rights, relate to –
  - (i) the exercise of facilities rights and/or the supply of one or more facilities services or network services, being a class licence that is a network licence; or
  - (ii) the supply of one or more applications services, being a class licence that is an applications licence; or
  - (iii) the supply of one or more content services, being a class licence that is a content licence.

### **63. TERMS AND CONDITIONS OF CLASS LICENCES.**

(1) NICTA shall make rules that set out the standard terms and conditions of class licenses.

(2) The standard terms and conditions in rules made under Subsection (1) may differ according to the different types of class licences.

### **64. REGISTRATION UNDER CLASS LICENCE.**

(1) Subject to Section 48, any person intending to undertake activities covered by a class licence shall, prior to undertaking such activities, file with NICTA a completed version of the appropriate class licence registration form and any other information required by the rules.

(2) Subject to Section 65, NICTA shall, within thirty (30) days of receipt of the appropriate, duly completed class licence registration form, accept the registration for a class licence.

(3) NICTA shall make rules determining -

(a) the format of class licence registration forms; and

(b) any other information required by NICTA for registration purposes.

### **65. REFUSAL OF REGISTRATION FOR CLASS LICENCE.**

(1) NICTA may refuse to accept a registration for a class licence if -

(a) the registrant does not propose to provide, the type of ICT services, or exercise the facilities rights, that are the subject of the class licence, identified under Section 62; or

(b) the registration does not contain the information required by any rules under Section 47(2); or

(c) the registrant is in contravention of this Act or any mandatory instrument in relation to any other ICT licences or existing licences that the registrant may hold; or

(d) the registration contains false or misleading information or misrepresentations of fact.

(2) NICTA shall refuse to accept a registration for a class licence if the registrant is not eligible to be an ICT licensee under Section 48.

(3) Where a registration is refused, NICTA shall, within thirty (30) days of receipt of the registration, send to the registrant a written notice stating the reasons for the refusal.

### **66. DEREGISTRATION UNDER A CLASS LICENCE.**

(1) NICTA may, by notice in writing, deregister any class licensee under this Act in any of the

following circumstances –

(a) the class licensee requests NICTA in writing that such deregistration occur; or

(b) the class licensee –

(i) enters into receivership or liquidation; or

(ii) takes any action for its voluntary winding-up or dissolution; or

(iii) enters into any scheme of arrangement (other than in any such case for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by NICTA); or

(iv) is the subject of any order that is made by a competent court or tribunal for its compulsory winding-up or dissolution; or

(c) the class licensee has failed to comply with any provisions of this Act or a mandatory instrument; or

(d) the class licensee has ceased to fulfil the eligibility requirements in Section 48.

(2) A deregistration of a class licensee under this Section shall take effect on a date specified in the notice issued under Subsection (1), being at least twenty (20) days after the date of the notice.

(3) The deregistration of a class licensee under this Section does not affect any obligation of the class licensee to do an act, or refrain from doing an act, where the obligation arose before the deregistration, under this Act or any mandatory instrument.

(4) Before NICTA acts under Subsections (1)(c) or (d), NICTA shall -

(a) notify the class licensee in writing of the proposed action specifying the reasons for the proposed action; and

(b) allow the class licensee at least thirty (30) days within which to –

(i) rectify the circumstances giving rise to NICTA's right of deregistration; and

(ii) make submissions to NICTA in relation to the proposed action; and

(c) take into account –

(i) whether the class licensee has rectified the circumstances giving rise to NICTA's right of deregistration; and

(ii) any submissions made by the class licensee; and

(iii) whether the proposed action is appropriate with regard to the objective of the Act and the regulatory principles.

(5) When the deregistration of a class licence has taken effect, NICTA shall, as soon as practicable publish the deregistration decision and its reasons for that decision, including at least one national daily newspaper.

#### **67. EFFECT OF DEREGISTRATION OF A CLASS LICENSEE.**

(1) Where the deregistration of a class licensee has taken effect –

(a) the authorisation provided by the class licence is immediately revoked; and

(b) the deregistered person shall immediately cease to provide any ICT service, or to exercise any facilities rights, or to undertake any act in respect of which the class licence was granted.

(2) Notwithstanding Subsection (1), NICTA may authorise the deregistered person, in writing, to continue providing any ICT service, or to exercise any facilities rights or part thereof, or undertake any other act in respect of which the class licence was granted, for such duration as NICTA may specify in the authorisation, in its absolute discretion, for the purpose of permitting the deregistered person to cease its activities in a manner that mitigates any adverse consequences to any persons to whom the deregistered person supplies services.

### **PART IV. — LICENSEE POWERS AND DUTIES.**

#### ***Division 1. — Simplified Outline.***

#### **68. SIMPLIFIED OUTLINE.**

The following is a simplified outline of this Part –

(a) All operator licensees shall comply with this Act.

(b) The Minister may require an operator licensee to provide certain assistance in the case of a public emergency or in the interest of public safety.

(c) All network licensees shall take steps to prevent their facilities from being used for the purpose of any offence and co-operate with authorities. NICTA may determine additional duties relating to interception capability.

(d) Network licensees have powers to access land and buildings for the purposes of exercising any facilities rights, supplying any facilities access services or supplying network services. The use of those powers is subject to prior approval by the Minister or Head of State and compliance with the Land Access Code.

(e) Network licensees shall provide wholesale customers, on request, access to certain information relating to the operation of facilities and the quality of network services supplied over those networks. The terms of compliance are determined by negotiation, subject to industry codes and industry standards. NICTA may arbitrate any dispute.

***Division 2. — Duties of All Operator Licensees.***

**69. GENERAL DUTIES OF OPERATOR LICENSEES.**

All operator licensees shall comply with this Act.

**70. POWERS OF GOVERNMENT IN AN EMERGENCY.**

(1) The Minister (or any officer expressly authorised on behalf of the Minister), to the extent required to respond to a public emergency or matter of public safety, may –

(a) require an operator licensee to provide ICT services; or

(b) require an operator licensee to restrict or delay the carriage of certain communications; or

(c) require an operator licensee to disclose the content of specified communications to the Minister; or

(d) require NICTA to coordinate with any other government agency.

(2) Any order made under Subsection (1)(b) does not apply to the carriage of communications for the purpose of making or answering signals of distress.

(3) If any doubt arises as to the existence of a public emergency matter or matter of public safety, a certificate signed by the Minister and delivered to the operator licensee shall be conclusive proof of that fact.

**71. PREVENTION OF OFFENCES.**

An operator licensee that owns or controls a facility shall take reasonable steps to prevent that facility from being used for the purpose of any offence against a law of Papua New Guinea.

**72. CO-OPERATION WITH AGENCIES.**

An operator licensee shall, upon written request by NICTA or any agency of Papua New Guinea involved in national security, law enforcement or the provision of emergency services, assist NICTA or that agency as far as reasonably necessary to prevent any offence against a law of Papua New Guinea or otherwise to enforce the laws, protect the public revenue and preserve the national security of Papua New Guinea.

### **73. INTERCEPTION CAPABILITY.**

(1) NICTA may make rules that require operator licensees to implement the capability to allow authorised interception of communications and such rules may specify the technical requirements for authorised interception capability.

(2) NICTA is not required to publish any rules made under Subsection (1) to the extent that such publication may prejudice law enforcement activities or national security, but shall provide a copy of the rules to those ICT licensees to whom the rules apply.

### **74. PROTECTION FROM ACTION.**

An operator licensee is not liable to any person in any action or other proceeding for damages for, or in relation to, an act done or omitted, in good faith, in compliance with Sections 70, 71, 72 or 73.

#### *Division 3. — Powers and Duties in Relation to Sites.*

### **75. LAND ACCESS RULES FOR NETWORK LICENSEES.**

NICTA shall by writing make rules to be known as the "Land Access Rules", that set out procedures relating to one or more of the following –

(a) procedures that a network licensee must follow in exercising powers under this Division relating to sites; and/or

(b) procedures that a network licensee must follow in complying with obligations under this Division relating to owners or occupiers of sites; and/or

(c) procedures that address environmental issues; and/or

(d) procedures to be followed for consultation between network licensees concerning the sharing of facilities where network licensees propose to install or construct new facilities in the vicinity of existing facilities.

### **76. ERECTION, MAINTENANCE AND REMOVAL OF TRANSMISSION LINES, ANTENNAE, ETC.**

(1) For the purposes of exercising a facilities right, or providing facilities access services or network services, a network licensee may, subject to Subsection (3) and on giving notice of its intention to do so to the owner or occupier of the site, exercise a facilities right in respect of that site, including in, under, through, over, across or on any land or any building, house or premises on any such land.

(2) The land to which Subsection (1) applies is land, including land under the sea or a river or

stream, that –

(a) is outside a town; or

(b) is a street or other Government land within a town,

at the time when the facilities are erected.

(3) The exercise of the powers conferred by Subsection (1) is subject to the prior written approval of -

(a) the Head of State, acting on advice, in the case of land outside a town; or

(b) the Minister, in the case of land within a town.

#### **77. OWNERSHIP OF FACILITIES.**

Notwithstanding anything in any other law, but subject to any agreement in writing to the contrary, the ownership of facilities the subject of the exercise of a facilities right by a network licensee is not affected by their affixation to a site.

#### **78. LAND ACCESS RULES BINDING ON NETWORK LICENSEES.**

A network licensee shall, when exercising a power in relation to a site under this Division, comply with the Land Access Rules.

#### **79. POWERS TO INSPECT SITES.**

A network licensee may, for the purpose of determining whether any site is suitable for its purposes –

(a) after giving reasonable notice to the occupier or the owner of the site enter on, and inspect, the site and any adjacent site; and

(b) do anything on the site or on any adjacent site that is necessary or desirable for that purpose, including, for example, making surveys, taking levels, sinking bores, taking samples, digging pits and examining the soil.

#### **80. TREES MAY BE CUT.**

(1) Where any tree, undergrowth or vegetation on or over land owned or occupied by the State, a Public Authority or a Provincial Government or customary land, obstructs, or is likely to obstruct, the operation of a facility, a network licensee may cut down or lop the tree or clear the undergrowth or vegetation.

(2) Before exercising its powers under Subsection (1) in relation to any land, a network licensee



shall give reasonable written notice of its intention to do so to the person or authority responsible for the care and management of the land.

(3) Where any tree, undergrowth or vegetation on or over any private land obstructs, or is likely to obstruct, the operation of a facility, a network licensee may, by written notice served on the owner of the land, require the owner to cut down or lop the tree, or to clear and remove the undergrowth or vegetation, in the manner, and within the period, specified in the notice.

(4) Where the owner referred to in Subsection (3) does not comply with the requirement under that Subsection within the specified period, the network licensee may enter the land and cut down or lop the tree, or clear and remove the undergrowth or vegetation, in the manner specified in the notice.

### **81. A NETWORK LICENSEE MAY REPLACE, REPAIR AND MAINTAIN FACILITIES.**

(1) Subject to any conditions of its network licence, a network licensee may, at any time, alter, move, remove, replace or maintain a facility -

(a) constructed on, over or under any land; or

(b) attached to a building or other structure.

(2) For the purpose of exercising powers under Subsection (1), a network licensee may enter on, and occupy, any land and may remove, or erect a gate in, any fence.

(3) Before removing, or erecting a gate in a fence, a network licensee shall take all reasonable steps to give written notice of its intention to do so to the owner of the land on which, or on the boundary of which, the fence is erected.

### **82. POWER EXTENDS TO NETWORK LICENSEE'S EMPLOYEES.**

Where, under a provision of this Division, a network licensee is empowered to enter onto a site, inspect a site, occupy a site or do anything else on, over or under the site, the provision also empowers an employee of the network licensee, a person acting for the network licensee under a contract, or an employee of such a person, to do that thing.

### **83. NETWORK LICENSEE TO DO AS LITTLE DAMAGE AS PRACTICABLE.**

(1) In exercising its powers under this Division, a network licensee shall take all reasonable steps to ensure that it causes as little detriment and inconvenience, and does as little damage, as is practicable.

(2) Where a person suffers financial loss or damage because of anything done by a network licensee under this Division in relation to any property owned by the person or in which the person has an interest, there is payable to the person by the network licensee such reasonable

amount of compensation as is agreed between them or, failing agreement, as is determined by a court of competent jurisdiction.

***Division 4. — Access to Network Information.***

**84. ACCESS TO NETWORK INFORMATION.**

(1) A network licensee shall, if requested to do so by the wholesale customer to whom the network licensee supplies network services, provide the wholesale customer with any of the following on such terms and conditions as are agreed between them or are determined under Section 87 -

(a) reasonable access to timely and detailed information –

(i) from the network licensee's operations support systems; or

(ii) about traffic flow; or

(iii) that is contained in the network licensee's databases and relates to the manner in which the network licensee's network treats calls of a particular kind; or

(b) timely and detailed network planning information including (without limitation) –

(i) the volume or characteristics of traffic being offered by the network licensee to a network of the wholesale customer; or

(ii) the network performance standards (if any) that have been set by the network licensee; or

(c) timely and detailed information that –

(i) relates to likely changes to facilities on a network of the network licensee; or

(ii) will affect the completion success rate of calls offered by the wholesale customer.

**85. ACCESS TO QUALITY OF SERVICE INFORMATION.**

(1) A network licensee shall, if requested to do so by a wholesale customer to whom the network licensee supplies network services, provide the wholesale customer with timely and detailed information relating to any of the following on such terms and conditions as are agreed between them or are determined under Section 87 -

(a) conditions affecting the quality of service experienced by the wholesale customer or any retail customers of the wholesale customer; or

(b) localisation of network conditions affecting traffic offered by the wholesale customer to the network licensee's network; or

(c) routing information allowing the wholesale customer to determine in which network calls have failed; or

(d) identification of switching or other equipment or facilities in each of the network licensee's networks which contribute to a level of uncompleted calls, affecting the wholesale customer's offered traffic, beyond the threshold agreed by the network licensee and the wholesale customer and consistent with terms used in the relevant ITU-T recommendations; or

(e) periodic summaries, in relation to the wholesale customer's traffic, of unsuccessful call ratios across the network licensee's network, categorised by cause of call failure and including separate identification of network difficulties and congestion; or

(f) network control actions taken by the network licensee that would affect the completion success rate of calls offered to the network licensee by the wholesale customer; or

(g) such other matters (if any) as are specified in the regulations.

## **86. CONSULTATION ABOUT RECONFIGURATION ETC.**

(1) A network licensee shall, if requested to do so by a wholesale customer to whom the network licensee supplies network services, consult with the wholesale customer, on such terms and conditions as are agreed between them or are determined under Section 87, before modifying or reconfiguring the licensee's network.

(2) The network licensee is not required to comply with Subsection (1) unless the modification or reconfiguration has a bearing on the wholesale customer's network planning, maintenance or reconfiguration activities.

## **87. TERMS AND CONDITIONS OF COMPLIANCE.**

(1) The network licensee is not required to comply with Sections 84 or 85 in respect of a wholesale customer unless –

(a) the wholesale customer's request is reasonable with regard to the criteria set out in Section 126 (as if the supply of the information constituted a "declared service" under that Section); and

(b) in respect of Section 85, the purpose of the access is to enable the wholesale customer to undertake planning, maintenance or reconfiguration of the wholesale customer's own network; and

(c) the wholesale customer has in place security procedures designed to protect the confidentiality of information –

(i) as are agreed between the network licensee and the wholesale customer; or

(ii) failing agreement, as are determined in writing by NICTA.

(2) The network licensee shall comply with such other requirements imposed on the network licensee by Sections 84, 85 and 86 or this Section on such terms and conditions as are agreed between the network licensee and the wholesale customer, subject to any registered industry code or industry standard.

(3) Subject to the terms of this Section, if information is requested by the wholesale customer under Sections 84 and 85, the network licensee shall make the information available to the wholesale customer as soon as practicable after the request is made.

(4) If the parties fail to reach agreement on the terms and conditions under Subsection (2) -

(a) either party may notify a dispute to NICTA for arbitration as if the supply of the information were a "declared service" for the purposes of Division VI.6; and

(b) NICTA may arbitrate the dispute under Division VI.6 accordingly.

(5) NICTA shall use reasonable endeavours to conclude any arbitration commenced under Subsection (4) within three (3) months of the date it received notice of the dispute.

## **PART V. — UNIVERSAL ACCESS AND SERVICE REGIME.**

### ***Division 1. — Simplified Outline.***

#### **88. SIMPLIFIED OUTLINE.**

The following is a simplified outline of this Part -

(a) A Universal Access and Service Fund is established to promote the long-term economic and social development of Papua New Guinea by funding approved UAS Projects.

(b) A UAS Board is established to identify, develop, and cost UAS Projects to give effect to Government Policy.

(c) NICTA shall establish a UAS Secretariat.

(d) The UAS Board shall recommend proposals to the Minister in a UAS Project report who shall accept or reject UAS Projects.

(e) A Universal Access and Service Fund will be sourced from Government contributions, industry levies and other grants or loans and shall be held in trust.

(f) NICTA shall implement accepted UAS Projects, including putting in place competitive processes and Project Agreements, administering compliance and directing the release of funds upon satisfactory completion.

(g) Each of the UAS Board, NICTA and the Minister shall report annually on the application of the Universal Access and Service Fund.

***Division 2. — Establishment of Universal Access and Service Fund.***

**89. UNIVERSAL ACCESS AND SERVICE FUND.**

(1) The Universal Access and Service Fund is hereby established.

(2) Interest from the Universal Access and Service Fund shall be paid into the Universal Access and Service Fund.

(3) The Universal Access and Service Fund shall not be used as collateral for a loan or otherwise encumbered.

**90. OBJECTIVE OF THE UNIVERSAL ACCESS AND SERVICE FUND.**

(1) The objective of the Universal Access and Service Fund is to promote the long-term economic and social development of Papua New Guinea by funding approved UAS Projects that will encourage the development of ICT infrastructure and improve the availability of ICT services within Papua New Guinea, including in rural communities.

(2) The Head of State, acting on advice, may make regulations not inconsistent with this Act, prescribing all matters that are required or permitted to be prescribed or that are necessary or convenient to be prescribed for the purpose of giving effect to this Part.

***Division 3. — Administration of the Universal Access and Service Fund.***

**91. UAS BOARD.**

(1) A Universal Access and Service Board is hereby established, to be known as the "UAS Board".

(2) The functions of the UAS Board are -

(a) to give effect to the objective of this Part as set out in Section 90; and

(b) to provide advice to the Minister in the formulation of Government Policy in respect of any aspect of this Part or that otherwise promotes the objective of this Part; and

- (c) to publicise the Universal Access and Service Fund and its objective; and
- (d) to consult, where appropriate, commercial, industrial and consumer organisations about the Universal Access and Service Fund and the implementation of the objective of this Part; and
- (e) to conduct research in relation to matters affecting the implementation of the objective of this Part; and
- (f) to develop and receive from stakeholders, UAS Project proposals and submit UAS Project proposals to the Minister; and
- (g) to prepare and publish an annual report to the Minister on the activities of the UAS Board; and
- (h) to give effect to Government Policy in the manner contemplated by this Part.

## **92. COMPOSITION OF THE UAS BOARD.**

(1) The UAS Board shall have five (5) members and be comprised as follows -

- (a) the Chairman of NICTA, *ex officio*, who is Chairman of the UAS Board; and
- (b) the Departmental Head of the Department responsible for communications and information, *ex officio*, who is Deputy Chairman of the UAS Board; and
- (c) the Departmental Head of the Department responsible for national planning, *ex officio*; and
- (d) the Departmental Head of the Department responsible for financial management, *ex officio*; and
- (e) a member drawn from the private sector appointed by the Head of State, acting on advice, who can contribute meaningfully towards the fulfilment of the objective of the Universal Access and Service Fund.

(2) The member referred to in Subsection (1)(e) -

- (a) shall be appointed pursuant to a written instrument of appointment; and
- (b) serves for the time period stated in the written instrument of appointment; and
- (c) may be compensated for reasonable expenses for attendance at UAS Board meetings; and

(d) is not eligible for appointment to the UAS Board unless he or she –

(i) is a person of integrity, independence of mind and good reputation; and

(ii) has knowledge of, or experience in, the ICT sector and in management, law, economics, finance, engineering, public administration or commerce; and

(e) is not eligible to be appointed, or to remain, a member if he or she –

(i) has, or had within the last twelve (12) months, a direct or indirect financial or other interest in an existing licence or an ICT licensee (including, but not limited to, any shares in an existing licensee or an ICT licensee, or status as an employee, consultant or advisor to an existing licensee or an ICT licensee); or

(ii) is, or was within the last twelve (12) months, a member or candidate for election as a member of the National Parliament, a member of a Provincial Government or a member of a Local Government or a Local Government authority, an office-holder, or candidate for election as an office holder, in a registered political party; or

(iii) is, or was within the last three (3) years, an adjudged insolvent or bankrupt; or

(iv) is of unsound mind; or

(v) has a criminal record; or

(vi) has, or had within the last twelve (12) months, any other interest which could, in the reasonable opinion of the Minister, conflict with the proper performance of his duties as a UAS Board Member.

### **93. VACANCY.**

(1) The UAS Board member position referred to in Section 92(1)(e) becomes vacant if the person holding that office –

(a) dies; or

(b) attains the age of seventy (70) years; or

(c) becomes permanently incapable of performing his duties;

(d) resigns from office by writing in a letter addressed to the Minister; or

(e) is absent from three consecutive meetings of the UAS Board without the written consent of the Chairman; or

(f) becomes of unsound mind; or

(g) is not eligible to be or to remain a member by virtue of Section 92(2)(e).

(2) A vacancy on the UAS Board shall be filled as soon as possible, and in any event, within ninety (90) days of the vacancy arising.

#### **94. PROCEDURES OF THE UAS BOARD.**

(1) The UAS Board shall meet as often as the business of the Universal Access and Service Fund requires, but in any event at least once in every calendar quarter.

(2) A meeting of the UAS Board may be convened by any member.

(3) Notice of a meeting of the UAS Board shall be provided to each member by the member who wishes to convene the meeting.

(4) Subject to Subsection (8), meetings of the UAS Board shall be held at such places and at such times as the Chairman determines.

(5) At a meeting of the UAS Board –

(a) the Chairman shall preside; and

(b) in the absence of the Chairman, the Deputy-Chairman shall preside and if both the Chairman and Deputy-Chairman are absent the members present will elect a Chairman for that meeting; and

(c) a quorum is constituted by three (3) members, one of whom shall be the Chairman of NICTA unless the position of the Chairman is vacant or the Chairman is on leave or is disqualified from taking part in a deliberation of the UAS Board in accordance with Section 95; and

(d) all members present are entitled to vote; and

(e) matters arising shall be decided by a majority of the votes of members present and voting; and

(f) in the event of an equality of votes on any matter, the Chairman, or in the Chairman's absence, the Deputy Chairman, has a casting vote as well as a deliberative vote.

(6) The UAS Board shall keep written minutes of all meetings.

(7) The UAS Board may otherwise regulate its own procedure.



(8) Meetings of the UAS Board may be held by teleconference or videoconference or by means of any other communication facilities that permit all those participating in the meeting to communicate with each other simultaneously and instantaneously.

## **95. DISCLOSURE OF INTERESTS.**

(1) A member of the UAS Board shall, as soon as possible after the relevant facts have come to his knowledge, inform the other members in writing of –

(a) any direct or indirect financial interest that the member has or acquires in any existing licence, existing licensee, ICT licence or ICT licensee; and

(b) any direct or indirect financial interest in a matter being considered or about to be considered by the UAS Board.

(2) A disclosure under Subsection (1) shall be recorded in the minutes of the UAS Board.

(3) A member to whom Subsection (1)(b) applies -

(a) shall not take part in any deliberation or decision of the UAS Board in relation to that matter; and

(b) shall be disregarded for the purpose of constituting a quorum of the UAS Board for any such deliberation or decision.

(4) If the operation of Subsection (3) has the effect that the UAS Board is unable to proceed with the deliberation or decision of a matter, the Chairman (who shall not be that member) may direct that the member who has the relevant interest may take part, after the disclosure of that interest, in a deliberation or decision of the UAS Board in relation to the matter and may be counted for the purpose of constituting a quorum of the UAS Board for any such deliberation or decision.

(5) This Section does not apply to the extent that the interest of a member is only as a result of the supply of goods and services that are available to the public on the same terms and conditions.

## **96. VALIDITY OF CONDUCT.**

Subject to the provisions of this Act, an act, decision or proceeding of the UAS Board is not invalid by reason of –

(a) a defect or irregularity in, or in connection with, the appointment or removal of a member of the UAS Board; or

(b) a vacancy in, or absence from, the office of a member of the UAS Board; or

(c) a failure by a member to comply with Section 95.

## **97. IMMUNITY.**

A member of the UAS Board is not personally liable for any thing done or omitted to be done in good faith in the performance or exercise, or purported performance or exercise, of a function or power under this or any other Act or in the course of carrying out the duties and functions of the UAS Board.

## **98. GOVERNMENT POLICY FOR UNIVERSAL ACCESS AND SERVICE FUND.**

(1) The Minister may notify the UAS Board and NICTA in writing of any Government Policy that sets out the priorities of the Government for utilising the Universal Access and Service Fund to achieve the objective set out in Section 90.

(2) Subject to this and any other Act, the UAS Board and NICTA shall ensure that any Government Policy notified in accordance with Subsection (1) is carried out.

## **99. UAS SECRETARIAT.**

(1) NICTA shall establish a dedicated secretariat, to be known as the "UAS Secretariat", within its organisation to carry out all functions required of NICTA by this Part.

(2) In order to give effect to Subsection (1), NICTA will, through its UAS Secretariat –

(a) provide such information and assistance as is required by the Minister or the UAS Board in the pursuance of their respective functions under this Part; and

(b) design and implement the competitive tender process under Section 109; and

(c) determine the payment of monies from the Universal Access and Service Fund in accordance with Project Agreements pursuant to Section 115; and

(d) negotiate and execute Project Agreements, monitor their compliance and enforce such agreements; and

(e) undertake the role of Fund Manager in the pursuance of the Fund Manager's duties; and

(f) approve processes, procedures, guidelines, documentation or other matters necessary to give effect to the requirements of this Part; and

(g) commission independent evaluations or audits of any UAS Projects financed by the Universal Access and Service Fund in accordance with the terms of a Project Agreement; and

(h) carry out such other duties related to the Universal Access and Service Fund as are

assigned to NICTA by this Part or any regulations.

***Division 4. — Financial Management of the Universal Access and Service Fund.***

**100. FINANCING OF THE UNIVERSAL ACCESS AND SERVICE FUND.**

(1) The Universal Access and Service Fund will be financed from funds that may include, but not be limited to, the following –

(a) all monies appropriated for the purpose of the Universal Access and Service Fund; and

(b) all monies received from the Universal Access and Service Levy paid by operator licensees in accordance with Section 107; and

(c) all monies paid pursuant to Sections 32(2)(a) and 36(2)(b)(i); and

(d) all monies paid by any person for the purposes of Universal Access and Service Fund; and

(e) amounts appropriated as Government contribution to a project which is partly funded by an international agency, whether by loan or grant.

(2) There shall, immediately following receipt, be paid to the credit of the Universal Access and Service Fund Trust Account all funds for the financing of the Universal Access and Service Fund, including all monies and amounts that are appropriated, received or paid as listed in Subsection (1).

**101. LIABILITY TO TAXATION.**

(1) The income of the Universal Access and Service Fund Trust is exempt from income tax for the purposes of the *Income Tax Act 1959*.

(2) For the purposes of the *Income Tax Act 1959*, an amount equal to any amount paid to the Universal Access and Service Fund Trust by way of the Universal and Access Service Levy, may be claimed, and will be allowed, as an allowable deduction under Section 68 of the *Income Tax Act 1959* from the assessable income of the person that paid the amount in the year of payment.

(3) Tax on any supply made by the Universal Access and Service Fund Trust is to be charged at the rate of zero (0) percent for the purposes of the *Goods and Services Tax Act 2003*.

(4) Without affecting the liability of any other party to an instrument, the Universal Access and Service Fund Trust is not liable to pay duty under the *Stamp Duties Act 1952*.

(5) All goods, other than –

(a) gasoline, diesel or other fuel; and

(b) cars, as defined in Section 2(1) of the *Goods and Services Tax Act* 2003,

imported by or on behalf of the Universal Access and Service Fund and which the Chief Executive of NICTA has certified are exclusively for the objective of the Universal Access and Service Fund, are exempt from duty imposed under the *Custom Tariff Act* 1990 and from excise duty imposed under the *Excise Tariff Act* (Chapter 107).

## **102. ESTABLISHMENT OF TRUST.**

(1) There shall be established a Universal Access and Service Fund Trust –

(a) consisting of three (3) trustees being –

(i) the Chairman of NICTA; and

(ii) the Departmental Head of the Department responsible for communications and information; and

(iii) the Departmental Head of the Department responsible for finance; and

(b) whose purposes, functions, powers and procedures shall be as prescribed.

(2) A trust account for the receipt of funds intended to finance the Universal Access and Service Fund as set out in Section 100 shall be established by the trustees in a reputable bank approved by the Central Bank for this purpose.

(3) The trust account shall be entitled the "Universal Access and Service Fund Trust Account" and shall be subject to the provisions, as prescribed, of the Universal Access and Service Fund Trust.

## **103. ADMINISTRATION OF THE TRUST ACCOUNT.**

(1) The Universal Access and Service Fund Trust Account shall be administered by NICTA as the Fund Manager appointed under Section 104.

(2) Subject to Subsection (4), NICTA shall be responsible for all transactions relating to the Universal Access and Service Fund Trust Account.

(3) Subject to this Act and to the specific functions and powers conferred upon NICTA under this Part, in its administration of the Universal Access and Service Fund Trust Account NICTA shall comply with any direction of the trustees appointed under Section 102.

(4) The trustees shall ensure that any cash reserves of the Universal Access and Service Fund Trust Account are prudently invested in accordance with the general directions of the UAS

Board, but subject to the provisions, as prescribed, of the Universal Access and Service Fund Trust.

(5) The UAS Board shall not give the trustees any directions that are inconsistent with the provisions, as prescribed, of the Universal Access and Service Fund Trust or this Act.

(6) Monies may be paid out of the Universal Access and Service Fund Trust Account only if all of the following criteria are met –

(a) the payment is for the purposes of the Universal Access and Service Fund and NICTA has given a direction to the trustees under Section 117; and

(b) the payment is in accordance with the written authorisation, by individual signature, of each of the three (3) trustees; and

(c) sufficient credit is available in the Universal Access and Service Fund Trust Account.

#### **104. MANAGEMENT OF UNIVERSAL ACCESS AND SERVICE FUND MONIES.**

(1) NICTA shall be the Fund Manager for the Universal Access and Service Fund.

(2) Subject to the Provisions, as prescribed, of the Universal Access and Service Fund Trust, the responsibilities of the Fund Manager include, but shall not be limited to, the following –

(a) receiving funds collected from operator licensees as Universal Access and Service Levies imposed pursuant to Section 107; and

(b) directing the disbursement of funds from the Universal Access and Service Fund in accordance with Section 117; and

(c) collaborating with the UAS Board to determine –

(i) the amount of annual revenue required to ensure that the Universal Access and Service Fund remains fiscally sound; and

(ii) the calculation of the rate of assessment for the Universal Access and Service Levy imposed pursuant to Section 107.

(3) Subject to Subsection (4), the money in the Universal Access and Service Fund shall be utilised exclusively for the payment of subsidies relating to UAS Projects and shall not be used by NICTA for any other purpose.

(4) NICTA shall budget for its forecasted costs in performing its UAS Secretariat (including Fund Manager) role as a category of forecast expenditure within its budget prepared under Section 31 and, subject to the provisions, as prescribed, of the Universal Access and Service Fund Trust, is entitled to recover a reasonable contribution to its cost directly associated with the

fulfilment of its obligations under this Part from the Universal Access and Service Fund.

#### **105. SURPLUSES AND RESERVES.**

(1) The Fund Manager may establish reserves from surpluses resulting from the Universal Access and Service Levy or other sources of funding for the purpose of funding UAS Projects in future years.

(2) Any surpluses in the Universal Access and Service Fund shall be used for the purposes of fulfilling the objective of the Universal Access and Service Fund, as set out in Section 90.

#### **106. AUDITOR.**

(1) The Minister, in consultation with NICTA and the Departmental Head of the Department responsible for treasury matters, shall appoint an independent auditor for the Universal Access and Service Fund, who shall provide an annual audited financial statement that shall be included in NICTA's annual report to the Minister.

(2) The Auditor General of Papua New Guinea may at his discretion audit the Universal Access and Service Fund from time to time.

#### **107. UNIVERSAL ACCESS AND SERVICE LEVY.**

(1) Subject to Subsection (2), NICTA may levy charges on operator licensees for the Universal Access and Service Fund, to be known as the "Universal Access and Service Levy".

(2) NICTA shall set the Universal Access and Service Levy as a percentage of the net revenues of each operator licensee at a level, to be determined annually, to apply from the beginning of each fiscal year –

(a) to achieve the desired level of funding for the Universal Access and Service Fund for that year as advised to NICTA by the UAS Board, less any amounts paid by NICTA in the previous year under Section 32(2)(a); and

(b) not exceeding a maximum percentage as prescribed in the regulations.

(3) Each operator licensee shall fully co-operate with NICTA, including through the provision of relevant information requested by NICTA, in order to enable NICTA to make the calculation identified in Subsection (2).

(4) Upon receiving notification by NICTA of the amount owed as its Universal Access and Service Levy, an operator licensee shall submit payment of the Universal Access and Service Levy to the Universal Access and Service Fund Trust Account.

(5) The Universal Access and Service Levy is a debt owed to the State and may, in addition to other available avenues, be recovered in a court of competent jurisdiction.

(6) Without limiting any other action or remedy available to it if an operator licensee fails to pay an amount owing in accordance with Subsection (4), NICTA may recover the outstanding amount of the Universal Access and Service Levy from funds otherwise payable under Section 115;

(7) Subject to Subsection (8), any regulations made under Section 32(4) may determine the timing for payment of the Universal Access and Service Levy and the manner of calculation of any late payment charges.

(8) No Universal Access and Service Levy may be charged prior to 1 January 2011.

*Division 5. — UAS Projects and Associated Subsidies.*

**108. UAS PROJECTS.**

(1) Having regard to any Government Policy notified in Section 98, the UAS Board shall engage NICTA to undertake the following tasks —

(a) identify, develop and estimate the indicative cost of UAS Projects; and

(b) receive from stakeholders submissions on proposals for UAS Projects; and

(c) undertake public consultation, if NICTA considers it necessary or desirable, to identify UAS Projects and their indicative costing; and

(d) estimate the proposed aggregate budget for all UAS Projects to be undertaken under this Part for the relevant period identified by the UAS Board; and

(e) rank the UAS Projects identified and developed under Subsections (1)(a) or (b) in order of priority with regard to —

(i) their affordability within the proposed budget; and

(ii) the remaining factors listed in Subsection (4); and

(f) prepare for consideration by the UAS Board, a report which summarises the UAS Projects under consideration, their respective indicative costing, their proposed ranking (and the reasons for their ranking), and the proposed aggregate budget, as identified above.

(2) The UAS Board shall consider the report prepared by NICTA under Subsection (1) and prepare a UAS Project report which identifies the UAS Board's recommendations for UAS Projects, their ranking and the reason for such ranking.

(3) The UAS Board shall submit the UAS Project report (as prepared under Subsection (2)), to

the Minister, at least once in every calendar year, for the Minister's consideration.

(4) In assessing the ranking of UAS Projects, NICTA and the UAS Board shall have regard to the following factors –

(a) whether the proposed UAS Project would promote the objectives of the Universal Access and Service Fund; and

(b) the net benefits of the UAS Project to Papua New Guinea, taking into account any costs and detriments to any person; and

(c) whether the UAS Project is sustainable with a one-time capital subsidy; and

(d) whether the UAS Project would not otherwise occur but for a subsidy payment under this Part; and

(e) the likely efficiency and effectiveness of the proposed UAS Project and whether it is financially and technically feasible; and

(f) any other information the UAS Board considers relevant; and

shall ensure that –

(g) any UAS Project does not include services under a mandatory coverage obligation; and

(h) any UAS Project is not otherwise provided by a pre-existing UAS Project.

(5) Within sixty (60) days of receipt of the UAS Project report the Minister shall -

(a) review the UAS Project report; and

(b) determine from the list which UAS Projects will be implemented within the proposed aggregate budget; and

(c) notify this decision to the UAS Board and NICTA.

(6) If the Minister does not notify his decision under Subsection (5) within sixty (60) days of receipt of the UAS Project report, then the Minister is taken, at the end of that sixty (60) day period, to have rejected all UAS Projects identified in the UAS Project report.

(7) The Minister shall provide to NICTA his reasons for the rejection of any UAS Project identified in the UAS Project report.

(8) Subject to ensuring the protection of confidential information including the indicative costing of any UAS Project, NICTA shall publish the Minister's reasons on its public register.



(9) A failure on the part of the Minister to select a particular UAS Project for implementation does not preclude the UAS Board from re-evaluating and re-submitting the UAS Project at a later date to the Minister in accordance with Subsection (3).

#### **109. COMPETITIVE SELECTION PROCESS.**

(1) NICTA shall develop and carry out a competitive selection process, in order to select a successful bidder for each UAS Project determined by the Minister under Section 108(5)(b).

(2) NICTA shall ensure that the competitive selection process is -

(a) designed and implemented in accordance with this Act and the regulations; and

(b) consistent with the regulatory principles.

(3) To the extent permitted by law, the *Public Finances (Management) Act* 1995 does not apply to the competitive selection process developed and carried out by NICTA under this Section.

#### **110. PUBLIC NOTICE.**

(1) NICTA shall ensure that the publicity for a competitive selection process for each UAS Project is sufficient to notify a reasonable pool of potential bidders in advance of the implementation of the process.

(2) Further details in relation to the content of the public notice will be set out in the regulations.

#### **111. REQUEST FOR PROPOSALS.**

(1) In implementing the competitive selection process, NICTA may issue a request for proposals that specifies the details of the UAS Project and the related selection process for potential bidders.

(2) NICTA shall ensure that a request for proposals issued under Subsection (1) sets out, as applicable -

(a) a detailed description of the services to be provided, quality of service obligations, any access obligations and the operational requirements of the UAS Project; and

(b) the geographical area where the UAS Project is to be located; and

(c) the expected beneficiaries of the UAS Project; and

(d) the competitive selection process for the UAS Project, including –

(i) an estimated timeline for key steps in the competitive selection process; and

(ii) the minimum qualifications and other requirements for eligible bidders, and related evidentiary requirements; and

(iii) the selection and evaluation criteria for evaluating bids and selecting winning bids; and

(e) the qualification criteria that potential bidders must meet or exceed to be eligible to compete in the selection process under Section 112 and the information required for bidders to demonstrate compliance with the qualification criteria for each UAS Project; and

(f) the form of Project Agreement to be executed under Section 115; and

(g) the form of Bid Bond and Performance Bond, as applicable, under Sections 114 and 118; and

(h) the form of ICT licence required, if applicable.

(3) To the extent that a UAS Project involves the construction of any facility by a network licensee, NICTA shall disclose the existence of the statutory obligation arising by operation of Section 131(1)(b) to provide facilities access services in relation to that facility.

## **112. ELIGIBILITY TO COMPETE.**

(1) NICTA shall include in a request for proposals issued under Section 111 qualification criteria that potential bidders must meet or exceed to be eligible to compete in the selection process.

(2) NICTA shall include in the qualification criteria, at a minimum, that the bidder demonstrate that –

(a) it has the financial capacity sufficient to complete the UAS Project; and

(b) it has the operational experience and technical capacity to implement the UAS Project; and

(c) it has a quality network design, deployment plan, maintenance plan and business plan (as applicable); and

(d) the subsidy amount required is justified in order to make the UAS Project sustainable; and

(e) it complies with Section 48; and

(f) it is in compliance with any existing ICT licence that it holds under this Act and any other obligations relating to that operator licence, including payment of the Universal

Access and Service Levy, if applicable.

(3) NICTA may prescribe in rules any additional mandatory qualification criteria.

### **113. DECLARATION OF INELIGIBILITY.**

If NICTA finds a potential bidder is ineligible to compete in the selection process according to the established criteria, it shall notify the potential bidder in writing by registered mail or other means that provides proof that the potential bidder has received the notice.

### **114. BID BOND.**

(1) If NICTA considers it appropriate, it may include in the request for proposals issued under Section 111 a requirement for a form of security, to be known as the "Bid Bond", to be submitted by bidders for a UAS Project using a competitive selection process established under Section 109.

(2) Where required, the Bid Bond must either be in -

(a) the form of a stand-by letter of credit set forth by NICTA and issued by a reputable bank located in or outside of Papua New Guinea that is acceptable to NICTA; or

(b) such other form as determined by NICTA.

(3) In setting out the specified form of the Bid Bond, NICTA shall state –

(a) the required amount of the Bid Bond; and

(b) details of the events that would trigger forfeiture of the Bid Bond; and

(c) the date by and conditions under which the Bid Bond will be released.

(4) NICTA shall release all Bid Bonds —

(a) in accordance with the requirements specified under Subsection (3) and set out in the request for proposals for the UAS Project; and

(b) no later than thirty (30) days following execution of the Project Agreement and the issuance of an operator licence by NICTA under this Act, if required, to the successful bidder for the UAS Project.

### ***Division 6. — Project Agreements.***

### **115. PROJECT AGREEMENTS.**

(1) The successful bidder shall execute a Project Agreement with NICTA.

(2) NICTA shall include in the Project Agreements, at a minimum, the following –

(a) methods for settling disputes regarding the Project Agreement and ensuring that the Project Agreement counterparty has an adequate system in place to handle complaints from consumers or others regarding the UAS Project; and

(b) identifiable, quantitative and time bound performance benchmarks sufficient to allow the progress of implementation to be monitored; and

(c) to the extent that the UAS Project involves the construction of any facility, an acknowledgement of the statutory obligation in Section 131(1)(b) to provide facilities access services in relation to that facility; and

(d) such other matters as determined by NICTA.

#### **116. MONITORING OF PROJECTS.**

(1) NICTA shall monitor and assess compliance with the terms of a relevant Project Agreement and shall be satisfied that appropriate conditions have been met before directing the disbursement of funds in respect of that UAS Project.

(2) In fulfilling its obligations under Subsection (1), NICTA may engage persons with suitable qualifications and experience as consultants on such terms and conditions as NICTA determines.

(3) Where NICTA finds that the Project Agreement counterparty has not, in the opinion of NICTA, complied with the terms of the Project Agreement, NICTA may, and in addition to its rights under the Project Agreement or otherwise at law, take any or all of the following actions -

(a) order compliance by the Project Agreement counterparty on terms and conditions as set by NICTA; or

(b) order payment of any liquidated damages provided in the Project Agreement; or

(c) adjust the disbursement schedule or other terms of disbursement of funds from the Universal Access and Service Fund; or

(d) require repayment to the Universal Access and Service Fund of some or all of the amounts disbursed to date; or

(e) make other arrangement to complete unfinished work.

(4) NICTA may recover costs from the Project Agreement counterparty for expenses incurred in taking action under Subsection (3)(e).

(5) Any debt incurred by a Project Agreement counterparty as a result of costs referred to in

Subsection (4) is a debt against the State.

(6) NICTA may take into account the failure of a Project Agreement counterparty to comply with the terms of a Project Agreement before selecting that counterparty (or any related company) as a successful bidder for another UAS Project.

#### **117. AUTHORISATIONS FOR DISBURSEMENT.**

Subject to Section 107(5), where NICTA is satisfied that the conditions in a Project Agreement have been met, it shall direct the trustees of the Universal Access and Service Fund Trust to disburse funds to the Project Agreement counterparty in accordance with the timetable and in the amounts set forth in the Project Agreement.

#### **118. PERFORMANCE BOND.**

(1) The Project Agreement may include a requirement for a form of financial security, to be known as the "Performance Bond", that will be submitted to NICTA to secure obligations under a Project Agreement.

(2) The specified form of a Performance Bond must contain –

(a) the required amount of the Performance Bond; and

(b) the details of the events triggering forfeiture of the Performance Bond; and

(c) the date by and conditions under which the Performance Bond, or portions of the bond, will be released.

(3) Where NICTA is satisfied that the conditions specified in a Project Agreement have been met, it shall release all Performance Bonds relating to those conditions.

#### ***Division 7. — Transparency and Accountability.***

#### **119. REPORTING BY FUND MANAGER.**

(1) Within sixty (60) days after the end of each fiscal year, NICTA shall submit an annual report to the UAS Board and the Minister on the financial situation and performance of the Universal Access and Service Fund and the Universal Access and Service Fund Trust Account.

(2) NICTA shall include in the report submitted under Subsection (1) -

(a) a report on its activities, including activities in support of the Minister and the UAS Board relative to the Universal Access and Service Fund and NICTA's implementation functions; and

(b) a statement of the current amount of monies or other investments held in the

Universal Access and Service Fund Trust Account; and

(c) a description of the cash reserves investments and the cash management procedures in place; and

(d) a record of disbursements made from the Universal Access and Service Fund Trust Account; and

(e) a record of the Universal Access and Service Levies or other monies accruing to the Universal Access and Service Fund.

(3) NICTA shall provide information or any special reports relevant to this Part as requested by the UAS Board or the Minister.

#### **120. REPORTING BY THE UAS BOARD.**

(1) The UAS Board shall submit an annual report on its activities under this Part to be submitted to the Minister within ninety (90) days of the end of the fiscal year.

(2) The UAS Board shall include in its annual report (without limitation) -

(a) the audited financial statements of the Universal Access and Service Fund; and

(b) the annual report from NICTA as required under Section 119; and

(c) a report on the progress in meeting the objectives of the Universal Access and Service Fund.

#### **121. REPORTING BY THE MINISTER.**

The Minister shall table the annual report of the UAS Board before Parliament at the first available opportunity.

#### **122. WEBSITE.**

(1) Within six (6) months of the Succession Date, NICTA shall establish a website for the Universal Access and Service Fund.

(2) Subject to Subsection 108(8), NICTA shall include in the Universal Access and Service Fund website information regarding the activities undertaken by the UAS Board and NICTA in fulfilling the objective set out in Section 90, including (without limitation) -

(a) the annual reports of the UAS Board; and

(b) NICTA's annual reports; and

- (c) information about the UAS Board, its membership, and its role; and
- (d) information about UAS Project proposals; and
- (e) information about current UAS Project requests for proposals; and
- (f) information about current and past UAS Projects which have been awarded funds from the Universal Access and Service Fund; and
- (g) the Act and any other legislation, regulations, guidelines or procedures regarding the fulfilment of the objectives set out in Section 90; and
- (h) any other information that the UAS Board and/or NICTA consider relevant and appropriate for inclusion on the website.

(3) NICTA shall endeavour to keep the information on the Universal Access and Service Fund website up to date.

## **PART VI — INTERCONNECTION AND WHOLESALE ACCESS.**

### *Division 1. — Simplified Outline.*

#### **123. SIMPLIFIED OUTLINE.**

The following is a simplified outline of this Part -

- (a) This Part sets out a wholesale access regime for the ICT industry in Papua New Guinea.
- (b) NICTA may recommend to the Minister that certain wholesale services should be declared services. NICTA's recommendation is based on the application of declaration criteria. The Minister may accept or reject NICTA'S recommendation.
- (c) Access providers who supply declared services are required to comply with non-discrimination obligations in relation to those declared services, unless they are the beneficiary of an access exemption.
- (d) The terms and conditions on which access providers are required to comply with the non-discrimination obligations are subject to agreement. An access provider or a related company shall not prevent or hinder the fulfilment of a non-discrimination obligation.
- (e) Access seekers are similarly subject to any-to-any connectivity obligations and shall acquire certain designated interconnection services from access providers.
- (f) If agreement cannot be reached, but the access provider has given a RIO, the terms and conditions of access are as set out in the RIO. If agreement cannot be reached, but no

RIO is in operation, the terms and conditions are to be determined by NICTA acting as an arbitrator.

(g) NICTA may conduct an arbitration of a dispute about access to declared services. NICTA's determination of the arbitration must not be inconsistent with the non-discrimination obligations or a RIO.

### *Division 2. — Objectives.*

#### **124. OBJECTIVE OF THIS PART.**

(1) The objective of this Part and Part VII of this Act is to –

(a) promote effective competition in markets for ICT services in Papua New Guinea, to be known as the "competition objective", subject to –

(b) promoting the economically efficient use of, and the economically efficient investment in, the facilities by which ICT services may be supplied, to be known as the "efficiency objective".

(2) In determining the extent to which a particular thing is likely to further the achievement of the efficiency objective, regard shall be had (without limitation) to all of the following matters -

(a) whether it is technically feasible for the relevant ICT services to be supplied, having regard to –

(i) the technology available or likely to become available; and

(ii) the reasonableness of the costs involved; and

(iii) the effect of supplying the ICT services on the integrity, operation or performance of other ICT services or facilities; and

(b) the legitimate commercial interests of the access provider in supplying the ICT services, including the ability of the access provider to exploit economies of scale and scope; and

(c) the incentives for investment in the facilities by which the ICT services may be supplied, including the risks involved in making the investment.

#### **125. ACCESS SEEKER**

(1) For the purposes of this Part –

(a) "access", in relation to a declared service, is a reference to access by an access seeker in order that the access seeker can supply retail services; and



(b) anything done by an operator licensee in fulfilment of a non-discrimination obligation is taken to be an aspect of access to a declared service.

(2) An operator licensee is an "access seeker" in relation to a declared service if the operator licensee –

(a) makes, or proposes to make, a request in relation to that declared service under Section 136 (which deals with the non-discrimination obligations); or

(b) another operator licensee makes, or proposes to make, a request of that operator licensee in relation to a designated interconnection service under Section 137 (which deals with the any-to-any connectivity obligation),

whether or not the request is refused or the request is being complied with, including in circumstances where the operator licensee wants access to the service, or to change some aspect of the operator licensee's existing access to the service, or the access provider wants to change some aspect of the operator licensee's existing access to the declared service or to achieve any-to-any connectivity.

## **126. REASONABLENESS — TERMS AND CONDITIONS.**

For the purposes of this Part, in determining whether particular terms and conditions are "reasonable", regard shall be had (without limitation) to the following matters –

(a) the extent to which the terms and conditions are likely to further the achievement of the objective of this Part as set out in Section 124; and

(b) the legitimate business interests of the operator licensees concerned, and the access provider's investment in facilities used to supply the declared service concerned; and

(c) the interests of any persons who have rights to use the declared service concerned; and

(d) the extent to which the terms and conditions are consistent with the general pricing principles and any relevant service-specific pricing principles; and

(e) the operational and technical requirements necessary for the safe and reliable operation of an ICT service or a facility.

### ***Division 3. — Declared Services.***

## **127. PUBLIC INQUIRY BY NICTA.**

(1) NICTA may hold a public inquiry under Section 230 into –

(a) whether a recommendation should be made to the Minister that a wholesale service should be declared or that an existing declaration of a declared service should be revoked or varied; and

(b) if so, the appropriate terms of any such declaration, revocation or amendment.

(2) NICTA may hold a public inquiry under Subsection (1) -

(a) on its own initiative, including prior to the expiry of an existing declaration; or

(b) upon receipt of a written request from any person asking NICTA to hold such a public inquiry, such request accompanied by a detailed submission identifying the grounds for that request.

(3) NICTA shall hold a public inquiry under Subsection (1) upon receipt of a written direction from the Minister under Section 230 directing NICTA to do so.

(4) After receiving a written request under Subsection (2), NICTA shall -

(a) within fourteen (14) days, notify any access provider supplying the wholesale service that NICTA has received the request, including a summary of request; and

(b) decide whether or not to hold that public inquiry, after having regard to -

(i) the objective of this Part; and

(ii) whether the request was made in good faith; and

(iii) any other matters it thinks are relevant; and

(c) if NICTA decides not to hold a public inquiry, advise the person making the request in writing (copying the relevant access providers) of the decision and of the reasons for the decision.

## **128. DECLARATION CRITERIA.**

The "declaration criteria" are as follows -

(a) that declaration of the wholesale service will further the achievement of the objective of this Part as set out in Section 124; and

(b) specifically, in relation to the competition objective, that -

(i) access or increased access to the wholesale service (as a consequence of declaration) is necessary for the promotion of effective competition in at least one market other than the market for the wholesale service; and

(ii) the wholesale service is supplied in whole or in part via a facility that cannot feasibly be substituted, as a matter of commercial reality, via another facility in order to supply that wholesale service; and

(c) specifically, in relation to the efficiency objective, that –

(i) declaration would not materially compromise the incentives for efficient investment in any facility over which the wholesale service may be supplied; and

(ii) access or increased access to the wholesale service (as a consequence of declaration) is technically feasible having regard to the specific factors identified in Section 124(2)(a); and

(iii) in the case of wholesale services that are facilities access services, increased access to the wholesale service would avoid inefficient replication of underlying facilities that may be efficiently shared.

## **129. DECLARATION RECOMMENDATION BY NICTA.**

(1) Following a public inquiry under Section 127, if NICTA is satisfied that all of the declaration criteria would be met by the declaration, or continued declaration, of a wholesale service on particular terms –

(a) NICTA shall recommend to the Minister that the wholesale service should be declared or continue to be declared; and

(b) NICTA shall publish a report identifying –

(i) NICTA's analysis of the extent to which the declaration criteria are met; and

(ii) the particular terms of the declaration, consistent with the declaration criteria; and

(iii) the extent to which the terms are technologically neutral and non-discriminatory; and

(iv) an expiry date for the declaration, which must be a date within five (5) years after its commencement date.

(2) Following a public inquiry under Section 127, if NICTA is not satisfied that all of the declaration criteria would be met by the declaration or continued declaration, of a wholesale service –

(a) if the wholesale service is already declared, NICTA shall recommend to the Minister that the declaration of the wholesale service should be revoked; and

(b) NICTA shall publish a report identifying –

(i) NICTA's analysis of the extent to which the declaration criteria are met; and

(ii) if the wholesale service is already declared, the proposed date of revocation of that declaration.

(3) If the public inquiry considered whether any variation to the particular terms of an existing declaration was desirable, NICTA shall identify in its report its reasons and conclusions why that variation was or was not desirable.

(4) NICTA may consult with the ICCC and other Government agencies in preparing its report, including where desirable to promote a consistent approach to economic regulation within Papua New Guinea.

### **130. DECLARATION BY MINISTER.**

(1) On receiving a declaration recommendation from NICTA, the Minister shall either -

(a) if the declaration recommendation is to declare a wholesale service, either –

(i) accept the declaration recommendation and declare the wholesale service; or

(ii) reject the declaration recommendation and not declare the wholesale service;  
or

(b) if the declaration recommendation is to renew, vary or revoke an existing declaration, either –

(i) accept the declaration recommendation and renew, vary or revoke the existing declaration as the case may be; or

(ii) reject the declaration recommendation and not renew, vary or revoke the existing declaration.

(2) In making the decision under Subsection (1), the Minister -

(a) shall have regard to the declaration criteria and the declaration recommendation, including any report under Section 129; and

(b) may have regard to such other matters as the Minister considers are relevant, provided that the Minister identifies those other matters in the Minister's published decision.

(3) If the Minister accepts the declaration recommendation to –

(a) declare a wholesale service or renew an existing declaration, the declaration must be published in the National Gazette on the particular terms set out in NICTA's report; or

(b) amend an existing declaration, the amended declaration must be published in the National Gazette on the terms set out in NICTA's report; or

(c) revoke an existing declaration, the revocation must be published in the National Gazette; and

(d) the Minister shall notify NICTA of his decision.

(4) If the Minister has not made a decision under Subsection (1) within thirty (30) days after receiving the declaration recommendation, NICTA shall confirm with the Minister the timing of his decision.

(5) If the Minister does not, within sixty (60) days after receiving the declaration recommendation make a decision to accept or reject the declaration recommendation, then the Minister is deemed, at the end of that sixty (60) day period, to have decided to accept that recommendation and Subsection (3) applies.

(6) A decision by the Minister to accept a declaration recommendation under Subsections (3) or (5) has effect from –

(a) the date of its publication in the National Gazette; or

(b) such later date as is specified in the terms of the declaration.

(7) If the Minister rejects NICTA's recommendation, the Minister shall publish reasons for the rejection.

### **131. DEEMED DECLARATIONS AND MANDATED INQUIRIES.**

(1) The wholesale services listed below are hereby declared -

(a) on the terms set out in Schedule 1 to this Act –

(i) domestic mobile terminating access service; and

(ii) domestic fixed terminating access service;

(b) all facilities access services that may be supplied by means of any facility constructed under a Project Agreement for the life of that facility.

(2) The Head of State, acting on advice, may make regulations before 31 December 2010, not inconsistent with this Act, prescribing the interim terms of declaration of the whole or any part of the following wholesale services, or any similar wholesale services -

(a) domestic inter-exchange transmission services; and/or

(b) domestic transmission tail services; and/or

(c) domestic digital data and/or voice resale services (whether access tails or end-to-end services), such as xDSL services and/or Ethernet services; and/or

(d) any wholesale services not identified in Subsections (2)(a), (b) or (c) above that were defined as "Excluded Services" in the Telecommunications Regulatory Contract between Telikom PNG Ltd and the ICCC dated 16 July 2002, as that definition stood as at 1 July 2009, but excluding any services identified in Section 132.

(3) Any declaration of a wholesale service under regulations made under Subsection (2) shall expire on the earlier of –

(a) three (3) years after the regulations take effect; or

(b) the date on which the Minister makes a declaration decision under Section 130 in respect of that wholesale service; or

(c) the date on which NICTA has completed its public inquiry pursuant to Subsection (7) for that wholesale service and has concluded that no declaration recommendation will be made.

(4) Any wholesale services that are declared under Subsection (1) or pursuant to any regulations made under Subsection (2) are to be known as the "deemed services".

(5) The deemed services are taken to have been declared by the Minister under Section 130 of this Act on the terms set out in Schedule 1, the Project Agreement identified in Section 131(1)(b), or any regulations made under Subsection (2), as applicable.

(6) The declaration of a deemed service under this Section can be amended or revoked by a declaration decision under Section 130 of this Act, notwithstanding the initial terms of the declaration identified under Subsection (5).

(7) NICTA shall use all reasonable endeavours to hold a public inquiry under Section 127 before the date two (2) years after the Succession Date as to whether the whole or any part of any of the following wholesale services or any similar wholesale services (without limitation) should be declared and, if so, the form of that declaration –

(a) the wholesale services listed in Subsections (2)(a), (b) or (c); and/or

(b) any other wholesale services the subject of regulations made under Subsection (2); and/or

(c) unbundling of specified facilities located between a local exchange and the network boundary, whether unconditioned and/or conditioned (including spectrum sharing); and/or

(d) domestic inter-network mobile roaming services; and/or

(e) facilities access services associated with fixed network facilities (including exchanges); and/or

(f) facilities access services associated with mobile network facilities (including telecommunications transmission towers).

### **132. EXEMPT SERVICES.**

(1) The Minister shall not declare the whole or any part of any of the following wholesale services under Section 130 before 1 July 2012 –

(a) access to international gateway facilities; and

(b) access to capacity on international communications cables; and

(c) access to capacity on international communications satellite links.

(2) Nothing in this Section prevents NICTA issuing a network licence to any person to exercise a facilities right in any of the facilities identified in Subsection (1), or to supply any facilities access services or network services involving such facilities, before or after 1 July 2012.

### **133. MODEL TERMS FOR DECLARED SERVICES.**

(1) NICTA may, at anytime, make, amend or revoke a written determination setting out a selection of model non-price terms and conditions relating to access to a declared service and publish that determination on its website, to be known as "model terms".

(2) Before making, amending or revoking any model terms, NICTA shall -

(a) publish a draft of the relevant determination, amended determination or revocation decision and provide the public with at least four (4) weeks to make submissions to NICTA; and

(b) consider any submissions that are received within this period.

(3) Unless sooner revoked, any model terms cease to be in force on the date of expiry of the declared service to which they relate.

(4) NICTA shall have regard to any model terms if it is required to arbitrate an access dispute under this Part in relation to the declared service to which those model terms relate. However,

this Section and any model terms do not limit NICTA'S powers with respect to accepting a RIO.

(5) NICTA shall ensure that any model terms are "reasonable" within the meaning of Section 126.

#### **134. GENERAL PRICING PRINCIPLES.**

(1) The "general pricing principles" are that the price of access to a declared service should promote the achievement of the objective of this Part as set out in Section 124 and, in particular, that the price of access to –

(a) that declared service should –

(i) be set so as to generate expected revenue from that declared service that is sufficient to meet the efficient costs of providing access to that declared service; and

(ii) include a reasonable return on investment, over the economic life of the assets employed, commensurate with the regulatory and commercial risks involved, this principle is known as the "cost recovery principle"; and

(b) a declared service that is a resale service should be set by –

(i) RMAC, where this results in pricing that is consistent with the cost recovery principle; or

(ii) cost-based pricing, if RMAC would result in pricing that is insufficient to meet the cost recovery principle; and

(c) a declared service that is not a resale service should be subject to cost-based pricing; and

(d) a declared service, where the access provider is required to extend or enhance to the capability of a facility in order to supply the declared service, should –

(i) be set so as to generate expected revenue in respect of that extension or enhancement that is sufficient to meet the reasonably anticipated costs of that extension or enhancement in the circumstances; and

(ii) include a reasonable return on investment, commensurate with the regulatory and commercial risks involved; and

to avoid doubt, this may require the access seeker to bear up to 100% of the actual cost of any such extension or enhancement.

(2) For the purposes of Subsection (1), the following words have the following meanings –



"cost-based pricing" means pricing based on the cost recovery principle in which NICTA has regard to the following factors –

- (a) the application of the cost recovery principle; and
- (b) the need for the pricing to make a fair and reasonable contribution to the access provider's common costs; and
- (c) the need for the recovery of the reasonable costs, incurred in the provision of access and interconnection by the access provider, that would not have been otherwise incurred but for the requirement to provide such access or interconnection; and
- (d) the availability and capacity of the facilities operated by the access provider and the timeframe reasonably required to provide access to additional capacity; and
- (e) any other factors that NICTA considers relevant, to the extent that such factors are consistent with the cost-recovery principle and Subsections (a) to (d) of this definition.

"efficient costs" include the direct and indirectly attributable capital, operating and maintenance costs actually incurred by the access provider in providing the declared service to itself and access seekers (including a reasonable contribution to any common costs), unless NICTA determines that such costs are inefficient having regard to the efficiency objective and any evidence before it.

"RMAC" means a "retail minus avoidable cost" pricing methodology in which NICTA has regard to the following factors –

- (a) where the access provider offers the benchmark retail service at more than one price point, the starting retail price should be calculated as the weighted average of the retail price points for that benchmark retail service, where the weights are based on the number of units sold by the access provider; and
- (b) the avoided costs deducted from that starting retail price should reflect the costs that the access provider would reasonably avoid by not retailing that benchmark retail service; and
- (c) any other factors that NICTA considers relevant, to the extent that such factors are consistent with the cost-recovery principle, the efficiency objective, and Subsections (a) and (b) of this definition.

(3) Any provision of the following instruments has no effect to the extent it is inconsistent with the general pricing principles –

- (a) any service-specific pricing principles; and
- (b) any model terms; and
- (c) any access exemption; and
- (d) any RIO.

### **135. SERVICE-SPECIFIC PRICING PRINCIPLES.**

(1) NICTA shall, in writing, determine principles relating to the price of access to a particular declared service and publish that determination on its website for that declared service, to be known as "service-specific pricing principles".

(2) The service-specific pricing principles may contain price related terms and conditions (whether relating to a price or the method of ascertaining a price) and non-price terms and conditions relating to access to the declared service.

(3) NICTA shall make service-specific pricing principles for a declared service within six (6) months after the Minister declares a wholesale service to be a declared service. NICTA may amend any existing service-specific pricing principles at any time.

(4) Before making, amending or revoking any service-specific pricing principles, NICTA shall -

- (a) publish a draft of the relevant determination, amended determination or revocation decision and provide the public with at least four (4) weeks to make submissions to NICTA; and

- (b) consider any submissions that are received within this time limit.

(5) Unless sooner revoked, any service-specific pricing principles cease to be in force on the date of expiry of the declared service to which they relate.

(6) NICTA shall have regard to any service-specific pricing principles for a declared service if it is required to arbitrate an access dispute under this Part in relation to that declared service. However, this Section and any determination under this Section does not limit NICTA's powers with respect to accepting a RIO.

(7) NICTA shall ensure that any service specific pricing principles are "reasonable" within the meaning of Section 126.

#### ***Division 4. — Non-Discrimination and Any-To-Any Connectivity Obligations.***

### **136. NON-DISCRIMINATION OBLIGATIONS.**

- (1) This Section sets out the "non-discrimination obligations".
- (2) For the purposes of this Section, if an operator licensee supplies declared services, whether to itself or to other persons –
  - (a) the operator licensee is an "access provider"; and
  - (b) the declared services are "active declared services".
- (3) An access provider shall, if requested to do so by a access seeker -
  - (a) supply an active declared service to the access seeker in order that the access seeker can provide retail services; and
  - (b) take all reasonable steps to ensure that the technical and operational quality of the active declared service supplied to the access seeker is equivalent to that which the access provider provides to itself; and
  - (c) take all reasonable steps to ensure that the access seeker receives, in relation to the active declared service supplied to the access seeker –
    - (i) fault detection, handling and rectification; and
    - (ii) ordering and provisioning,of a technical and operational quality and timing that is equivalent to that which the access provider provides to itself.
- (4) Subsection (3)(a) does not impose an obligation to the extent (if any) to which the imposition of the obligation would have any of the following effects –
  - (a) preventing an operator licensee who already has a contractual right of access to the declared service from obtaining a sufficient amount of the declared service to be able to meet the operator licensee's reasonably anticipated requirements, measured at the time when the request was made; or
  - (b) preventing the access provider from obtaining a sufficient amount of the declared service to be able to meet the access provider's reasonably anticipated requirements, measured at the time when the request was made.
- (5) If an access provider owns or controls any facilities then the access provider shall, if requested to do so by an access seeker –
  - (a) permit interconnection of those facilities with the facilities of the access seeker for the purpose of enabling the access seeker to be supplied with active declared services in order that the access seeker can provide retail services; and

(b) take all reasonable steps to ensure that –

(i) the technical and operational quality and timing of that interconnection is equivalent to that which the access provider provides to itself; and

(ii) the interconnection complies with any applicable industry code or industry standard; and

(iii) that access seeker receives, in relation to that interconnection, fault detection, handling and rectification of a technical and operational quality and timing that is equivalent to that which the access provider provides to itself.

(6) If an access seeker uses active declared services supplied by an access provider in accordance with Subsection (3), the access provider shall (in connection with matters associated with, or incidental to, the supply of those active declared services), if requested to do so by the access seeker, give the access seeker such billing information (at such times or intervals, containing such particulars, and in such a manner and form as is specified in the regulations) as is reasonably required to enable the access seeker to supply retail services.

(7) If an access provider supplies an active declared service by means of conditional access customer equipment, the access provider shall, if requested to do so by an access seeker who has made a request referred to in Subsection (3), supply to the access seeker any service that is necessary to enable the access seeker to supply retail services by means of the active declared service using that conditional access customer equipment.

(8) This Section does not impose an obligation on an access provider if there are reasonable grounds to believe that -

(a) the access seeker would fail, to a material extent, to comply with the terms and conditions on which the access provider complies, or on which the access provider is reasonably likely to comply, with that obligation; or

(b) the access seeker would fail, in connection with that obligation, to prevent dangerous conduct.

(9) Examples of grounds for the belief in Subsection (8)(a) include -

(a) evidence that the access seeker is not creditworthy; or

(b) repeated failures by the access seeker to comply with the terms and conditions on which the same or similar access has been provided (whether or not by the access provider).

### **137. ANY-TO-ANY CONNECTIVITY OBLIGATION.**

- (1) This Section sets out the "any-to-any connectivity obligation".
- (2) An access seeker shall acquire a designated interconnection service from an access provider, if the access provider requests the access seeker to acquire that designated interconnection service for the purpose of ensuring any-to-any connectivity between the respective retail customers of the access provider and the access seeker.
- (3) The "designated interconnection services" are –
- (a) the wholesale services set out in Schedule 1 to this Act, subject to the expiry of their declarations, any amendments or revocation of those declarations under Section 131 and any regulations under Subsection (3)(b); and
  - (b) any other declared services specified in regulations to be designated interconnected services, but only to the extent such network services involve the supply of terminating access services or originating access services over a network.
- (4) For the purposes of this Part, the any-to-any connectivity obligation is an aspect of access by the access seeker to a declared service.
- (5) Nothing in this Section –
- (a) requires an access seeker to acquire a declared service from an access provider that is not a designated interconnection service; or
  - (b) derogates from any non-discrimination obligations applicable to the access provider in respect of any designated interconnection service.

### **138. COMPLIANCE WITH OBLIGATIONS.**

The access provider shall comply with any non-discrimination obligations applicable to the access provider, and the access seeker shall comply with any any-to-any connectivity obligations applicable to the access seeker –

- (a) on such terms and conditions as are agreed between the access provider and the access seeker; or
- (b) failing agreement –
  - (i) if a RIO given by the access provider is in operation and specifies terms and conditions about a particular matter — on such terms and conditions relating to that matter as are set out in the RIO; or
  - (ii) if a RIO given by the access provider is in operation, but the RIO does not specify terms and conditions about a particular matter - on such terms and conditions relating to that matter as are determined by NICTA under Division

VI.6; or

(iii) if there is no RIO — on such terms and conditions as are determined by NICTA under Division VI.6.

### **139. ACCESS EXEMPTIONS.**

(1) An access provider may apply to NICTA for a written order, to be known as an "access exemption", exempting the access provider from all or any of the obligations referred to in Section 136.

(2) A person who is, or expects to be, an access seeker may apply to NICTA for a written order that, in the event that the proposed wholesale service becomes an active declared service, the person is exempt from any or all of the obligations referred to in Section 136, to the extent to which the obligations relate to the active declared service.

(3) An application under Subsections (1) or (2) must be –

(a) in writing; and

(b) in a form approved in writing by NICTA for the purposes of this Subsection; and

(c) may propose any conditions to which the access provider will become subject if the exemption were to be granted by NICTA (such conditions intended to further the achievement of the objective of this Part as set out in Section 124).

(4) NICTA may request the applicant to give such further information as NICTA considers reasonably necessary to assess the application. NICTA may refuse to consider the application until the applicant gives NICTA that information. NICTA may refuse the application if such information is not provided within a reasonable time limit identified by NICTA.

(5) NICTA shall not grant an access exemption unless –

(a) NICTA has first –

(i) published the application for the access exemption and engaged in public consultation in accordance with Section 229 of this Act on the question of whether the access exemption should be granted; and

(ii) considered any submissions that were received within the time limit specified by NICTA when it published the access exemption which must be at least four (4) weeks after the date of that publication; and

(b) NICTA is satisfied that the granting of the access exemption (including any conditions or limitations on the access exemption) will further the achievement of the objective of this Part as set out in Section 124; and

(c) NICTA has included such conditions or limitations in the access exemption (whether or not proposed by the applicant under Subsection (3)(c)) as NICTA considers are necessary to enable it to grant the exemption, if NICTA has decided to grant the exemption under Subsection (5)(b).

(6) After considering the application, NICTA shall -

(a) publish a written order in its public register, in the form of an access exemption, exempting the applicant from one or more of the obligations referred to in Section 136, either unconditionally or subject to such conditions or limitations as are specified in the order; or

(b) refuse the application.

(7) Where an access exemption has been made, it has effect in accordance with its terms and conditions to exempt the person to whom it applies from any or all obligations referred to in Section 136. The access exemption may be expressed to come into effect immediately after it is made or on a later date specified in the order.

(8) An access exemption may specify an expiry date for the order (including, for example, an expiry date identified by reference to the end of a period beginning when the service or proposed service becomes an active declared service). If an order expires, this Part does not prevent NICTA from making a fresh access exemption in the same terms as the expired order.

(9) If NICTA makes a decision refusing an application under Subsection (6), NICTA shall give the applicant a written statement setting out the reasons for the refusal.

#### **140. NICTA'S ROLE IN COMMERCIAL NEGOTIATIONS.**

(1) If the access provider and the access seeker propose to negotiate, or are negotiating, with a view to agreeing on terms and conditions under Section 138(a), either party may in writing request NICTA –

(a) to give a written procedural direction requiring a party to do, or refrain from doing, a specified act or thing relating to the conduct of those negotiations; and/or

(b) arrange for a representative of NICTA to attend, or mediate at, those negotiations, being a person of NICTA's choosing.

(2) NICTA may comply with a request under Subsection (1) if NICTA considers that it would facilitate the negotiations and having regard to –

(a) the desirability of access providers and access seekers agreeing on terms and conditions in a timely manner; and

(b) any costs to a party in complying with any direction issued under Subsection (1)(a).

(3) A person receiving a written procedural direction from NICTA shall comply with the written procedural direction.

(4) The kinds of procedural directions that may be given under Subsection (1)(a) include directions requiring a party to –

(a) give relevant information to the other party; or

(b) not to impose unreasonable procedural conditions on the party's participation in negotiations; or

(c) respond in writing to the other party's proposal or request in relation to the time and place of a meeting; or

(d) attend a mediation conference or conciliation conference.

***Division 5. — Reference Interconnection Offer.***

**141. REFERENCE INTERCONNECTION OFFER.**

(1) For the purposes of this Part, a "reference interconnection offer" or "RIO" is a written undertaking given by an access provider to NICTA –

(a) that must contain a written statement of the prices (with price-related terms), or standard non-price terms and conditions, or both ("RIO terms"); and

(b) under which the access provider undertakes to comply with the RIO terms in respect of the access provider's supply of one or more declared services to any access seeker so as to discharge the non-discrimination obligations that are applicable to the access provider for such declared services; and

(c) must be clearly written, organised in a logical and consistent manner, and in any form specified by NICTA in rules made for the purposes of this Section.

(2) A RIO must –

(a) be expressed to come into effect immediately after the RIO is accepted by NICTA; and

(b) specify an expiry date that is no later than the earlier of –

(i) the expiry date for the declared service to which the RIO relates; or

(ii) three (3) years after the date of acceptance of the RIO by NICTA.



(3) The RIO may cover either standard prices (with price-related terms), or standard non-price terms and conditions, or both, for a declared service, but in so far as it covers any or all of these matters, it must provide sufficient information for an access seeker to determine the basis on which the access provider will supply the relevant declared service.

(4) If a RIO given by an access provider is in operation, the access provider may, by giving not less than ninety (90) days written notice to NICTA, withdraw the RIO prior to its expiry date.

#### **142. NICTA TO ACCEPT OR REJECT RIO.**

(1) An access provider may provide NICTA with -

(a) a RIO; or

(b) a proposed variation to an existing RIO provided by the access provider that has been accepted by NICTA and that remains in operation,

provided that the RIO or proposed variation is compliant with Section 141.

(2) NICTA may request the access provider to give NICTA further information about the RIO (or proposed variation). NICTA may refuse to consider the RIO (or proposed variation) until the access provider gives NICTA any information that NICTA has requested. NICTA may withdraw its request for further information, in whole or in part.

(3) Before NICTA makes a decision under Subsection (2) in relation to the RIO (or proposed variation to an existing RIO), the access provider may, by written notice given to NICTA within the time advised by NICTA in writing, modify the RIO (or proposed variation), so long as the modification is a modification that is agreed by NICTA to be of a minor nature.

(4) After considering the RIO (or proposed variation to an existing RIO), NICTA shall either accept or reject the RIO (or proposed variation).

(5) NICTA shall not accept the RIO (or proposed variation) unless –

(a) NICTA has first –

(i) published the RIO (or proposed variation) and engaged in public consultation in accordance with Section 229 of this Act; and

(ii) considered any submissions that were received within the time limit specified by NICTA when it published the RIO (or proposed variation) which must be at least four (4) weeks after the date of that publication; and

(b) NICTA is satisfied that the RIO (or proposed variation) –

- (i) is consistent with the requirements of Section 141; and
- (ii) is consistent with any non-discrimination obligations that are applicable to the access provider; and
- (iii) contains terms and conditions that are reasonable in accordance with Section 126; and
- (iv) is consistent with the general pricing principles and any service-specific pricing principles.

(6) If NICTA accepts the RIO (or proposed variation) or is deemed to have accepted the RIO under Subsection (9), then NICTA shall give the access provider a written notice stating that the RIO (or proposed variation) has been accepted.

(7) Upon receipt of the written notice under Subsection (6), the access provider shall comply with the RIO in respect of any access seekers that enter into the RIO and shall offer to enter into the RIO with any access seeker on the terms of the RIO.

(8) If NICTA rejects the RIO (or proposed variation) -

(a) NICTA shall give the access provider a written notice stating that the RIO (or proposed variation) has been rejected and setting out the reasons for the rejection; and

(b) if NICTA considers that the reasons for the rejection could be addressed by amendments to the RIO, and such amendments are not extensive or complex, then NICTA may identify or describe the amendments to the RIO that may address NICTA's concerns.

(9) Subject to Subsection (10), if NICTA does not make a decision under Subsection (4) about the RIO (or proposed variation) within nine (9) months after receiving the RIO (or proposed variation), NICTA is taken to have made, at the end of that nine (9) month period, a decision under Subsection (4) to accept the RIO (or proposed variation).

(10) NICTA may, by written notice given to the access provider, extend or further extend the nine (9) month period specified in Subsection (9).

#### ***Division 6 — Resolution of disputes About Access.***

### **143. NOTIFICATION OF ACCESS DISPUTES.**

(1) If a declared service is supplied, or proposed or offered to be supplied, by an access provider to an access seeker and –

(a) either –

(i) one or more non-discrimination obligations apply, or will apply, to the access provider in relation to the declared service; or

(ii) an any-to-any connectivity obligation applies to the access seeker in relation to the declared service; and

(b) the access seeker and the access provider are unable to agree about –

(i) the terms and conditions on which the access provider or access seeker (as applicable) is to comply with those obligations; or

(ii) one or more aspects of access to the declared service,

then the access seeker or the access provider may notify NICTA in writing that an access dispute exists.

(2) On receiving the notification, NICTA shall give written notice of the access dispute to -

(a) the access provider, if the access seeker notified the access dispute; and

(b) the access seeker, if the access provider notified the access dispute; and

(c) if NICTA is of the opinion that the resolution of the access dispute may involve requiring another person to do something—that other person.

(3) If NICTA receives a RIO that relates, in whole or in part, to a matter and the matter is the subject of an access dispute that has been notified to NICTA then NICTA may defer consideration of the access dispute, in whole or in part, while NICTA considers the RIO.

(4) NICTA shall, in exercising its powers under this Division, have regard to the desirability of access disputes being resolved in a timely manner (including through the use of alternative dispute resolution methods such as mediation and conciliation).

(5) Where an operator licensee has entered into a commercial agreement to supply or acquire a declared service –

(a) the operator licensee shall provide to NICTA a copy of the agreement; and

(b) NICTA shall not publish a copy of the agreement.

(6) In circumstances where NICTA considers that operator licensees have entered into a commercial agreement for the supply of a declared service that contains a term or condition (whether or not including a price) that is -

(a) materially inconsistent with the general pricing principles or any service specific pricing principles; or

(b) directly or indirectly harmful to retail customers in Papua New Guinea,

then NICTA may, by notice in writing to the access provider and the access seeker, deem the access seeker to have notified an access dispute to NICTA in accordance with Subsection (1) in relation to that term or condition.

#### **144. WITHDRAWAL OF ACCESS DISPUTES.**

(1) The party that notified the access dispute ("first party") may withdraw the notification at any time before NICTA makes its final determination, but only with the consent of –

(a) the other party; or

(b) NICTA, if the first party is unable to obtain the consent of the other party; or

(c) NICTA, if an access dispute was deemed by NICTA to have been notified by the access seeker under Section 143(6).

(2) A notification may not be withdrawn in any other circumstances.

(3) If the notification is withdrawn -

(a) NICTA shall not make a final determination in relation to the access dispute; and

(b) if NICTA has not already made an interim determination in relation to the access dispute, NICTA shall not make an interim determination in relation to the access dispute.

#### **145. PARTIES TO THE ARBITRATION.**

(1) The parties to the arbitration of an access dispute are the access provider and the access seeker and –

(a) if NICTA is of the opinion that the resolution of the access dispute may involve requiring another person to do something—that other person; or

(b) any other ICT licensee who applies in writing to be made a party and is accepted by NICTA as having a sufficient interest.

(2) In an arbitration hearing before NICTA under this Part, a party may appear in person or be represented by someone else.

(3) NICTA may charge the parties to an arbitration for its reasonable costs in conducting the arbitration and apportion the charge between the parties. The parties shall pay those charges.

(4) If any charges are imposed under Subsection (3), NICTA shall specify in the final

determination in the arbitration (or a direction issued by NICTA if the access dispute notification is withdrawn before a final determination is issued) -

- (a) the charges;
- (b) the manner and rationale for the apportionment of those charges; and
- (c) the manner in which NICTA has determined its reasonable costs, including a reasonable breakdown of such costs.

#### **146. INTERIM DETERMINATION BY NICTA.**

(1) NICTA may make a written determination on interim access by the access seeker to the declared service while an arbitration continues, to be known as an "interim determination".

(2) An interim determination -

- (a) does not terminate an arbitration or relieve NICTA from its duty to make a final determination; and
- (b) has effect on the date specified in the determination and may not be backdated; and
- (c) unless sooner revoked, remains in force until the end of the period specified in the determination which must not be longer than twelve (12) months.

(3) Subject to Subsection 147(2), NICTA may issue one or more further interim determinations to take effect from the date of expiry of any previous interim determination. Any further interim determinations shall each be for a period of not more than six (6) months.

(4) NICTA may take a matter referred to in Subsection 149(1)(a) to (f) into account in making an interim determination and any other matters that it thinks are relevant.

(5) NICTA may revoke or vary an interim determination.

(6) NICTA is not required to observe any requirements of natural justice in relation to the making of an interim determination or the variation of an interim determination.

(7) If an interim determination relating to an access dispute is in force and either –

- (a) the notification of the dispute is withdrawn under Section 144; or
- (b) a final determination relating to the access dispute takes effect;

the interim determination is taken to have been revoked when the withdrawal occurs or the final determination takes effect, respectively.

(8) All parties to the arbitration shall comply with the interim determination.

#### **147. FINAL DETERMINATION BY NICTA.**

(1) Unless NICTA terminates the arbitration under Section 150, NICTA shall make a written determination on access by the access seeker to the declared service, to be known as a "final determination".

(2) NICTA shall use reasonable endeavours to make a final determination within eighteen (18) months of the date on which it receives notification of an access dispute under Section 143.

(3) The final determination may deal with any matter relating to access by the access seeker to the declared service including matters that were not the basis for notification of the dispute. For example, the final determination may -

(a) require the access provider to supply access to the declared service to the access seeker; or

(b) require the access seeker to acquire, and pay for, access to the declared service supplied by the access provider; or

(c) specify the terms and conditions on which the access provider is to comply with any or all of the non-discrimination obligations applicable to the access provider; or

(d) specify the terms and conditions on which the access seeker is required to comply with any or all any-to-any connectivity obligations applicable to the access seeker; or

(e) specify any other terms and conditions of the access-seeker's access to the declared service; or

(f) require a party to extend or enhance the capability of a facility by means of which the declared service is supplied, subject to Section 134(1)(d); or

(g) specify the extent to which the final determination overrides an earlier final determination or interim determination relating to access to the declared service by the access seeker.

(4) Before making a final determination, NICTA shall give a draft of the final determination to the parties, provide those parties with at least fourteen (14) days to make written submissions, and shall have regard to those written submissions.

(5) When NICTA makes a final determination, it shall give the parties to the arbitration its reasons for making the final determination.

(6) All parties to the arbitration shall comply with the final determination.

#### **148. RESTRICTIONS ON INTERIM AND FINAL DETERMINATIONS.**

(1) NICTA shall not make an interim determination or a final determination that would have any of the following effects –

(a) preventing an operator licensee who already has access to the declared service from obtaining a sufficient amount of the declared service to be able to meet the operator licensee's reasonably anticipated requirements, measured at the time when the access seeker made a request in relation to the service under Section 136; or

(b) preventing the access provider from obtaining a sufficient amount of the declared service to be able to meet the access provider's reasonably anticipated requirements, measured at the time when the access seeker made a request in relation to the service under Section 136; or

(c) resulting in the access seeker becoming the owner (or one of the owners) of any part of a facility without the consent of the owner of the facility; or

(d) requiring a party (other than the access seeker) to bear an unreasonable amount of the costs of –

(i) extending or enhancing the capability of a facility; or

(ii) maintaining extensions to or enhancements of the capability of a facility; or

(e) requiring the access provider to provide the access seeker with access to a declared service if there are reasonable grounds to believe that –

(i) the access seeker would fail, to a material extent, to comply with the terms and conditions on which the access provider provides, or is reasonably likely to provide, that access; or

(ii) the access seeker would fail, in connection with that access, to prevent dangerous conduct.

(2) Examples of grounds for believing as mentioned in Subsection (1)(e) include -

(a) evidence that the access seeker is not creditworthy; or

(b) repeated failures by the access seeker to comply with the terms and conditions on which the same or similar access has been provided (whether or not by the access provider).

(3) NICTA shall not make an interim determination or a final determination that is inconsistent with –

(a) any of the non-discrimination obligations that are, or will be, applicable to the access provider; or

(b) any of the any-to-any connectivity obligations that are, or will be, applicable to the access seeker; or

(c) a RIO from the access provider that has been accepted by NICTA and is currently in operation; or

(d) any general pricing principles or service-specific pricing principles,

and such a determination is of no effect to the extent that such an inconsistency arises.

#### **149. MATTERS THAT NICTA SHALL TAKE INTO ACCOUNT.**

(1) NICTA shall take the following matters into account in making a final determination -

(a) the extent to which the determination is likely to further the achievement of the objective of this Part as set out in Section 124; and

(b) the legitimate business interests of the access provider, and the access provider's investment in facilities used to supply the declared service; and

(c) the interests of all persons who have rights to use the declared service; and

(d) the general pricing principles and any relevant service-specific pricing principles; and

(e) the value to the access provider of extensions or enhancements of capability whose cost is borne by the access seeker pursuant to Section 134(1)(d); and

(f) the operational and technical requirements necessary to protect the integrity of, or for the safe and reliable operation of, an ICT service, a network or a facility; and

(g) may take into account any other matters that it thinks are relevant.

#### **150. NICTA MAY TERMINATE ARBITRATION IN CERTAIN CASES.**

NICTA may at any time terminate an arbitration (without making a determination) if it thinks that –

(a) the notification of the dispute was vexatious; or

(b) the subject matter of the dispute is trivial, misconceived or lacking in substance; or

(c) a party to the arbitration of the dispute has not engaged in negotiations in good faith; or



(d) access to the declared service should continue to be governed by an existing contract between the access provider and the access seeker; or

(e) in the case of a dispute notified under Section 143(1), the arbitration should be terminated on the grounds that –

(i) the arbitration is not likely to make a significant contribution to competition in any market; or

(ii) the access seeker's retail service is not of significant social and/or economic importance.

### **151. ROLE OF NICTA IN NEGOTIATIONS TO RESOLVE DISPUTES.**

(1) If NICTA considers that it would be likely to facilitate negotiations relating to an access dispute if a person who is or was a party to the arbitration of the access dispute were to be given a direction under this Subsection, NICTA may, for the purposes of facilitating those negotiations, give the person a written procedural direction requiring the person to do, or refrain from doing, a specified act or thing relating to the conduct of those negotiations.

(2) A person receiving a written procedural direction from NICTA shall comply with the written procedural direction.

(3) Procedural directions under Subsection (1) may (without limitation) require a party to -

(a) give relevant information to one or more other parties; or

(b) not impose unreasonable procedural conditions on the party's participation in negotiations; or

(c) respond in writing to another party's proposal or request in relation to the time and place of a meeting; or

(d) attend a mediation or conciliation conference, with at least seven (7) days notice.

(4) If the arbitration has been terminated, a reference in this Section to a "party" is a reference to a former party.

### **152. PROHIBITION ON HINDERING THE FULFILMENT OF A NON-DISCRIMINATION OBLIGATION OR DETERMINATION.**

(1) A person shall not engage in conduct for the purpose of preventing or hindering the fulfilment of –

(a) a non-discrimination obligation; or

(b) an any-to-any connectivity obligation; or

(c) an obligation imposed by an interim determination or final determination;

if the person is –

(d) an access provider who supplies a declared service; or

(e) a service provider to whom a declared service is being supplied by a access provider;  
or

(f) a related company to an access provider; or

(g) an access seeker subject to an any-to-any connectivity obligation.

(2) A person may be taken to have engaged in conduct for the purpose referred to in Subsection (1) even though, after all the evidence has been considered, the existence of that purpose is ascertainable only by inference from the conduct of the person or from other relevant circumstances.

### **153. PROCEDURE AND POWERS OF NICTA.**

(1) NICTA may have one or more hearings in arbitrating any access dispute, but is not required to hold a hearing.

(2) In an arbitration hearing about an access dispute; NICTA -

(a) is not bound by technicalities, legal forms or rules of evidence; and

(b) shall act as speedily as a proper consideration of the dispute allows, having regard to the need to carefully and quickly inquire into and investigate the dispute and all matters affecting the merits, and fair settlement, of the dispute; and

(c) may inform itself of any matter relevant to the dispute in any way it thinks appropriate; and

(d) may enable a party to attend by video-conference or audio-conference if that party is unable to attend in person; and

(e) shall give a party at least seven (7) days notice of any hearing.

(3) NICTA may determine the periods that are reasonably necessary for the fair and adequate presentation of the respective cases of the parties to an access dispute, and may require that the cases be presented within those periods.

(4) NICTA may require evidence or argument to be presented in writing, and may decide the matters on which it will hear oral evidence or argument.

(5) NICTA may do any of the following things for the purpose of arbitrating an access dispute –

(a) give a direction in the course of, or for the purposes of, an arbitration hearing; and

(b) hear and determine the arbitration in the absence of a person who has been summoned or served with a notice to appear; and

(c) sit at any place and adjourn to any time and place; and

(d) refer any matter to an expert and accept the expert's report as evidence; and

(e) generally give all such directions, and do all such things, as are necessary or expedient for the speedy hearing and determination of the access dispute.

(6) NICTA may give an oral or written order to a person not to divulge or communicate to anyone else specified information that was given to the person in the course of an arbitration unless the person has NICTA's permission.

(7) A party to an arbitration shall comply with any directions issued by NICTA under Subsection (4).

(8) In a hearing under this Section, a party may appear in person or be represented by someone else.

#### **154. PARTY MAY REQUEST NICTA TO TREAT MATERIAL AS CONFIDENTIAL.**

(1) A party to an arbitration hearing may –

(a) inform NICTA that, in the party's opinion, a specified part of a document contains confidential information; and

(b) request NICTA not to give a copy of that part to another party.

(2) On receiving a request, NICTA shall -

(a) inform the other party or parties that the request has been made and of the general nature of the matters to which the relevant part of the document relates; and

(b) ask the other party or parties whether there is any objection to NICTA complying with the request.

(3) If there is an objection to NICTA complying with a request, the party objecting may inform NICTA of its objection and of the reasons for it.

(4) After considering a request, any objections and any further submissions that any party has made in relation to the request, NICTA may –

(a) decide not to give to the other party or parties a copy of so much of the document as contains confidential information that NICTA thinks should not be so given; and/or

(b) decide to give to the other party or parties a copy of so much of the document as contains confidential information that NICTA thinks should be given, but subject to any directions by NICTA to protect the confidentiality of such information, including direction limiting disclosure to –

(i) identified persons that have signed confidentiality undertakings; and/or

(ii) nominated legal advisors or economic consultants of the other party pursuant to signed confidentiality undertakings.

#### **155. OPERATION AND BACKDATING OF FINAL DETERMINATIONS.**

(1) A final determination takes effect seven (7) days after the final determination is made.

(2) Any or all of the provisions of a final determination may be expressed to have taken effect on a specified date that is earlier than the date on which the final determination took effect.

(3) The specified date under Subsection (2) must not be earlier than –

(a) the date on which the parties to the determination commenced negotiations with a view to agreeing on the terms and conditions as mentioned in Section 138(a); and

(b) if a price for a declared service is the subject of the access dispute, and that price has already been agreed or determined, then the final determination must not be backdated under Subsection (2) to apply to a period where that price remains in effect under the terms of that agreement or determination.

(4) A provision of a final determination must be expressed to cease to have effect on a specified date that is no later than the expiry date of the relevant declaration for the declared service.

(5) If –

(a) a provision of a determination is covered by Subsection (2); and

(b) the provision requires a party to the determination (the first party) to pay money to another party,

then the determination may require the first party to pay interest to the other party, at the rate specified in the determination, on the whole or a part of the money, for the whole or a part of the

period-

(c) beginning on the date on which the parties began negotiations with a view to agreeing on the terms and conditions as mentioned in Section 138(a); and

(d) ending on the date on which the determination would have taken effect if no provision of the determination had been covered by Subsection (1) of this Section.

## **PART VII — CONSUMER PROTECTION AND RETAIL PRICING.**

### ***Division 1. — Simplified Outline.***

#### **156. SIMPLIFIED OUTLINE.**

The following is a simplified outline of this Part -

(a) This Part sets out a regime for the protection of retail customers and the regulation of the pricing of retail services.

(b) Following a public inquiry, NICTA may recommend to the Minister that a retail service supplied by an operator licensee should be subject to a retail service determination in respect of that operator licensee.

(c) NICTA's recommendation is based on the application of retail regulation criteria.

(d) The Minister may accept or reject that recommendation.

(e) An operator licensee that is subject to a retail service determination in respect of a retail service is required to comply with the terms of that retail service determination in relation to the supply of that retail service to retail customers.

### ***Division 2. - Retail Service Regulation.***

#### **157. PUBLIC INQUIRY BY NICTA.**

(1) NICTA may hold a public inquiry under Section 230 into -

(a) whether a recommendation should be made to the Minister that a retail service should be subject to a retail service determination in respect of an operator licensee, or that an existing retail service determination should be revoked or varied; and

(b) if so, the appropriate terms of any such retail service determination, revocation or amendment.

(2) NICTA may hold a public inquiry under Subsection (1) -

(a) on its own initiative; or

(b) upon receipt of a written request from any person asking NICTA to hold such a public inquiry.

(3) After receiving a written request under Subsection (2), NICTA shall -

(a) within fourteen (14) days, notify the operator licensee supplying the retail service that NICTA has received the request; and

(b) decide whether or not to hold that public inquiry, after having regard to –

(i) the objective of this Part; and

(ii) whether the request was made in good faith; and

(iii) any other matters it thinks are relevant; and

(c) if NICTA decides not to hold a public inquiry, advise the person making the request in writing (copying the operator licensee supplying the retail service) of the decision and of the reasons for the decision.

(4) NICTA shall hold a public inquiry under Subsection (1) upon receipt of a written request from the Minister directing NICTA to hold such a public inquiry.

#### **158. RETAIL REGULATION CRITERIA.**

The "retail regulation criteria" are as follows –

(a) that making a retail service determination for the retail service in respect of an operator licensee for a particular period will further the achievement of the objective set out in Section 124 but disregarding Section 124(2); and

(b) specifically, in relation to the competition objective, that –

(i) that operator licensee has a substantial degree of power in the market within which the retail service is supplied; and

(ii) in the absence of the retail service determination for that period, that substantial degree of power is likely to –

(A) persist in the market over that period; and

(B) expose retail customers to a material risk of higher prices and/or reduced service where they acquire the retail service from that operator licensee during that period; and

(c) specifically, in relation to the efficiency objective, that the operator licensee will not be prevented from achieving a return on assets during that period sufficient to sustain investment necessary to supply the retail service; and

(d) the aggregate likely benefits of making that retail service determination outweigh any aggregate likely detriments.

#### **159. RETAIL SERVICE DETERMINATION RECOMMENDATION BY NICTA.**

(1) Following a public inquiry under Section 157, if NICTA is satisfied that all of the retail regulation criteria would be met by subjecting, or continuing to subject, a retail service to a retail service determination in respect of a particular operator licensee on particular terms -

(a) NICTA shall recommend to the Minister that the retail service should be subjected, or continued to be subject, to a retail service determination in respect of that particular operator licensee; and

(b) NICTA shall publish a report identifying –

(i) NICTA's analysis of the extent to which the retail regulation criteria would be met for that operator licensee; and

(ii) the particular terms of the retail service determination, consistent with Section 161; and

(iii) an expiry date for the retail service determination, which must be a date within five (5) years after its commencement date.

(2) Following a public inquiry under Section 157, if NICTA is satisfied that all of the retail regulation criteria would be met by subjecting, or continuing to subject, a retail service to a retail service determination in respect of a particular operator licensee -

(a) if the retail service is already subject to a retail service determination in respect of that operator licensee, NICTA shall recommend to the Minister that the retail service determination should be revoked; and

(b) NICTA shall publish a report identifying -

(i) NICTA's analysis of the extent to which the declaration criteria would be met in respect of that operator licensee; and

(ii) if the retail service is already subject to a retail service determination in respect of that operator licensee, the proposed date of revocation of that retail service determination.

(3) If the public inquiry considered whether any variation to the particular terms of a retail service determination was desirable, NICTA shall identify in its report its reasons and conclusions why that variation was or was not desirable.

(4) NICTA may consult with the ICCC and other Government agencies in preparing its report, including where desirable to promote a consistent approach to economic regulation within Papua New Guinea.

#### **160. RETAIL SERVICE DETERMINATION BY MINISTER.**

(1) On receiving a retail service determination recommendation from NICTA in respect of a particular operator licensee, the Minister shall either –

(a) if the recommendation is to subject the retail service to a retail service determination for that operator licensee, either –

(i) accept the recommendation and subject the retail service to a retail service determination for that operator licensee; or

(ii) reject the recommendation and not subject the retail service to a retail service determination; or

(b) if the recommendation is to renew, vary or revoke an existing retail service determination; either –

(i) accept the recommendation and renew, vary or revoke the existing retail service determination as the case may be; or

(ii) reject the recommendation and not renew, vary or revoke the existing retail service determination.

(2) In making the decision under Subsection (1), the Minister;

(a) shall have regard to the retail regulation criteria and the retail service determination recommendation, including the report under Section 159(2)(b); and

(b) may have regard to such other matters as the Minister considers are relevant, provided that the Minister identifies those other matters in the Minister's published decision.

(3) If the Minister accepts the recommendation to -

(a) subject the retail service to a retail service determination for that operator licensee, or renew an existing retail service determination, the retail service determination must be published in the National Gazette on the particular terms set out in NICTA's report; or

(b) amend an existing retail service determination, the amended retail service



determination must be published in the National Gazette on the particular terms set out in NICTA's report; or

(c) revoke an existing retail service determination, the revocation must be published in the National Gazette.

(4) If the Minister does not, within sixty (60) days after receiving the retail service determination recommendation, make a decision to accept or reject that recommendation, then the Minister is taken, at the end of that sixty (60) day period, to have decided to accept that recommendation and Subsection (3) applies.

(5) A decision by the Minister to accept a retail service determination recommendation under Subsections (3) or (4) has effect from the later of –

(a) the date of its publication in the National Gazette; or

(b) such later date as is specified in the terms of the retail service determination.

(6) If the Minister rejects NICTA's recommendation, the Minister shall publish reasons for the rejection.

(7) Subject to Subsection (9), the Head of State, acting on advice, may make regulations before 31 December 2011 not inconsistent with this Act, prescribing the terms of any retail service determination for the whole or any part of any retail services supplied by a particular operator licensee.

(8) Any retail services prescribed in any regulations under Subsection (7) are taken to have been subjected to a retail service determination by the Minister under this Section on the terms set out in the regulations, but any such retail service determination can be amended or revoked by a decision of the Minister under this Section, notwithstanding the terms of the regulations.

(9) Any retail service determination under regulations made under Subsection (7) shall expire on the earlier of –

(a) three (3) years after the regulations take effect; or

(b) the date at which the Minister makes a decision under this Section following a recommendation by NICTA under Section 159 in respect of that retail service; or

(c) the date on which NICTA has completed its public inquiry pursuant to Subsection (8) for the retail service and has concluded that no retail service determination should be made.

(10) NICTA shall use all reasonable endeavours to hold a public inquiry under Section 157 before the date two (2) years after the Succession Date as to whether the whole or any part of the following retail services or any similar retail services (without limitation) should be subject to a

retail service determination and, if so, the form of that determination -

(a) any retail services supplied by a particular Operator licensee the subject of regulations made under Subsection (7); and

(b) any retail services supplied by a particular operator licensee that NICTA considers have experienced abnormal price increases in the twelve (12) month period following the Succession Date.

## **161. CONTENT OF RETAIL SERVICE DETERMINATION.**

(1) A retail service determination must specify the operator licensee to which it applies. A retail service determination may apply to more than one operator licensee.

(2) A retail service determination may, over its term (or any part of that term), do one or more of the following in respect of a retail service –

(a) regulate prices for the supply of the retail service, including (without limitation) -

(i) fixing a price or the rate of increase or decrease in a price, including a maximum or average price or rate; or

(ii) controlling a price by requiring changes in that price to be consistent with a pricing formula, including one that makes reference to, relies upon or otherwise controls several prices, including that price, so long as each of those prices are prices for applications services that are subject to price control; or

(iii) specifying an amount determined by reference to a general price index, the cost of production, rate of return on assets employed, quantity, location, period or any other specified factor; or

(iv) fixing a maximum revenue, or maximum rate of increase or minimum rate of decrease in maximum revenue from the retail service; or

(v) requiring prices to be consistent with any relevant international benchmarks for prices, costs and return on assets, taking into account the particular circumstances of Papua New Guinea; or

(vi) requiring the operator licensee supplying the retail service to submit tariffs to NICTA on a periodic basis for prior written approval on such terms as are specified in the retail service determination, including traffic forecasts; or

(b) specify service standards that the operator licensee supplying the retail service must meet, together with –

(i) payments which that operator licensee must make to any retail customers

(whether by way of rebate or otherwise); or

(ii) price reductions which must apply,

if the operator licensee fails to meet those service standards; or

(c) specify any pricing policies and/or principles that must be complied with by the operator licensee in pricing the retail service; or

(d) specify conditions relating to the price of the retail service, including that any calculation is to be performed, or a matter is to be determined, by NICTA; or

(e) require the operator licensee to provide specified information to NICTA, retail customers, or any other persons on such terms as are specified in the retail service determination; or

(f) require the operator licensee to supply the retail service in particular areas or to particular classes of retail customer, provided it has the technical capability to do so over its existing network in the relevant geographic areas; or

(g) require the operator licensee to comply with any terms and conditions advised by NICTA that NICTA considers are necessary or desirable to give effect to any of the matters listed in Subsections (a) to (f) above or to monitor compliance with the retail service determination.

(3) A retail service determination must not have retrospective effect.

## **162. COMPLIANCE WITH RETAIL SERVICE DETERMINATION.**

An operator licensee shall comply with a retail service determination that specifies that it applies to that operator licensee.

## **PART VIII — RADIOCOMMUNICATIONS SPECTRUM.**

### ***Division 1. — Simplified Outline.***

## **163. SIMPLIFIED OUTLINE.**

The following is a simplified outline of this Part -

(a) This Part contains a framework for the regulation of spectrum. Additional detail is set out in the radio spectrum regulations.

(b) NICTA shall prepare and publish a spectrum plan and multiple frequency band plans for radio frequency planning purposes. The plans will identify the designated purposes of relevant bands.

(c) NICTA has the exclusive right to grant radiocommunications licences in accordance with the radio spectrum regulations. There are three key types of radiocommunications licences –

(i) spectrum licences are intended to be tradeable, long-term licences that delegate management of a segment of spectrum to the spectrum licensee; and

(ii) apparatus licences are short-term licences that are issued to an apparatus licensee to authorise the ownership and operation of a particular type of apparatus; and

(iii) radiocommunications class licences are generic authorisations that allow any person to operate specified types of equipment, essentially low powered consumer devices, within the conditions of the radiocommunications class licence.

(d) It is an offence to engage in regulated conduct otherwise than as authorised by a radiocommunications licence.

*Division 2. — Objective and Application.*

**164. OBJECTIVE OF THIS PART.**

The objective of this Part is to provide for the management of the spectrum in Papua New Guinea in order to meet the objective of this Act and specifically to –

(a) maximise, by ensuring the efficient allocation and use of the spectrum, the overall public benefit derived from using spectrum; and

(b) make adequate provision of the spectrum –

(i) for use by agencies involved in defence purposes or the national security of Papua New Guinea, law enforcement or the provision of emergency services; and

(ii) for use by other public or community services; and

(c) provide a responsive and flexible approach to meeting the needs of users of the spectrum; and

(d) encourage the use of efficient radiocommunications technologies so that a wide range of services of an adequate quality can be provided; and

(e) provide an efficient, equitable and transparent system of charging for the use of spectrum, taking account of the value of both commercial and non-commercial use of spectrum; and

(f) support Government Policy; and

(g) provide a regulatory environment that maximises opportunities for the ICT industry in domestic and international markets; and

(h) promote the interests of Papua New Guinea concerning international agreements, treaties and conventions relating to radiocommunications or spectrum.

## **165. RADIO SPECTRUM REGULATIONS.**

(1) The Head of State, acting on advice, may make or vary regulations to be known as the "radio spectrum regulations", not inconsistent with this Act, prescribing all matters that by this Part are required or permitted to be prescribed; or that are necessary or convenient to be prescribed for carrying out or giving effect to this Part or its administration or implementation.

(2) The radio spectrum regulations may (without limitation) address any one or more of the following matters to the extent not inconsistent with this Act –

(a) clarification of the application of this Part, including –

(i) any exemptions from the application of this Part, whether conditional or unconditional; and

(ii) clarification of any equipment to which this Part applies, including satellites and equipment located outside the territorial boundaries of Papua New Guinea; and

(b) any aspect of radio frequency planning, including such matters as are contemplated by Division VIII.3; and

(c) any aspect of the licensing of radiocommunications, including (without limitation) -

(i) such matters as are contemplated by Division VIII.4; and

(ii) the issue, variation, suspension and revocation of radiocommunications licences; and

(iii) the authorisation of third parties under spectrum licences or apparatus licences and the issuing of temporary permits instead of radiocommunications licences; and

(iv) the regulation and inspection (including the issuing of standards, permits, labelling requirements, or other technical requirements) of apparatus, and any other equipment that transmits or receives radiocommunications, including the regulation of any person who manufactures, imports, sells, hires, loans or otherwise deals in such equipment; and

(v) procedures for the settlement of interference disputes between radiocommunications licensees; and

(vi) the issuing, variation, suspension and revocation of licences that provide a conditional exemption from the application of Section 180 or 181, such as radio dealers licences; and

(d) the accreditation of persons to exercise powers on NICTA's behalf and the examination for persons that wish to operate apparatus, including the issuing, cancellation or suspension of certificates of competency; and

(e) privacy of radiocommunications and improper signalling; and

(f) any specific additional powers of NICTA to monitor compliance with, or enforce or give directions in relation to, this Part of the Act, including:—

(i) record-keeping and provision of information to NICTA; and

(ii) compliance with any international standards; and

(iii) powers for inspectors to enter premises to test apparatus for harmful interference and direct (or take action to effect) the suppression of such interference; and

(g) notwithstanding Section 278, any additional offences relating to unauthorised radiocommunications and the causing of radiocommunications interference.

### ***Division 3. — Radio Frequency Planning.***

#### **166. SPECTRUM PLANS.**

(1) NICTA shall make or vary rules under Section 218, in the form of a spectrum plan.

(2) A spectrum plan must —

(a) divide into such number of frequency bands as NICTA thinks appropriate so much of the spectrum as NICTA thinks necessary for the purpose of regulating radiocommunications under this Act; and

(b) designate one or more frequency bands to be used primarily for defence purposes; and

(c) specify the general purpose or purposes for which each other frequency band may be used.

(3) When preparing a spectrum plan, NICTA shall (without limitation) have regard to relevant

ITU-R standards.

### **167. FREQUENCY BAND PLANS.**

(1) NICTA shall make or vary rules under Section 218, in the form of frequency band plans, each relating to one or more frequency bands. A frequency band plan must not be inconsistent with the spectrum plan.

(2) A frequency band plan -

(a) must make provision in relation to the purpose or purposes for which the relevant frequency band may be used; and

(b) without limiting Subsection (2)(a), may provide for –

(i) one or more purposes for which any part of a frequency band (including any particular frequency or frequency channel) may be used; and

(ii) parts of the spectrum to be reserved for provision of public or community services.

(c) may be of general application or may be limited as provided in the frequency plan; and

(d) without limiting Subsection (2)(c), may apply –

(i) with respect to a specified area; and

(ii) with respect to a specified period.

(3) When preparing a frequency band plan, NICTA shall (without limitation) have regard to relevant ITU-R standards.

### **168. PUBLIC CONSULTATION ON PLANS.**

(1) Subject to Subsection (2), before preparing a spectrum plan or a frequency band plan, NICTA shall –

(a) prepare a draft of the plan;

(b) by notice published in the National Gazette –

(i) state that a draft of the plan is available for public comment; and

(ii) state how copies of the draft may be obtained; and

(iii) invite interested parties to make representations about the draft plan on or before the day specified in the notice, being a date at least thirty (30) days after the date on which the notice is published; and

(iv) specify an address or addresses to which representations about the draft plan may be sent; and

(c) engage in public consultation in accordance with Section 229.

(2) This Section does not apply to the preparation of a plan if NICTA is satisfied that the preparation of the plan is a matter of urgency.

### **169. REVOCATION AND VARIATION OF PLANS.**

(1) NICTA may, at any time, revoke or vary a spectrum plan or frequency band plan.

(2) Section 168 applies to such a revocation or variation as if references in that Section to the draft of a plan were references to the proposal for such a revocation or variation.

(3) In the case of a variation, the plan as varied must comply with any requirements under Section 166 or 167, as the case requires.

### ***Division 4. — Licensing of Radiocommunications.***

### **170. RADIOCOMMUNICATIONS LICENCE ELIGIBILITY.**

The following persons, and only the following persons, shall be eligible to apply for and hold a radiocommunications licence under this Act, or to act pursuant to a radiocommunications licence under this Act –

(a) an eligible corporation; or

(b) any individual who is a citizen of Papua New Guinea,

who is not ineligible to be an ICT licensee under Section 48.

### **171. ISSUING OF RADIOCOMMUNICATIONS LICENCES.**

(1) NICTA has the exclusive right to issue, vary, suspend, or cancel radiocommunications licences.

(2) NICTA may -

(a) issue or refuse to issue a radiocommunications licence to any person; and

(b) vary, suspend or cancel any existing radiocommunications licences issued to any



person,

as NICTA thinks fit, but in doing so shall comply with any procedures or requirements specified in the radio spectrum regulations.

## **172. FORM OF RADIOCOMMUNICATIONS LICENCES.**

(1) Subject to the radio spectrum regulations, a radiocommunications licence shall be in such form, for such period, issued in such manner, and subject to such conditions as NICTA thinks fit.

(2) All radiocommunications licensees shall comply with this Act and the radio spectrum regulations.

(3) A radiocommunications licence comes into force on the day on which it is issued or on such later day as is specified in the radiocommunications licence for that purpose.

(4) NICTA shall not impose any condition in a radiocommunications licence that is -

(a) inconsistent with this Act or the radio spectrum regulations; or

(b) not related to the subject matter of this Part.

## **173. SPECTRUM LICENCES.**

(1) Spectrum licences may be issued by NICTA to authorise spectrum licensees (and other persons whom they authorise) to engage in regulated conduct in designated segments of spectrum in a designated geographic area.

(2) The radio spectrum regulations may (without limitation) contain provisions to give effect to the following general principles –

(a) spectrum licences may be subject to licence conditions, such as (without limitation) permitted levels and frequencies of radio emission, and 'use it or lose it' mandatory resumption requirements; and

(b) spectrum licences may be allocated by NICTA on a market basis (for example, by a relevant allocation process under Section 36) and/or administrative basis (for example, by application); and

(c) spectrum licensees may deploy any apparatus from any site within their designated segment of spectrum, provided that operation of that apparatus is compatible with the terms and conditions of the spectrum licence and the technical framework established for the designated segment of spectrum by NICTA; and

(d) licensees may decide how they will manage the deployment of apparatus within their designated segment of spectrum, the nature of the ICT service they wish to deliver, and

the technology they wish to use; and

(e) spectrum licences are intended to be a tradeable spectrum access right, such trades effected by the assignment of standard trading units within the designated segment of spectrum; and

(f) spectrum licences are intended to be issued for a period of between five (5) and fifteen (15) years with a particular spectrum licence granted for a particular band of spectrum within a particular geographic area; and

(h) spectrum licences can only be issued in frequency bands that have been designated for spectrum licensing in the spectrum plan or relevant frequency band plan.

(3) NICTA shall issue one or more spectrum licences to the Defence Force, in relation to the frequency bands allocated for use by the Defence Force exclusively. The Defence Force shall pay an annual spectrum licensing fee as notified to the Defence Force by NICTA.

#### **174. TRADING OF SPECTRUM LICENCES.**

(1) Subject to the radio spectrum regulations, a spectrum licensee may assign the whole or any part of a spectrum licence.

(2) The radio spectrum regulations may restrict assignments of certain spectrum licences or identify circumstances in which spectrum licences are to be varied, issued or cancelled in the context of assignments.

(3) The parties to an assignment under Subsection (1) of the whole, or any part of, a spectrum licence that involves –

(a) a change in the spectrum licensee; or

(b) the issue of a replacement spectrum licence; or

(c) the variation of the conditions of an existing spectrum licence; or

(d) the cancellation of one or more existing spectrum licences,

shall give to NICTA such information about the assignment as NICTA requires (if any) for the purpose of amending the public register to take account of the assignment.

(4) An assignment under Subsection (1) does not take effect before the public register is amended by NICTA under Subsection (3).

#### **175. APPARATUS LICENCES.**

(1) Apparatus licences may be issued by NICTA to authorise apparatus licensees to engage in

certain regulated conduct in respect of apparatus to which the apparatus licence relates within designated frequencies within a designated geographic area.

(2) The radio spectrum regulations may (without limitation) contain provisions to give effect to the following general principles –

(a) apparatus licences may be subject to licence conditions, including (without limitation) permitted levels and frequencies of radio emission, and 'use it or lose it' mandatory resumption requirements; and

(b) apparatus licences may only be allocated by NICTA on an administrative basis (for example, a person may apply in writing to NICTA for an apparatus licence of the type specified in the application); and

(c) in deciding whether to issue an apparatus licence, NICTA shall process applications in the order received and have regard to all matters it considers relevant, including whether radiocommunications from apparatus authorised under the apparatus licence would interfere with radiocommunications from apparatus authorised under any existing apparatus licence; and

(d) apparatus licences are intended to be directed at certain categories of transmitting and receiving apparatus; and

(e) applicants for, and holders of, an apparatus licence may be required to meet Minimum standards of proficiency; and

(f) apparatus licensees may authorise other persons to operate radiocommunications devices under the licence, subject to certain conditions; and

(g) apparatus licences may be issued for a period of up to five (5) years; and

(h) apparatus licences cannot be issued in frequency bands that have been designated for spectrum licensing in the spectrum plan or relevant frequency band plan.

## **176. RADIOCOMMUNICATIONS CLASS LICENCES.**

(1) Radiocommunications class licences may be issued by NICTA to authorise persons to engage in certain regulated conduct in respect of apparatus that is within the terms and conditions of the radiocommunications class licence.

(2) The radio spectrum regulations may (without limitation) contain provisions to give effect to the following general principles –

(a) radiocommunications class licences are not intended to be issued to individual persons, but are rather generic authorisations that allow any person to engage in regulated conduct within the terms and conditions of the radiocommunications class licence; and

(b) radiocommunications class licences do not have to be applied for and no radiocommunications fees are payable; and

(c) radiocommunication class licences authorise persons operating apparatus in designated segments of spectrum to use that spectrum on a shared basis; and

(d) radiocommunications class licences are intended to be issued only in circumstances where a limited set of common frequencies are employed by apparatus operated under a common set of conditions.

(3) NICTA shall issue one or more radiocommunications class licences for –

(a) apparatus intended for reception of certain broadcasting services, such as televisions, other than broadcast satellite service receivers; and

(b) certain low power devices, such as (without limitation) citizen band radios, mobile phone handsets, wireless data cards, and cordless telephones.

#### **177. REALLOCATION OF SPECTRUM.**

(1) The Minister may make a written declaration that one or more specified parts of the spectrum are subject to re-allocation under this Part in relation to a specified period (called a "spectrum re-allocation declaration").

(2) The re-allocation period must begin within twenty-eight (28) days after a spectrum re-allocation declaration is made and run for at least two (2) years.

(3) For each part of the spectrum specified in the spectrum re-allocation declaration, the declaration must state whether the part of the spectrum should be re-allocated by allocating spectrum licences or apparatus licences.

(4) A particular part of the spectrum may be specified in the spectrum re-allocation declaration whether or not any apparatus licences are in force in respect of frequencies that are wholly or partly within that part of the spectrum.

(5) The Minister shall not make a spectrum re-allocation declaration in relation to a particular part or parts of the spectrum unless, during the previous six (6) months, NICTA has -

(a) given the Minister a recommendation that the Minister should make such a declaration in relation to that part, or those parts, of the spectrum; and

(b) attached a "reallocation plan" to that recommendation that sets out the grounds for NICTA's recommendation and the proposed procedures, scope and timetable for the re-allocation.

(6) In deciding whether to make a spectrum re-allocation declaration, the Minister shall have regard to NICTA's recommendation but may have regard to any other matters.

(7) Before giving the Minister a recommendation under Subsection (5) to make a spectrum re-allocation declaration NICTA shall -

- (a) engage in a public consultation in accordance with Section 229 of this Act; and
- (b) make reasonable efforts to consult with any radiocommunications licensees that are potentially affected by the re-allocation;
- (c) have regard to any representations received by a potentially affected radiocommunications licensee during the consultation period; and
- (d) have regard to any matters specified in the radio spectrum regulations as matters NICTA shall consider under Section 177.

(8) The radio spectrum regulations may set out procedures to govern the variation, cancellation, or conversion of radiocommunications licences following a spectrum re-allocation declaration.

(9) NICTA may give directions to any person requiring them to take such actions as are necessary to give effect to the spectrum re-allocation declaration. The person shall comply with a direction received from NICTA under this Section.

#### **178. DEEMED ACQUISITION OF AN ASSET.**

For the purposes of Section 69 of the *Independent Consumer and Competition Commission Act 2002*, a person is deemed to have acquired the assets of a business if that person has -

- (a) been issued with any spectrum licence or apparatus licence under this Part; or
- (b) received an assignment of the whole or any part of a spectrum licence; or
- (c) is the beneficiary of an authorisation under a spectrum licence or an apparatus licence in accordance with the radio spectrum regulations; or
- (d) is the beneficiary of a permit under the radio spectrum regulations.

#### ***Division 5. — Unlicensed Radiocommunications.***

#### **179. CIVIL PROCEEDINGS.**

(1) Subject to the radio spectrum regulations, if a person ("the defendant") -

- (a) engages in regulated conduct otherwise than in accordance with any radiocommunications licence; and

(b) as a result, electromagnetic interference is caused to radiocommunications carried on by another person ("the plaintiff) under a radiocommunications licence,

the plaintiff may apply to the National Court for relief.

(2) The court may grant all or any of the following forms of relief –

(a) an injunction restraining the defendant from causing such interference, from causing interference of a similar kind or from causing or permitting others to cause interference of the same or a similar kind; or

(b) an order directing the defendant to do a specified act for the purpose of –

(i) placing the plaintiff as nearly as practicable in the position in which he or she would have been but for the interference; or

(ii) otherwise mitigating detriment to the plaintiff arising out of the interference; or

(c) damages against the defendant in respect of loss suffered by the plaintiff as a result of the interference, including loss of any benefit that the plaintiff might reasonably have been expected to obtain but for the interference; or

(d) such other relief as the National Court thinks just.

## **180. REGULATED CONDUCT.**

(1) For the purposes of this Part, "regulated conduct" means -

(a) exercise a facilities right in apparatus for the purpose of transmitting radiocommunications; or

(b) deal in, or let on hire or loan, or repair or adjust, any apparatus identified in the radio spectrum regulations for the purposes of this Section that is used to transmit radiocommunications.

(2) Subject to the radio spectrum regulations, a person who engages in regulated conduct otherwise than as authorised by a radiocommunications licence or the provisions of this Act, is guilty of an offence.

(3) A higher penalty shall be favoured for any offence under Subsection (2) if the person has knowingly engaged in the regulated conduct for the purposes of commercial gain.

(4) Regulated conduct is not authorised by a radiocommunications licence if it is not in accordance with the terms and conditions of the radiocommunications licence.

(5) Notwithstanding Section 24 of the *Criminal Code* 1974, where a contravention of Subsection (2) occurs in relation to a merchant ship or civil aircraft, the owner and the master are each guilty of an offence.

(6) A merchant ship or civil aircraft referred to in Subsection (5) is liable to be seized by, or by order of NICTA, and held until the amount of any fine imposed is paid.

### **181. PROHIBITED SUPPLY OF GOODS.**

Subject to the radio spectrum regulations, a person who –

(a) has in his possession or sells or supplies to another person any apparatus knowing, or having-reasonable cause to believe, that they are for use –

(i) by that person; or

(ii) in or in connection with the navigation, operation or maintenance of a vessel, to engage in regulated conduct otherwise than as authorised by a radiocommunications licence, or the provisions of this Act; or

(b) maintains or installs or does any act or thing in or in connection with the maintenance or installation of, any appliance, apparatus or thing knowing, or having reasonable cause to believe, that the appliance, apparatus or thing will be used to engage in regulated conduct otherwise than as authorised by a radiocommunications licence or the provisions of this Act; or

(c) does any act or thing in or in connection with the navigation, operation or maintenance of a vessel that he knows, or has reasonable cause to believe, is used, or is to be used, to engage in regulated conduct otherwise than as authorised by a radiocommunications licence or the provisions of this Act; or

(d) transports any goods to a vessel that he knows, or has reasonable cause to believe, is used, or is to be used, to engage in regulated conduct otherwise than as authorised by a radiocommunications licence or the provisions of this Act,

is guilty of an offence.

### **182. PRESUMPTIONS AS TO APPARATUS.**

(1) For the purposes of this Part, the occupier of any place, and the person in charge of any vehicle, vessel or aircraft, on or in which there is any apparatus, shall be presumed to be in possession of and to be using the apparatus until the contrary is proved.

(2) For the purposes of this Part, any apparatus shall be deemed to remain capable of transmitting radiocommunications notwithstanding the fact that it is temporarily incapable of doing so, unless

NICTA or a person authorised by NICTA is satisfied that it has been dismantled or rendered completely inoperative.

## **PART IX. — NUMBERING.**

### ***Division 1. — Simplified Outline.***

#### **183. SIMPLIFIED OUTLINE.**

The following is a simplified outline of this Part –

(a) NICTA is required to make a national numbering plan for the numbering of ICT services in Papua New Guinea, the use of numbers in connection with the supply of ICT services and, to the extent considered appropriate by NICTA, obligations relating to the supply of ICT services that use certain numbers.

(b) All ICT licensees are required to comply with the national numbering plan.

(c) If an ICT licensee is required by the national numbering plan to provide a service to another ICT licensee, then the ICT licensees shall comply, with that requirement on such terms and conditions as are agreed between them, subject to any registered industry code or industry standard. Any dispute can be arbitrated by NICTA as if the dispute concerned a declared service.

(d) The Minister can determine that a specified person shall provide and maintain an integrated public number database, if no ICT licensee is subject to a licence condition to this effect. The person shall comply with the determination and the Minister's written directions.

(e) NICTA is required to publish a discussion paper regarding the implementation of pre-selection and mobile number portability in Papua New Guinea. Following public consultation, NICTA is required to provide a report to the Minister identifying NICTA's recommendation on these issues.

### ***Division 2. — Numbering Plan.***

#### **184. NUMBERING PLAN.**

(1) NICTA may make or vary rules, under Section 218 of this Act, to be known as the "national numbering plan" for –

(a) the numbering of ICT services; and

(b) the use and allocation of numbers in connection with the supply of ICT services; and

(c) to the extent considered appropriate by NICTA, obligations relating to the supply of



ICT services that use certain numbers.

(2) Without limitation, the national numbering plan –

(a) must specify the numbers that are for use in connection with the supply of ICT services; and

(b) must specify the numbers (if any) that have been allocated by NICTA to each operator licensee and to any other person; and

(c) may specify different numbers for use in connection with the supply of different types of ICT services.

(3) The national numbering plan may address any matter relating to the subject matter of this Part including (without limitation) any one or more of the following matters -

(a) the allocation of numbers to operator licensees, porting of allocated numbers between operator licensees and the surrender or withdrawal of allocated numbers; and

(b) rules limiting the permitted uses of, or imposing conditions on the use of, certain numbers or classes of number, including (without limitation) rules about –

(i) permitted types of charges in relation to calls to or from such numbers, such as free phone numbers; and

(ii) the issue of allocated numbers by operator licensees to their wholesale customers or retail customers for use in connection with the supply of ICT services; and

(c) rules about the provision of specified services in the context of the use of certain numbers or classes of number, including (without limitation) –

(i) the use of emergency service numbers and the provision of emergency call services; and

(ii) the supply of operator services, including directory assistance services; and

(iii) the supply of calling line identification; and

(iv) interoperability with the national relay service, the national maritime service, computer networks or the internet; and

(v) subject to Sections 188 and 189, rules relating to pre-selection and number portability, including to implement recommendations that the Minister has accepted under those Sections; and

(d) regulation of the registration and management of internet domain names by any person; and

(e) notwithstanding Section 278, any additional offences relating to matters addressed by the national numbering plan.

(4) NICTA shall ensure that any procedures set out in the national numbering plan for the allocation and use of numbers are carried out in an objective, timely, transparent and non-discriminatory manner.

#### **185. PUBLIC CONSULTATION ON NUMBERING PLAN.**

NICTA shall engage in public consultation in accordance with Section 229 in relation to the development of, or any variation to, the national numbering plan and shall -

(a) publish draft changes to the national numbering plan; and

(b) receive submissions on those changes; and

(c) take into account those submissions when exercising its powers under Section 184.

#### **186. COMPLIANCE WITH NATIONAL NUMBERING PLAN.**

(1) If an operator licensee is required by the numbering plan to provide a specified service to another operator licensee, then the operator licensees shall comply with that requirement on such terms and conditions as are agreed between them, subject to any registered industry code or industry standard.

(2) If the parties fail to reach agreement on the terms and conditions under Subsection (1), then either party may notify a dispute to NICTA for arbitration as if the relevant service were a declared service for the purposes of Division VI.6 and NICTA may arbitrate the dispute under that Division accordingly.

(3) NICTA may enforce the outcome of the arbitration by giving directions under this Section. The parties to the arbitration shall comply with those directions.

(4) A determination by NICTA in an arbitration under Subsection (2) cannot be inconsistent with any provision in this Act or the national numbering plan.

#### **187. INTEGRATED PUBLIC NUMBER DATABASE.**

(1) NICTA may make rules under Section 218 of this Act that require a specified person to provide and maintain an integrated public number database, being a database that matches telephone numbers to retail customers and their address details.

(2) The specified person under Subsection (1) shall comply with the rules.

(3) NICTA shall not make rules under Subsection (1) unless NICTA has first obtained the Minister's written approval to the rules.

(4) If rules are in force under Subsection (1) in relation to a person, NICTA may, by written notice given to the person, direct the person to do, or refrain from doing, a specified act or thing relating to the provision or maintenance of the integrated public number database.

(5) A direction under Section 186(3) may require the database to include specified information and must address confidentiality considerations in relation to personal information.

(6) A determination under Subsection (1) has no effect if an operator licensee is obliged by a condition of its licence to provide and maintain an integrated public number database.

***Division 3. — Pre-Selection and Number Portability.***

**188. POTENTIAL IMPLEMENTATION OF PRE-SELECTION.**

(1) NICTA shall hold a public inquiry under Section 230 and publish a discussion paper identifying the costs and benefits of the implementation of pre-selection in Papua New Guinea.

(2) NICTA may determine the timing for that public inquiry having regard to the objective of this Act and the regulatory principles.

(3) As part of the public inquiry, NICTA may consult with any person (whether or not in Papua New Guinea) in the preparation of the discussion paper with a view to determining –

(a) the form of pre-selection (if any) that would be most appropriate for implementation in Papua New Guinea; and

(b) the costs and benefits of implementing that form of pre-selection.

(4) Following receipt of submissions on the discussion paper under Section 233 and any hearings under Section 234, NICTA shall prepare a report for the Minister under Section 235 identifying -

(a) NICTA's recommendation on whether the national numbering plan should be amended to implement pre-selection in Papua New Guinea in any form; and

(b) the basis for NICTA's recommendation; and

(c) if the recommendation is to implement pre-selection in Papua New Guinea in some form, the proposed form of rules and/or amendments to the national numbering plan to implement that form of pre-selection; and

(d) the costs and benefits of implementing that form of pre-selection.

(5) Where NICTA recommends under Subsection (4) to implement pre-selection in Papua New Guinea, the Minister shall seek submissions from the public on whether the Minister should accept NICTA's recommendation.

(6) Following receipt of submissions, the Minister shall release a public report -

(a) identifying the extent to which the Minister accepts NICTA's recommendation; and

(b) if the Minister does not accept any recommendation (in whole or in part), the reasons why that recommendation is not accepted.

(7) Where the Minister accepts NICTA's recommendation to implement pre-selection in Papua New Guinea, NICTA shall, in consultation with the Minister, implement those recommendations that the Minister has accepted.

### **189. POTENTIAL IMPLEMENTATION OF MOBILE NUMBER PORTABILITY.**

(1) NICTA shall hold a public inquiry under Section 230 and publish a discussion paper identifying the costs and benefits of the implementation of mobile number portability in Papua New Guinea.

(2) NICTA may determine the timing for that public inquiry having regard to the objective of this Act and the regulatory principles.

(3) As part of the public inquiry, NICTA may consult with any person (whether or not in Papua New Guinea) in the preparation of the discussion paper with a view to determining –

(a) the form of mobile number portability (if any) that would be most appropriate for implementation in Papua New Guinea; and

(b) the Costs and benefits of implementing that form of mobile number portability.

(4) Following receipt of submissions on the discussion paper under Section 233 and any hearings under Section 234, NICTA shall prepare a final report for the Minister under Section 235 identifying -

(a) NICTA's recommendation whether the national numbering plan should be amended to implement mobile number portability in Papua New Guinea in any form; and

(b) the basis for NICTA's recommendation; and

(c) if the recommendation is to implement mobile number portability in Papua New Guinea in some form, the proposed form of rules and/or amendments to the national numbering plan to implement that form of mobile number portability; and

(d) the costs and benefits of implementing that form of mobile number portability.

(5) Where NICTA recommends under Subsection (4) to implement mobile number portability in Papua New Guinea, the Minister shall seek submissions from the public on whether the Minister should accept NICTA's recommendations.

(6) Following receipt of submissions, the Minister shall release a public report -

(a) identifying the extent to which the Minister accepts NICTA's recommendations; and

(b) if any recommendations are not accepted (in whole or in part), the reasons why those recommendations are not accepted.

(7) NICTA shall, in consultation with the Minister, implement those recommendations that the Minister has accepted.

(8) If NICTA seeks to introduce any other form of number portability in Papua New Guinea, NICTA shall follow the process set out in this Section and hold a public inquiry in relation to that form of number portability.

## **PART X. — CUSTOMER EQUIPMENT AND CABLING.**

### ***Division 1. — Simplified Outline.***

#### **190. SIMPLIFIED OUTLINE.**

The following is a simplified outline of this Part -

(a) A person may apply to NICTA for a permit to connect customer equipment to a facility. NICTA may issue, vary and cancel these permits.

(b) Connection of customer equipment to a facility without a permit from NICTA is an offence. NICTA can order customer connection to be disconnected where it does not have a permit.

(c) A person may apply to NICTA for a cabling licence. NICTA may issue, vary and cancel cabling licences.

(d) The undertaking of cabling work without a cabling licence from NICTA is an offence;

(e) A network licensee may cease supplying a service to a person in certain circumstances where customer equipment or customer cabling is a threat to network operation, or network or personal safety.

(f) Unauthorised connection of customer equipment or customer cabling can be the subject of judicial relief, including injunctions and damages.

*Division 2. — Permits for Customer Equipment.*

**191. CONTROLLED CUSTOMER EQUIPMENT.**

(1) NICTA may make rules specifying that certain customer equipment is, or certain types of customer equipment are, "controlled customer equipment" for the purposes of this Part if NICTA considers that such rules are necessary or desirable to further the objective of this Act or to allow NICTA to fulfil its functions.

(2) The regulations may prescribe –

- (a) the accreditation of test houses by NICTA; and
- (b) the testing of customers equipment by accredited test houses; and
- (c) the removal of the accreditation of a test house; and
- (d) the review of administrative decisions made in connection with the accreditation, or the removal of the accreditation, of test houses; and
- (e) the payment of the appropriate fee for applications for the accreditation of test houses; and
- (f) any other matter related to Division X.2.

**192. CONNECTION PERMITS.**

(1) Any person may apply to NICTA, in a form approved by NICTA, for a connection permit to connect controlled customer equipment to a facility.

(2) An application under this Section shall –

- (a) give a detailed description of the controlled customer equipment; and
- (b) be accompanied by –
  - (i) a report issued by an accredited test house on compliance by the controlled customer equipment with any industry code registered by NICTA or any industry standards determined by NICTA under this Act; and
  - (ii) such other information as NICTA requires the applicant to provide; and
  - (iii) if a variation is sought, the grounds for the variation; and
- (c) be accompanied by payment of a fee prescribed by NICTA in the regulations.

### **193. ISSUE AND VARIATION OF CONNECTION PERMITS.**

(1) Where an application has been made under Section 192, NICTA may, by notice in writing to the applicant, issue a connection permit for the connection of the controlled customer equipment to the relevant facility subject to such conditions as NICTA shall determine including, for example, one or both of the following -

(a) requiring the controlled customer equipment to be labelled in a manner specified by NICTA; and/or

(b) requiring the controlled customer equipment to be inspected by any network licensee before being connected to a facility in respect of which that network licensee has a facilities right.

(2) NICTA may, by giving seven (7) days written notice to the holder of a connection permit, vary a connection permit.

(3) The power to vary the connection permit under Subsection (2) includes the power to -

(a) vary the conditions of the connection permit; or

(b) add further conditions; or

(c) revoke any of the conditions.

(4) The holder of a connection permit may apply to NICTA to vary a connection permit under this Subsection (2).

(5) NICTA shall not issue or vary a connection permit unless it is satisfied that -

(a) connection of the controlled customer equipment specified in the connection permit to the relevant facility in accordance with the conditions in the permit would comply with any industry code registered by NICTA or any industry standards determined by NICTA under this Act; and

(b) the issue of a connection permit or its variation would not be inconsistent with Government Policy notified in accordance with Section 11(1).

(6) In deciding whether it is satisfied as to whether connection of controlled customer equipment to a relevant facility would comply with a registered industry code or industry standard, NICTA may reach a conclusion contrary to any conclusion reached on that matter in a report, by an accredited test house, that accompanied the application for the permit concerned.

### **194. RECONSIDERATION OF DECISIONS ON PERMITS.**

(1) Where NICTA decides -

- (a) not to issue a connection permit; or
- (b) to impose conditions on a connection permit; or
- (c) to vary a connection permit,

it shall give to the applicant, or holder of the connection permit as the case may be (in this Section called "the applicant"), written notice of its decision together with reasons for its decision.

(2) NICTA shall include in the notice under Subsection (1) a statement to the effect that the applicant may within twenty-one (21) days of receiving the notice apply to NICTA for a reconsideration of the decision.

(3) The applicant may apply to NICTA for reconsideration of a decision described in Subsection (1) within twenty-one (21) days of the applicant receiving notice of the decision.

(4) Upon receipt of a reconsideration request, NICTA -

- (a) shall give due and proper consideration to the request, including any submissions made by interested persons; and

- (b) may publish a further decision which affirms, varies or negates its previous decision.

#### **195. OFFENCES RELATING TO CUSTOMER EQUIPMENT.**

(1) A person, who knowingly or recklessly connects to a facility that is maintained, owned or made available by a network licensee, any controlled customer equipment in respect of which a connection permit under this Part is not in force, is guilty of an offence.

Penalty — A fine not exceeding K15,000.00 or imprisonment for a term not exceeding three (3) months or both.

(2) A person, who sells or supplies, or offers to sell or supply, to another person, any controlled customer equipment that the first person knows or ought reasonably to know is controlled customer equipment for which a connection permit under this Part is not in force, without first notifying the other person that there is no connection permit for the connection of the controlled customer equipment to a network, is guilty of an offence.

Penalty — A fine not exceeding K15,000.00 or imprisonment for a term not exceeding three (3) months or both.

#### **196. DISCONNECTION OF CUSTOMER EQUIPMENT FOR WHICH THERE IS NO PERMIT.**



(1) Where –

(a) a person has under his control any controlled customer equipment connected to a facility, maintained, owned or made available by a network licensee; and

(b) there is no permit in force for connection of that controlled customer equipment to that facility; and

(c) NICTA gives to the person a written notice stating that -

(i) there is no permit in force for the connection of that controlled customer equipment to the relevant facility; and

(ii) the person is to disconnect that controlled customer equipment from the facility to which it is connected within seven days, or such longer period as is specified in the notice, after the notice is given,

(iii) the person shall comply with the notice.

(2) A person, who fails or refuses to comply with a notice under Subsection (1) is guilty of an offence.

Penalty — A fine not exceeding K15,000.00 or imprisonment for a term not exceeding three (3) months or both.

## **197. CANCELLATION OF PERMITS.**

(1) NICTA may cancel a connection permit, by written notice given to the holder of the permit, where –

(a) NICTA is satisfied that the holder of the permit has contravened the conditions of the connection permit; or

(b) the cancellation is authorised by Government Policy notified in accordance with Section 11(1).

(2) Where NICTA cancels a permit under Subsection (1), it shall include in the notice under that Subsection -

(a) NICTA's reasons for the cancellation; and

(b) a statement to the effect that the applicant may, within twenty-one (21) days after receiving the notice, apply to NICTA for reconsideration of the cancellation.

## **198. REPRESENTATIONS CONCERNING CANCELLATION OF PERMITS.**

(1) Before cancelling a connection permit under Section 197, NICTA -

(a) shall give to the holder of the connection permit; and

(b) may give to such other persons as NICTA considers to have an interest in the connection permit,

written notice -

(c) stating that it proposes to cancel the connection permit; and

(d) inviting each person to whom the notice is given to make representations to NICTA, within twenty-one (21) days after receiving the notice, concerning the proposed cancellation.

(2) A person who receives a notice under Subsection (1) may, within twenty-one (21) days after receiving the notice, make such representations to NICTA as that person considers relevant.

(3) NICTA shall give due consideration to any representations made under Subsection (2).

(4) Where NICTA decides not to proceed with the cancellation of a permit, it shall give to the holder of the connection permit written notice to that effect.

(5) Failure to comply strictly with Subsection (1) does not affect the validity of the notice, or of a cancellation of a connection permit, where there is substantial compliance with the requirements of that Subsection.

### **199. TRANSFER OF PERMITS.**

(1) The holder of a connection permit may, at any time, transfer the connection permit to another person.

(2) The transfer of a connection permit does not have effect before NICTA has been given written notice -

(a) stating that the connection permit has been transferred; and

(b) specifying the name and address of the person to whom the connection permit has been transferred.

### ***Division 3. — Licensing of Cabling Providers.***

### **200. APPLICATION FOR CABLING LICENCES.**

(1) A natural person may apply to NICTA in a form approved by NICTA for a cabling licence.

(2) An application under Subsection (1) shall -

(a) give a detailed description of the applicant's qualifications, knowledge and experience of cabling work; and

(b) be accompanied by payment of the prescribed fee.

### **201. ISSUE OF CABLING LICENCES.**

Where an application has been made under Section 200, NICTA may, by notice in writing to the applicant, issue a cabling licence subject to such conditions as NICTA shall determine including, for example, all or any of the following conditions –

(a) relating to the geographic areas in which the cabling licensee may perform cabling work; or

(b) relating to the types of premises in or on which the cabling licensees may perform cabling work; or

(c) requiring cabling work which has been carried out by the cabling licensee to be inspected by NICTA or by network licensees.

### **202. VARIATION OF CABLING LICENCES BY NICTA.**

(1) NICTA may, by written notice to the holder of a cabling licence, vary the cabling licence.

(2) The power to vary under Subsection (1) includes the power to –

(a) vary the conditions of the cabling licence; or

(b) add further conditions; or

(c) revoke any of the conditions.

(3) The holder of a cabling licence may apply to NICTA to vary a cabling licence under this Section.

### **203. ISSUE AND VARIATION OF CABLING LICENCES.**

(1) NICTA shall not issue or vary a cabling licence unless it is satisfied that –

(a) the cabling licensee has the necessary qualifications, knowledge and experience to perform cabling work in accordance with the cabling licence; and

(b) the issue of the cabling licence or its variation would not be inconsistent with Government Policy notified in accordance with Section 11(1).

(2) Where NICTA decides not to issue or not to vary a cabling licence it shall give to the applicant written notice that the application is refused.

(3) Notice under Subsection (2) shall include NICTA's reasons for the refusal and a statement to the effect that the applicant may within twenty-one (21) days of receiving the notice apply to the ICT Appeals Panel for review under Section 256(f).

#### **204. OFFENCES RELATING TO UNLICENSED CABLING WORK.**

(1) A person other than a network licensee or a cabling licensee, who performs cabling work without a cabling licence, is guilty of an offence.

Penalty — A fine not exceeding K15,000.00 or imprisonment for a term not exceeding three (3) months or both.

(2) A cabling licensee, who knowingly or recklessly contravenes the conditions of their cabling licence, is guilty of an offence.

Penalty A fine not exceeding K15,000.00 or imprisonment for a term not exceeding three (3) months or both.

#### **205. DEEMED REFUSAL OF CABLING LICENCES.**

Where, at the end of thirty (30) days after an application for the issue of a cabling licence has been made under Section 200, NICTA has not issued the licence, NICTA is taken, for the purposes of Section 201 –

(a) to have decided, on the last of the thirty (30) days, not to issue the cabling licence; and

(b) to have informed the applicant accordingly on that day.

#### **206. REPRESENTATIONS CONCERNING VARIATION OF CABLING LICENCES.**

(1) Before varying a cabling licence, NICTA shall give to the cabling licensee a notice -

(a) setting out the text of the proposed variation; and

(b) inviting the licensee to make representations to NICTA, within twenty-one (21) days after receiving the notice, concerning the proposed variation.

(2) The cabling licensee may, within twenty-one (21) days after receiving the notice under Subsection (1), make such representations to NICTA.

(3) NICTA shall give due consideration to any representations made under Subsection (2).

(4) Where NICTA decides not to proceed with the variation, it shall give to the cabling licensee written notice to that effect.

(5) Failure to comply strictly with Subsection (1) does not affect the validity of the notice, or of a variation of a cabling licence, if the requirements of that Subsection are substantially complied with.

## **207. CANCELLATION OF CABLING LICENCES.**

(1) Where NICTA is satisfied that a cabling licensee has contravened the conditions of the cabling licence, NICTA may cancel the cabling licence by written notice given to the cabling licensee.

(2) Where NICTA cancels a cabling licence under Subsection (1), it shall include in the notice under that Subsection -

(a) NICTA's reasons for the cancellation; and

(b) a statement to the effect that the cabling licensee may, within twenty(20) days after receiving the notice, apply to the ICT Appeals Panel for review under Section 256(f).

(3) The cancellation of a cabling licence has effect on and from the day on which notice of the cancellation is given to the cabling licensee.

## **208. REPRESENTATIONS CONCERNING CANCELLATION OF CABLING LICENCE.**

(1) Before cancelling a cabling licence under Section 207, NICTA shall give to the cabling licensee a written notice –

(a) stating that it proposes to cancel the cabling licence; and

(b) inviting the cabling licensee to make representations to NICTA, within twenty-one (21) days after receiving notice, concerning the proposed cancellation.

(2) The cabling licensee may, within twenty-one (21) days after receiving the notice under Subsection (1), make such representations to NICTA.

(3) NICTA shall give due consideration to any representations made under Subsection (2).

(4) Where NICTA decides not to proceed with the cancellation, it shall give to the cabling licensee written notice to that effect.

(5) Failure to comply strictly with Subsection (1) does not affect the validity of the notice, or of a cancellation of a cabling licence, where the requirements of that Subsection are substantially

complied with.

## **209. SURRENDER OF CABLING LICENCES.**

A licensee may, at any time, surrender their cabling licence by giving NICTA written notice that it is surrendered and returning the cabling licence to NICTA.

## **210. NICTA MAY LIMIT APPLICATION OF DIVISION IN RELATION TO CUSTOMER CABLING.**

(1) NICTA may, by written notice in the National Gazette, declare that this Division, or specified provisions of it, do not apply in relation to specified kinds of customer cabling.

(2) A notice under Subsection (1) may specify a kind of customer cabling –

(a) by reference to the technical characteristics of the customer cabling; or

(b) by reference to the functions of the customer cabling.

(3) This Division has effect in accordance with a notice in force under Subsection (1).

(4) NICTA may make a declaration under Subsection (1) on its own initiative or at the request of any person.

### ***Division 4. — Connection of Customer Equipment and Customer Cabling to Communication Networks.***

## **211. DISCONNECTION ETC, OF CUSTOMER EQUIPMENT OR CUSTOMER CABLING.**

(1) An operator licensee may cease supplying a service to a person by means of a facility where, through the use of the service, there is connected to that facility, customer equipment or customer cabling that is a threat to -

(a) the safety or proper functioning of the facility; or

(b) the safety of any person.

(2) An operator licensee may refuse to supply to a person a service of a kind normally provided by the operator licensee by means of a facility where the operator licensee is satisfied that the person intends, through the use of the service, to connect or have connected to that facility, customer equipment or customer cabling that is a threat to –

(a) the safety or proper functioning of the facility; or

(b) the safety of any person.

(3) Where an operator licensee stops providing a service to a person under Subsection (1) or refuses to provide a service to a person under Subsection (2), the person may apply to NICTA for an order under Subsection (6).

(4) NICTA shall, by notice in writing, in respect of an application under Subsection (3) -

(a) inform the operator licensee concerned of the making of the application; and

(b) invite the operator licensee to make representations to NICTA, within seven (7) days after receiving the notice, as to whether an order should be made under Subsection (6).

(5) In deciding whether to make an order under Subsection (6), NICTA shall give due consideration to any representations made under Subsection (4).

(6) Where, on an application having been made under Subsection (3), NICTA is satisfied that the connection to the facility, of the customer equipment or customer cabling to which the application relates is not a threat to –

(a) the safety or proper functions of the facility; or

(b) the safety of any person,

NICTA shall, by written notice -

(c) order the operator licensee to supply the service that is necessary for connection of the customer equipment or customer cabling to the facility; and

(d) inform the applicant that the order has been made.

(7) Where NICTA decides not to make an order under Subsection (6), it shall give to the applicant written notice that the application is refused, together with -

(a) its reasons for the refusal; and

(b) a statement to the effect that the person may, within twenty-one (21) days after receiving the notice, apply to NICTA for reconsideration of the refusal.

(8) Where, at the end of thirty (30) days after an application for the making of an order under Subsection (6) has been made, NICTA has not made such an order, NICTA is taken, for the purposes of Subsection (7) –

(a) to have decided, on the last of the thirty (30) days, not to make such an order; and

(b) to have informed the person accordingly on that day.

**212. ACTION FOR UNAUTHORISED CONNECTION TO A FACILITY OF CUSTOMER EQUIPMENT OR CUSTOMER CABLING.**

(1) Where -

(a) a person –

(i) connects customer equipment to a facility contrary to Section 211; or

(ii) has under their control customer equipment connected to a facility that was so connected by another person contrary to Section 211; or

(iii) has under their control customer equipment connected to a facility that, contrary to Section 211, has not been disconnected from the facility; or

(iv) connects customer cabling to a facility contrary to Section 211; or

(v) has under their control customer cabling connected to a facility that was so connected by another person contrary to Section 211; or

(vi) has under their control customer cabling connected to a facility that, contrary to Section 211 has not been disconnected from the network; and

(b) as a result of –

(i) the connection of the customer equipment or customer cabling to the facility;  
or

(ii) the customer equipment or customer cabling being used while it was so connected; or

(iii) the customer equipment not being disconnected from the facility; or

(iv) the customer equipment being used after it was required to be disconnected from the facility,

damage is caused to the facility, or the network licensee owning or operating the facility suffers a loss or incurs a liability,

an ICT licensee affected by the contravention may apply to the National Court for relief.

(2) The relief that may be granted under Subsection (1) includes an injunction and, at the option of the operator licensee, either damages or an account of profits.

**PART XI — REGULATORY INSTRUMENTS.**



*Division 1. — Simplified Outline.*

**213. SIMPLIFIED OUTLINE.**

The following is a simplified outline of this Part –

- (a) The Head of State may make regulations, not inconsistent with this Act, prescribing a range of matters to give further effect to the provisions of this Act.
- (b) NICTA may make rules and guidelines relating to the ICT industry and ICT licensees. Before making, revoking or varying any rules and guidelines, NICTA is required to consult with the Minister and affected ICT licensees and engage in public consultation.
- (c) Bodies and associations that are approved by NICTA as representatives of a section of the ICT industry may develop industry codes under a self-regulatory approach.
- (d) Compliance with an industry code is voluntary unless NICTA registers the industry code, in which case compliance with the industry code becomes mandatory for all ICT licensees.
- (e) NICTA has a reserve power to make an industry standard if there are no industry codes or if an industry code is deficient. Compliance with industry standards is mandatory.

*Division 2. — Mandatory Instruments.*

**214. MAKING OF MANDATORY INSTRUMENTS.**

(1) NICTA shall not make any mandatory instrument –

- (a) unless NICTA has complied with any public consultation or public inquiry procedure that this Act specifies applies to that mandatory instrument; and
- (b) that is inconsistent with this Act or with Government Policy notified in accordance with Section 11.

(2) NICTA shall have regard to the objective of the Act and the regulatory principles when making, renewing, amending or revoking any mandatory instrument.

**215. COMPLIANCE WITH MANDATORY INSTRUMENTS.**

(1) A person shall comply with this Act and any mandatory instrument to the extent that it imposes obligations on that person, irrespective whether that person is an ICT licensee under this Act.

(2) Where a mandatory instrument imposes obligations on a person that is not an ICT licensee,

NICTA shall either –

(a) make reasonable endeavours to inform the person that the mandatory instrument imposes obligations upon them; or

(b) publish the mandatory instrument on NICTA's website.

(3) In the event of a direct inconsistency between the terms of any mandatory instruments, the most recent mandatory instrument shall prevail. NICTA shall endeavour to resolve any inconsistency as soon as NICTA becomes aware of it.

### ***Division 3. — Regulations.***

#### **216. REGULATIONS.**

(1) The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters –

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act or its administration or implementation.

(2) The regulations may make provision for fees and for penalties by way of a fine not exceeding K50,000.00 or imprisonment for a term not exceeding six (6) months or both for offences against the regulations.

(3) A contravention of the regulations constitutes a contravention of this Act.

#### **217. CONTENT REGULATIONS.**

(1) The Head of State, acting on advice, may make regulations ("content regulations") not inconsistent with this Act prescribing the following matters relating to content services -

(a) the representation of the culture and national identity of Papua New Guinea; and

(b) requirements in relation to advertising content; and

(c) requirements in relation to the provision of educational, political or other types of content; and

(d) public information and education regarding content regulation and technologies for the end user control of content; and

(e) national emergencies; and

(f) the procedures for handling public complaints and for reporting information about complaints to NICTA; and

(g) the extent to which any of the content regulations apply only to specified categories of content licensees; and

(h) other matters of concern to the community.

(2) The content regulations must not address censorship matters addressed by or under the *Classification of Publication (Censorship) Act 1989*.

#### ***Division 4. — Rules and Guidelines.***

### **218. NICTA MAY MAKE, VARY OR REVOKE RULES AND GUIDELINES.**

(1) NICTA may make rules and guidelines, not inconsistent with this Act –

(a) as provided elsewhere in this Act; and

(b) otherwise relating to the conduct, operations or regulation of an ICT licensee.

(2) NICTA may vary or revoke a rule or guideline made under Subsection (1).

### **219. PROCESS REGARDING RULES AND GUIDELINES.**

(1) NICTA shall, before making, varying or revoking a rule or guideline –

(a) engage in public consultation in accordance with Section 229 of this Act; and

(b) in particular, give a copy of any new rule or guideline, a copy of any variation to any rule or guideline and notice of the revocation of any rule or guideline, to and consult with –

(i) the Minister; and

(ii) any ICT licensee or other person to which the rule applies or is intended to apply; and

(iii) such other persons or representative bodies as NICTA considers appropriate; and

(c) publish a notice of its intention to do so and ensure that copies of the rule or guideline (as in force from time to time) are placed on NICTA's public register.

(2) Notice of the making of a rule or guideline, or the variation or revocation of a rule or guideline shall be published in the National Gazette.

(3) A rule or guideline, or variation or revocation of a rule or guideline, takes effect on the date on which its existence is notified in the National Gazette or such later date specified by NICTA in the rule or guideline.

(4) NICTA shall keep the contents and operation of rules and guidelines under review with a view to ensuring their continued relevance and effectiveness.

(5) Nothing in this Section permits a rule or guideline to be made, varied or revoked where that would be inconsistent with Government Policy notified in accordance with Section 11(1).

## **220. RULES RELATING TO DEALINGS WITH INTERNATIONAL OPERATORS.**

(1) With a view to preventing the misuse of market power by international telecommunications operators in respect of telecommunications infrastructure located outside Papua New Guinea, NICTA may make rules relating to dealings by operator licensees with such international telecommunications operators.

(2) Where a provision of an agreement made by an operator licensee is inconsistent with any rules made under Subsection (1), the provision is unenforceable.

(3) For the purposes of this Section only, ICT licensees are not "international telecommunications operators".

(4) NICTA shall consult with the ICCC before making any rules under this Section.

(5) The ICCC is responsible for the general administration of any rules made under this Section and in so doing shall consult with NICTA.

### ***Division 5. — General Principles of Industry Self-Regulation.***

## **221. SECTION OF THE ICT INDUSTRY.**

(1) For the purposes of Divisions 5, 6 and 7 of this Part, if a person is a member of a group that constitutes a section of the ICT industry, the person is a "participant" in that section of the ICT industry.

(2) NICTA may, by written instrument, determine that persons carrying on, or proposing to carry on, one or more of the following kinds of activity constitute a section of the ICT industry for the purposes of this Part.

(a) carrying on business as an ICT licensee; or

(b) supplying goods or services for use in connection with the supply of an ICT service;  
or

- (c) supplying a network service, applications service or a content service; or
- (d) manufacturing, or importing or dealing with customer equipment; or
- (e) the exercise of facilities rights.

(3) Sections of the ICT industry determined under Subsection (2) need not be mutually exclusive and may overlap.

(4) A determination under Subsection (2) has effect accordingly.

## **222. STATEMENT OF REGULATORY POLICY.**

(1) Parliament intends that bodies or associations that NICTA is satisfied represent sections of the ICT industry should develop industry codes that are to apply to participants in the respective sections of the industry in relation to the ICT activities of the participants.

(2) Parliament intends that NICTA, in exercising its powers under Divisions 5, 6 and 7 of this Part, will act in a manner that, in the opinion of NICTA, enables public interest considerations to be addressed in a way that does not impose undue financial and administrative burdens on participants in sections of the ICT industry.

(3) In forming an opinion under Subsection (2), NICTA shall have regard (without limitation) to -

(a) the number of retail customers who would be likely to benefit from the industry code or industry standard concerned; and

(b) the extent to which those retail customers are residential or small business customers; and

(c) the legitimate business interests of participants in sections of the ICT industry; and

(d) the public interest, including the public interest in the efficient, equitable and sustainable supply of –

(i) ICT services; and

(ii) goods for use in connection with ICT services; and

(iii) services for use in connection with ICT services,

in a manner that reflects the objective of this Act and the Regulatory Principles.

(4) No action lies under Part VI of the *Independent Consumer and Competition Commission Act 2002* for conduct in compliance with an industry code registered by NICTA under Section 224

and an industry standard.

### **223. SUBJECT MATTER OF INDUSTRY CODES AND INDUSTRY STANDARDS.**

Subsection (2) sets out examples of matters that may be dealt with by industry codes and industry standards. The applicability of a particular example will depend on which section of the ICT industry is involved. Subsection (2) is not intended to limit the matters that may be dealt with by industry codes and industry standards.

(2) The examples are as follows –

(a) retail customer service, including (without limitation) –

- (i) informing retail customers about goods or services on offer, the prices of those goods or services, and the other terms and conditions on which those goods or services are offered; and
- (ii) giving retail customers information about performance indicators that they can use to evaluate the quality of services; and
- (iii) regular reporting to retail customers about performance against those performance indicators; and
- (iv) customer and network fault management; and
- (v) the quality of ICT services; and

(b) retail customer protection, including (without limitation) –

- (i) the internal handling of retail customer complaints and reporting about retail customer complaints; and
- (ii) security deposits given by retail customers, debt collection practices and customer credit practices; and
- (iii) the accuracy of billing of retail customers and the timelines and comprehensibility of bills; and
- (iv) the procedures to be followed in order to generate standard billing reports to assist in the investigation of retail customer complaints about bills; and
- (v) the "churning" of retail customers between operator licensees; and
- (vi) disconnection of retail customers; and
- (vii) ensuring that retail customers have an informed basis on which to enter into

contracts; and

(viii) privacy and, in particular the protection of personal information, the intrusive use of telecommunications by operator licensees, the monitoring or recording of communications, calling number display, and the provision of directory products and services; and

(c) numbering, including any matters addressed by, or that could be addressed by, the national numbering plan; and

(d) access, including the Land Access Rules; and

(e) interconnection and access, including (without limitation) –

(i) technical parameters and specifications; and

(ii) wholesale billing and credit issues; and

(iii) network integrity and safety requirements; and

(iv) ordering and provisioning procedures; and

(v) operation and maintenance procedures, including service quality requirements; and

(vi) sharing and unbundling of facilities; and

(vii) interoperability of systems; and

(viii) the allocation of risk; and

(ix) the settlement of disputes; and

(f) radiocommunications, including any matters addressed by the radio spectrum regulations.

(3) The regulations may specify particular matters or content that must not be addressed by industry codes and industry standards.

(4) An industry code or industry standard has no effect to the extent that it is inconsistent with a provision of this Act.

#### *Division 6. — Industry Codes.*

### **224. REGISTRATION OF INDUSTRY CODES.**

(1) NICTA shall register an industry code, by including it in its public register as provided by Section 43, if –

(a) the industry code is not inconsistent with this Act, including the statement of regulatory policy in Section 222, or any other mandatory instrument; and

(b) NICTA is satisfied that the body or association that has developed the industry code represents a particular section of the ICT industry (whether or not NICTA has issued a determination under Section 221); and

(c) that body or association develops an industry code that applies to participants in that section of the ICT industry and deals with one or more matters relating to the ICT activities of these participants; and

(d) the body or association gives a copy of the industry code to NICTA; and

(e) NICTA is satisfied that –

(i) in a case where the industry code deals with matters of substantial relevance to Papua New Guinea, the code provides appropriate community safeguards for the matters covered by the code; or

(ii) in a case where the industry code does not deal with matters of substantial relevance to the Papua New Guinea, the code deals with the matters covered by the code in an appropriate manner; and

(f) NICTA is satisfied that, before giving the copy of the industry code to NICTA –

(i) the body or association published one or more drafts of the code and invited participants in that section of the ICT industry to make submissions to the body or association about the draft within a period of at least thirty (30) days; and

(ii) NICTA is satisfied that the participants in that section of the ICT industry were appropriately notified of the opportunity to make submissions and the potential registration of that code by NICTA under this Section; and

(iii) the body or association gave proper consideration to any submissions that were received from participants in that section of the ICT industry within that period; and

(iv) no submissions from participants in that section of the ICT industry opposed the most recent draft of that code being registered by NICTA under this Section; and

(g) NICTA is satisfied that, before giving the copy of the code to NICTA –



(i) the body or association published a draft of the code and invited members of the public to make submissions to the body or association about the draft within a period of at least thirty (30) days; and

(ii) the body or association gave consideration to any submissions that were received from members of the public within that period; and

(2) If an industry code (the "new code") is registered under this Part and the new code is expressed to replace another industry code, then the other code ceases to be registered under this Part when the new code is registered.

(3) NICTA may remove an industry code, or any provision of an industry code, from the public register.

(4) An industry code ceases to be registered when it is removed from the public register.

(5) Before registering any industry code NICTA shall -

(i) consult with the ICCC to obtain its views as to whether the conduct proposed to be included in the industry code would be likely to substantially lessen competition in a market; and

(ii) consider the ICCC' s views when assessing whether the industry code is consistent with the statement of regulatory policy in Section 222.

## **225. NICTA MAY REQUEST INDUSTRY CODES.**

(1) If NICTA is satisfied that a body or association represents a particular section of the ICT industry (whether or not NICTA has issued a determination under Section 221), NICTA may, by written notice given to the body or association, request the body or association to –

(a) develop an industry code that applies to participants in that section of the ICT industry and deals with one or more specified matters relating to the telecommunications activities, of those participants; and

(b) give NICTA a copy of the industry code within a specified period of at least four (4) months.

(2) NICTA shall not make a request under Subsection (1) in relation to a particular section of the ICT industry unless NICTA is satisfied that –

(a) the development of the industry code is necessary or convenient in order to –

(i) provide appropriate community safeguards; or

(ii) otherwise deal with the performance or conduct of participants in that section

of the ICT industry; and

(b) in the absence of the request, it is unlikely that an industry code would be developed within a reasonable period; and

(c) the content of the industry code would not place the parties to the code in contravention of any obligation in Part VI of the *Independent Consumer and Competition Commission Act 2002*.

(3) A notice under Subsection (1) may specify indicative targets for achieving progress in the development of the industry code (for example, a target of sixty (60) days to develop a preliminary draft of the industry code).

### ***Division 7. — Industry Standards.***

#### **226. NICTA MAY DETERMINE AN INDUSTRY STANDARD.**

(1) NICTA may, by written instrument, determine an industry standard, not inconsistent with this Act, that applies to participants in a section of the ICT industry and deals with that matter or those matters, but only if the requirements of Subsection (2) or (3) are met. A standard under this Subsection is to be known as an "industry standard".

(2) NICTA may determine an industry standard if –

(a) NICTA has made a request under Section 225 and any of the following conditions is satisfied –

(i) the request is not complied with; or

(ii) if indicative targets for achieving progress in the development of the code were specified in the notice of request—any of those indicative targets were not met; or

(iii) the request is complied with, but NICTA subsequently refuses to register the industry code; or

(b) NICTA is satisfied that it is necessary or convenient for NICTA to determine an industry standard in order to –

(i) provide appropriate community safeguards in relation to that matter or those matters; or

(ii) otherwise regulate adequately participants in that section of the ICT industry in relation to that matter or those matters.

(3) NICTA may determine an industry standard if -

- (a) an industry code has been registered under this Part for at least six (6) Months; and
- (b) NICTA is satisfied that the industry code is "deficient" (as defined by Subsection (7)); and
- (c) NICTA has given the body or association that developed the industry code a written notice requesting that deficiencies in the code be addressed within a specified period of at least thirty (30) days; and
- (d) that period ends and NICTA is satisfied that it is necessary or convenient for NICTA to determine an industry standard that applies to participants in that section of the ICT industry and deals with that matter or those matters.

(4) If NICTA is satisfied that a body or association represents that section of the ICT industry, NICTA shall consult the body or association before determining an industry standard under Subsections (2) or (3).

(5) Before determining or varying an industry standard, NICTA shall engage in public consultation on the proposed industry standard or proposed variation for at least 30 days, in accordance with Section 229 of this Act.

(6) The industry code referred to in Subsection (2) ceases to be registered under this Part on the day on which the industry standard comes into force.

(7) For the purposes of this Section, an industry code is deficient if, and only if -

- (a) the industry code is not operating to provide appropriate community safeguards in relation to that matter or those matters; or
- (b) the industry code is not otherwise operating to regulate adequately participants in that section of the ICT industry in relation to that matter or those matters.

## **227. VARIATION AND REVOCATION OF INDUSTRY STANDARDS.**

(1) NICTA may, by written instrument, vary an industry standard that applies to participants in a particular section of the ICT industry if it is satisfied that it is necessary or convenient to do so to -

- (a) provide appropriate community safeguards in relation to one or more matters relating to the ICT activities, of those participants; and
- (b) otherwise regulate adequately those participants in relation to one or more matters relating to the ICT activities, of those participants.

(2) NICTA may, by written instrument, revoke an industry standard.

(3) If an industry code is registered under this Part and the industry code is expressed to replace an industry standard then the industry standard is revoked when the industry code is registered.

## **PART XII — PUBLIC INQUIRIES AND INVESTIGATIONS**

### ***Division 1. — Simplified Outline.***

#### **228. SIMPLIFIED OUTLINE.**

The following is a simplified outline of this part –

(a) When NICTA is required to engage in public consultation it is to follow the specified Procedure.

(b) NICTA may hold public inquiries into matters relating to its functions and powers. The Minister may direct NICTA to hold a public inquiry. NICTA may use its powers to obtain information in connection with a public inquiry. NICTA shall prepare a report of a public inquiry, but may exclude confidential information from the report.

(c) NICTA may investigate specified matters, including possible contraventions of this Act or a licence. NICTA may initiate an investigation or do so in response to a complaint and shall do so when directed by the Minister. NICTA shall publish a report of an investigation, but may exclude confidential information from its report. NICTA may direct that breaches of licence conditions or prescribed obligations are remedied.

(d) NICTA may give notice to a person to produce documents and/or information or to appear before NICTA where it has reason to believe that the person has information or can give evidence relevant to the performance by NICTA of its powers and functions.

### ***Division 2. — Public Consultation.***

#### **229. PROCEDURE FOR PUBLIC CONSULTATION.**

(1) If NICTA is required to engage in public consultation by this Act, it shall follow the procedure set out in this Section.

(2) NICTA shall publish on its public register and, in whatever other way it thinks appropriate, notice of –

(a) the fact that it is holding public consultation; and

(b) the period during which the public consultation is to be held; and

(c) the nature of the matter to which the public consultation relates; and

(d) the manner in which submissions are to be made to NICTA; and

(e) the deadline for submissions to be received.

(3) NICTA shall have regard to, and publish in its public register, all written submissions received during the public consultation process that are received by NICTA before the specified deadline.

(4) NICTA is not required to hold a hearing for the purposes of public consultation under this Section.

(5) Without limitation, if NICTA considers it necessary or appropriate to do so, NICTA may consult with –

(a) the Minister; and/or

(b) the ICCC; and/or

(c) any ICT licensee or other person to which the matter applies or is intended to apply; and/or

(d) such other persons or representative bodies as NICTA considers appropriate.

(6) NICTA may, for the purposes of public consultation, seek information from such persons, and make such inquiries, and hold meetings with any persons for any reasons related to the public consultation, as it thinks fit.

### *Division 3. — Public Inquiries.*

#### **230. COMMENCEMENT OF A PUBLIC INQUIRY.**

(1) Where NICTA considers that it is appropriate and practicable to hold a public inquiry under this Part into any matter relating to the performance or exercise of any of NICTA's functions and powers, NICTA may hold such an inquiry into that matter.

(2) The Minister may give NICTA a direction in writing to hold a public inquiry under this Part into any matter relating to the performance or exercise of any of NICTA's functions and powers.

(3) The Minister shall specify the terms of reference of the public inquiry in any direction given under Subsection (2).

(4) If the Minister gives a direction under Subsection (2) about a particular public inquiry, the Minister may direct NICTA to –

(a) consult with one or more specified persons, bodies or agencies in connection with the conduct of the inquiry; and

(b) have regard to one or more specified matters in connection with the conduct of the inquiry.

(5) NICTA shall comply with any directions from the Minister under Subsections (2) and (4).

(6) NICTA shall hold a public inquiry where it is required to do so by a provision of this Act.

### **231. INQUIRY SHALL BE PUBLIC.**

Where NICTA decides, or is directed or required, to hold a public inquiry, NICTA shall publish notice of –

(a) the fact that it is holding the inquiry; and

(b) the period during which the inquiry is to be held; and

(c) the terms of reference of the inquiry; and

(d) identifying when the discussion paper identified in Section 232 is likely to be available.

### **232. DISCUSSION PAPER.**

(1) As soon as practicable after deciding or being directed to hold a public inquiry, NICTA shall prepare and publish a discussion paper that –

(a) identifies the issues that, in NICTA's opinion, are relevant to that matter; and

(b) sets out such background material about, and discussion of, those issues as NICTA thinks appropriate; and

(c) identifies the period within which, and the form in which, members of the public may make submissions to NICTA about the matter; and

(d) identifies the matters that NICTA would like such submissions to deal with.

(2) NICTA shall ensure that a copy of the discussion paper under Subsection (1) is published on its public register and is generally available to the public.

(3) NICTA may publish a notice that it has issued a discussion paper in whatever way it thinks appropriate, including by direct notification to particular ICT licensees or persons that have expressed interest.

### **233. CONDUCT OF A PUBLIC INQUIRY.**

(1) NICTA may, for the purposes of a public inquiry, obtain information from such persons, and make such inquiries, as it thinks fit.

(2) NICTA shall provide a reasonable opportunity for any member of the public to make a written submission.

(3) In connection with a public inquiry, NICTA may give one or more notices under Section 246.

#### **234. HEARINGS.**

(1) NICTA may hold hearings for the purposes of a public inquiry including, without limitation –

(a) in order to receive submissions about the matter to which the inquiry relates; and/or

(b) in order to provide a forum for public discussion of issues relevant to that matter.

(2) A hearing or a part of a hearing before NICTA may be held in private if -

(a) an interested person so requests and NICTA is satisfied that the evidence or information to be provided by the person is of a confidential nature; or

(b) NICTA considers that it is otherwise desirable to do so.

(3) NICTA may regulate the conduct of the proceedings at a hearing as it thinks appropriate.

#### **235. REPORT ON AN INQUIRY.**

(1) If NICTA holds a public inquiry, NICTA shall publish a report setting out its findings as a result of the public inquiry.

(2) If the public inquiry was held because of a direction given by the Minister, NICTA shall give a copy of the report to the Minister before it publishes it under Subsection (1).

#### **236. PROTECTION FROM CIVIL ACTION.**

Civil proceedings shall not lie against a person in respect of any loss, damage or injury of any kind suffered by another person because of the making in good faith of a statement, or the giving in good faith of a document or information, to NICTA in connection with a public inquiry under this Part, whether or not the statement is made, or the document or information is given, in connection with a written submission or a public hearing.

#### **237. PUBLICATION OF REPORT.**

NICTA shall have regard to the commercial interest of any person to whom the information relates before publishing any information pursuant to Section 43(2) or Section 235.

*Division 4. — Investigations.*

**238. MATTERS NICTA MAY INVESTIGATE.**

(1) NICTA may investigate –

(a) any matter relating to NICTA's functions under this Act or the conduct of an ICT licensee; or

(b) any matter that may involve a contravention of this Act or a mandatory instrument; or

(c) any matter relating to the supply of or failure to supply, an ICT service; or

(d) any other matter relating to the subject matter or objective of this Act.

(2) NICTA shall not conduct an investigation where it thinks that the subject matter of the investigation would not be a matter relevant to the performance of any of its functions.

**239. COMPLAINTS.**

(1) A person may complain to NICTA about a matter of a kind referred to in Section 238.

(2) A complaint may be made in writing or orally.

(3) NICTA may investigate a matter of a kind referred to in Section 238 in response to a complaint.

**240. MATTERS NICTA SHALL INVESTIGATE.**

NICTA shall investigate –

(a) a matter of a kind referred to in Section 238; or

(b) any other matter concerning the supply of ICT services or the ICT industry,

where the Minister requests NICTA so to investigate.

**241. CONDUCT OF INVESTIGATIONS.**

(1) NICTA may conduct an investigation under this Division in such manner as NICTA thinks fit.

(2) In connection with an investigation, NICTA may give a notice under Section 246.

(3) NICTA may, for the purposes of an investigation, obtain information from such persons, and make such inquiries, as it thinks fit.



(4) Where a person has made a complaint under Section 239 -

(a) it is not necessary for a complainant or a respondent to a complaint to be afforded an opportunity to appear before NICTA in connection with an investigation; and

(b) NICTA shall not, as a result of the investigation, make a finding that is adverse to a complainant or a respondent unless it has afforded the complainant or respondent an opportunity to make submissions in relation to the matter to which the investigation relates.

(5) Where NICTA decides not to investigate, or not to investigate further, a matter to which a complaint relates, it shall, as soon as practicable and in such manner as it thinks fit, inform the complainant of the decision and of the reasons for the decision.

#### **242. REPORT ON INVESTIGATION.**

(1) NICTA shall publish a report in its public register setting out its findings as a result of any investigation it conducts. It shall publish the report promptly following the conclusion of the investigation.

(2) If the investigation was held because of a direction given by the Minister, NICTA shall give a copy of the report to the Minister before it publishes it under Subsection (1).

(3) Subject to Section 44, the report under Subsection (1) shall cover –

(a) the conduct of the investigation concerned; and

(b) any findings that NICTA has made as a result of the investigation; and

(c) the evidence and other material on which those findings were based; and

(d) such other matters relating to, or arising out of, the investigation as NICTA thinks fit.

#### **243. PUBLIC REGISTER OF INFORMATION ABOUT INVESTIGATIONS.**

Subject to Section 44, NICTA shall as soon as practicable publish on its public register details of its investigations under this Part, setting out -

(a) a short summary of the nature of the matter; and

(b) the names of the persons (if any) to whom the matter relates; and

(c) the date on which the investigation began; and

(d) the date on which the investigation ended; and

(e) a summary of the outcome of the investigation.

#### **244. DIRECTIONS FOR CONTRAVENTIONS.**

(1) This Section applies where, as a result of an investigation under this Part, NICTA is satisfied that a person has contravened a requirement of this Act or a mandatory instrument.

(2) Where NICTA is satisfied that the contravention consists of –

(a) failure to do an act required by this Act or a mandatory instrument, NICTA may direct the person in writing to do that act; or

(b) conduct prohibited by this Act or a mandatory instrument, NICTA may direct the person in writing –

(i) to stop engaging in that conduct; or

(ii) not to engage in it again,

(c) or both, as the case requires.

(3) NICTA may give a direction under Subsection (2)(b) whether or not it appears that the person intends to continue to engage in that conduct or to engage in it again.

(4) A direction under Subsection (2) may also direct the person to do specified acts that NICTA thinks necessary to help remedy the contravention.

(5) Any person receiving a direction from NICTA under Subsection (2) shall comply with the direction.

#### **245. PROTECTION FROM CIVIL ACTION.**

Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person because of any of the following acts done in good faith -

(a) the making of a complaint under Section 239; or

(b) the making of a statement to, or the giving of a document or information to, NICTA in connection with an investigation under Section 241.

#### ***Division 5. — NICTA Information Gathering Powers.***

#### **246. POWER TO OBTAIN INFORMATION.**

(1) This Section applies to any person if NICTA has reason to believe that the person –

(a) has any information (including but not limited to accounts and records) or any document that is relevant to the performance of NICTA's powers and functions under this Act; or

(b) is capable of giving any evidence which NICTA has reason to believe is relevant to the performance of NICTA's powers and functions under this Act.

(2) Notwithstanding the provisions of any other written law, NICTA may, by a written notice, direct any person –

(a) to give NICTA, within the period and in the manner and form specified in the notice, any such information; or

(b) to produce to NICTA, within the period and in the manner specified in the notice, any such documents, whether in a physical form or in an electronic media; or

(c) to make copies of any such documents and to produce those copies to NICTA within the period and in the manner specified in the notice; or

(d) if the person is an individual, to appear, at a private hearing, before NICTA at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents, whether in a physical form or in an electronic media; or

(e) if the person is a body corporate or a public body, to cause a competent officer of the body to appear, at a private hearing, before NICTA at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents, whether in a physical form or in an electronic media; or

(f) if the person is a partnership, to cause an individual who is a partner in the partnership or an employee of the partnership to appear, at a private hearing, before NICTA at a time and place specified in the notice to give any such evidence, either orally or in writing, and produce any such documents, whether in a physical form or in an electronic media.

(3) NICTA shall allow the person so directed under Subsection (2) a reasonable time to give and to produce any information and/or documents specified in the notice.

(4) Any person directed to provide information under Subsection (2) shall comply with the written direction and ensure that the information provided pursuant to the written direction is true, accurate and complete. The person shall provide to NICTA representation to that effect, including a representation that he is not aware of any other information which would make the information provided untrue or misleading.

(5) This Section does not require a person to produce a document that would disclose information that is the subject of legal professional privilege.

(6) A person is not excused from furnishing information or producing a document in pursuance of this Section on the ground that the information or document may tend to incriminate the person, but such information or document is not admissible in evidence against the person in criminal proceedings other than proceedings under, or arising out of, this Section.

#### **247. OFFENCE FOR NON-COMPLIANCE.**

A person who fails to comply with a lawful direction of NICTA under this Part is guilty of an offence.

Penalty — In the case of an individual, a fine not exceeding K100,000.00 for a first offence or, for a subsequent offence, the greater of K500,000.00 or three (3) times the value of the benefit that the individual has obtained directly or indirectly from the contravention.

Penalty — In the case of a body corporate, a fine not exceeding K1,000,000.00 for the first offence, or, for a subsequent offence, the greater of K2,000,000.00 or three (3) times the value of the benefit that the body corporate has obtained directly or indirectly from the contravention.

#### **248. OFFENCE FOR GIVING FALSE OR MISLEADING INFORMATION, EVIDENCE OR DOCUMENT, ETC.**

A person who fails to disclose or omits to give any relevant information or evidence or document, or provides information or evidence or document that he knows or has reason to believe is false or misleading, in response to a lawful direction issued by NICTA, is guilty of an offence.

Penalty — In the case of an individual, a fine not exceeding K100,000.00 for a first offence or, for a subsequent offence, the greater of K500,000.00 or three (3) times the value of the benefit that the individual has obtained directly or indirectly from the contravention.

Penalty — In the case of a body corporate, a fine not exceeding K1,000,000.00 for the first offence, or, for a Subsequent offence, the greater of K2,000,000.00 or three (3) times the value of the benefit that the body corporate has obtained directly or indirectly from the contravention.

#### **249. PROOF OF COMPLIANCE.**

(1) A person shall, if at any time called upon in writing by NICTA to do so, produce to NICTA all such evidence and provide all such information as the person may have relating to his compliance with any of the provisions of this Act or a mandatory instrument, as NICTA may generally, or in relation to any particular case, require.

(2) Subsection (1) shall not affect any other power conferred on NICTA under this Act.

## **250. NICTA MAY RETAIN DOCUMENTS.**

- (1) NICTA may take, and retain for as long as is necessary, possession of a document produced under this Part.
- (2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by NICTA to be a true copy.
- (3) Notwithstanding the provisions of any other written law, the certified copy shall be received by all courts and tribunals as evidence as if it were the original.
- (4) Until a certified copy is supplied, NICTA shall, at such times and places as NICTA thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document.

### *Division 6. — Record-Keeping Rules.*

## **251. NICTA MAY MAKE RECORD-KEEPING RULES.**

- (1) NICTA may make rules for and in relation to requiring one or more specified ICT licensees to keep and retain records of any information, to be known as "record keeping rules".
- (2) The record keeping rules may specify the manner and form in which the records are to be kept.
- (3) NICTA shall not exercise its powers under this Section so as to require the keeping or retention of records unless the records contain, or will contain, information that is relevant to the performance of a function, or the exercise of a power, conferred by or under this Act.

## **252. COMPLIANCE WITH RECORD-KEEPING RULES.**

- (1) An ICT licensee shall comply with any record keeping rules under Section 251 that are applicable to the ICT licensee.
- (2) An operator licensee that does not comply with any record keeping rules under Section 251 that are applicable to the ICT licensee is guilty of an offence.

## **253. INCORRECT RECORDS.**

- (1) A person shall not, in purported compliance with a requirement imposed by the record keeping rules, make a record of any matter or thing in such a way that it does not correctly record the matter or thing.
- (2) A person who contravenes Subsection (1) is guilty of an offence.

## **PART XIII. — APPEALS.**

### ***Division 1. — Simplified Outline.***

#### **254. SIMPLIFIED OUTLINE.**

The following is a simplified outline of this Part -

(a) Certain decisions of NICTA may be reviewed by the ICT Appeals Panel. The ICT Appeals Panel is constituted from members of the Panel of Experts established under the ICC Act.

(b) The ICT Appeals Panel shall be comprised of single member who will be an International Arbitrator or a resident member, depending on the matter the subject of the application for review. The International Arbitrator must be a person with international experience in the operation and administration of an economic regulatory regime and a non-resident of Papua New Guinea.

(c) The International Arbitrator may determine that certain applications warrant that the ICT Appeals Panel should be constituted by two members, the International Arbitrator and a resident member.

(d) The review provides a rehearing of the decision of NICTA with a streamlined process which precludes introduction of new evidence and requires decisions to be handed down within a prescribed time period.

(e) No actions may be taken in Court from a decision of NICTA until the ICT Appeals Panel process is first exhausted. Judicial review is only available after a person has first exhausted all other remedies provided under this Act.

### ***Division 2. — ICT Appeals Panel.***

#### **255. ICT APPEALS PANEL.**

(1) Where an application for review is made under Section 258 the ICT Appeals Panel shall be constituted -

(a) in respect of a decision specified in Subsection 256(c) and (d) by –

(i) the International Arbitrator (as presiding member) and resident member, sitting together; or

(ii) if the International Arbitrator determines that the dispute does not warrant two (2) members of the ICT Appeals Panel, by the International Arbitrator alone; or

(b) in respect of any other decision, by the resident member alone.

(2) In determining whether the dispute does not warrant two (2) members of the ICT Appeals Panel, the International Arbitrator shall have regard to –

(a) the desirability of increasing knowledge and expertise of Papua New Guinea citizens in the operation and administration of an economic regulatory regime by including the resident member; and

(b) whether the incremental cost of involving the resident member is appropriate if the dispute is minor or of minimal complexity.

(3) The ICT Appeals Panel shall immediately notify the applicant of the person(s) who constitute the ICT Appeals Panel. The date of that notification will be the date the ICT Appeals Panel is constituted.

(4) If a resident member is required to sit on the ICT Appeals Panel, the resident member shall be the person selected by the chairman of the Panel of Experts as the resident member from the current Panel of Experts.

#### **256. REVIEW BY THE ICT APPEALS PANEL.**

An application may be made to the ICT Appeals Panel for review of the following decisions of NICTA –

(a) in respect of an individual licence –

(i) to make or vary rules setting out terms and conditions under Section 55; or

(ii) to refuse an application under Section 56; or

(iii) to refuse to renew under Section 57; or

(iv) to vary terms and conditions under Section 58; or

(v) to suspend or revoke under Section 60; or

(b) in respect of a class licence –

(i) to make or vary rules setting out terms and conditions under Section 63; or

(ii) to refuse to register under Section 65; or

(iii) to deregister under Section 66; or

(c) in respect of wholesale services –

- (i) to make or not to make a recommendation under Section 129; or
  - (ii) to make, amend or revoke a determination under Section 133; or
  - (iii) to make, amend or revoke a determination under Section 135; or
  - (iv) to grant (including on any conditions) or to decline to grant an access exemption under Section 139; or
  - (v) to accept or reject a Reference Interconnect Offer under Section 142, including if such acceptance is deemed; or
  - (vi) a final determination under Section 147 (including in a dispute notified under Sections 87 or 186); or
- (d) in respect of a retail service determination, to make or not to make a recommendation under Section 159; or
- (e) in respect of a radiocommunications licence –
- (i) to refuse an application under Section 171; or
  - (ii) to vary, suspend or cancel under Section 171; or
- (f) in respect of a cabling licence –
- (i) to refuse an application under Section 201; or
  - (ii) to vary the terms and conditions under Section 202; or
  - (iii) to cancel under Section 207; or
- (g) to issue a desist notice under Section 280; or
- (h) any other decisions of NICTA made pursuant to regulations that are prescribed in the regulations to be subject to review by the ICT Appeals Panel.

## **257. STANDING.**

(1) A person whose interests are affected by a decision of NICTA of a kind specified in Section 256, may bring an application for review of the decision to the ICT Appeals Panel.

(2) The Minister may intervene, personally or by counsel or other representative, in a review under this Part for the purpose of introducing evidence, or making submissions, on any question relevant to the public interest.



(3) If the ICT Appeals Panel is satisfied that a person applying under Subsection (1) has a sufficient interest, the ICT Appeals Panel shall review the decision.

## **258. APPLICATION FOR REVIEW.**

(1) An application for review of a decision of NICTA shall –

(a) be in writing; and

(b) be accompanied by –

(i) where the applicant is an individual, a bank cheque in the amount of K500; and

(ii) where the applicant is a body corporate, a bank cheque in the amount of K5,000;

(c) set out the decision or part of the decision to which the application relates; and

(d) set out in detail the grounds on which the applicant seeks review and the decision sought on the review; and

(e) be lodged with the ICT Appeals Panel within twenty (20) days after written notice of the decision is given to the applicant, or in the case of any deemed decision within ten (10) days after the decision is deemed to have been made, or such longer period as the Appeals Panel as constituted under Section 255 may allow; and

(f) be provided to any other person directly affected by the application.

(2) The Chairman of the Panel of Experts shall –

(a) organize for the ICT Appeals Panel to be constituted under section 255; and

(b) for the application fee to be offset against the costs of the ICT Appeals Panel.

## **259. PROCEDURE.**

(1) The ICT Appeals Panel shall –

(a) give a copy of the application to NICTA and to any other person directly affected by the application; and

(b) invite them to join as a party to the review and make submissions on the matter the subject of the review in a manner within the period specified by the ICT Appeals Panel; and

(c) subject to Section 260, invite all parties (including the applicant) to make initial

submissions on the matter the subject of the review within the period specified by the ICT Appeals Panel, accompanied by any documentary information, additional material or evidence, as permitted by Section 260, that they consider should be taken into account by the ICT Appeals Panel in the review; and

(d) ensure that all parties have an equivalent time to make initial submissions; and

(e) ensure that each party has an opportunity to review and respond to any initial submissions made by any other party.

(2) The ICT Appeals Panel may stay the operation of the decision or recommendation of NICTA to which the application relates.

(3) If a decision of NICTA is stayed under Subsection (2) –

(a) the ICT Appeals Panel shall cause notice of the stay of the decision –

(i) to be given to NICTA; and

(ii) to be published in the National Gazette.

(b) NICTA shall publish the notice of the stay of the decision on its public register.

(4) A review shall be decided within sixty (60) days of the ICT Appeals Panel being constituted under Section 255 or such longer period, not exceeding thirty (30) days, as the ICT Appeals Panel specifies.

(5) If the ICT Appeals Panel fails to decide a review within the total period permitted by Subsection (4) the applicant may apply to the National Court for an order that the ICT Appeals Panel decide the review.

(6) Where two (2) members of the ICT Appeals Panel have been appointed, the members shall attempt to reach a consensus decision failing which the decision of the International Arbitrator shall be the decision of the ICT Appeals Panel on the application for review.

## **260. NATURE OF THE REVIEW.**

(1) A review by the ICT Appeals Panel shall be by way of rehearing and, subject to Subsection (2), must be conducted solely on the basis of the documentary information and views that were before NICTA when it made its determination.

(2) The ICT Appeals Panel may grant leave to a party to introduce additional material or evidence that was not available to NICTA but only by way of material or evidence that updates the information before NICTA with new facts up until the date of the ICT Appeals Panel hearing.

(3) The ICT Appeals Panel shall not be bound by the rules of evidence and may adopt such procedures it sees fit.

## **261. DECISION OF THE ICT APPEALS PANEL.**

(1) After considering the application, the ICT Appeals Panel may either -

(a) affirm or vary the original decision or any part thereof; or

(b) set aside the original decision and return the matter to NICTA with such directions as the ICT Appeals Panel considers appropriate.

(2) Where the ICT Appeals Panel returns the matter to NICTA under Subsection (1)(b), NICTA shall make a fresh decision in accordance with the ICT Appeals Panel's directions, including any directions in relation to the retrospective effect of the fresh decision to be made.

(3) In making its decision, the ICT Appeals Panel is to have regard to the desirability for consistency with previous decisions of the ICT Appeals Panel.

(4) The ICT Appeals Panel may make interim or final orders, including any other order it thinks fit to make. An order of the ICT Appeals Panel must be complied with by any person to whom it is directed in accordance with its terms.

(5) Subject to Section 263, any decision by the ICT Appeals Panel is final and binding on the parties to the appeal and is not subject to further appeal.

(6) The ICT Appeals Panel shall give the parties written notice of its decision and the reasons for the decision.

(7) The costs of the ICT Appeals Panel in a review of a decision of NICTA referred to in Section 256 shall be borne by the parties to the review, as determined by the ICT Appeals Panel.

## **262. PUBLICATION.**

(1) Subject to Subsection (2), NICTA shall publish any decision of the ICT Appeals Panel under Section 259 and the reasons for the decision and shall endeavour to do so by removing any information required by Subsection (2) not to be disclosed.

(2) NICTA shall not publish any information or any part of any information disclosed to it if the publication would –

(a) disclose a matter it determines to be of a confidential character; or

(b) involve the unreasonable disclosure of personal information about any individual.

## **263. APPLICATION TO THE NATIONAL COURT.**

(1) A person whose interests are affected by a decision or other action of NICTA, the ICT Appeals Panel or the Minister under this Act or a mandatory instrument may apply to the National Court only on a question of law.

(2) If a person applies to the National Court under Subsection (1) in respect of a decision of the ICT Appeals Panel, the Court shall not, unless it is satisfied that there are special or exceptional circumstances, make any orders staying or otherwise affecting the operation or implementation of the decision pending the finalisation of the application.

(3) A person shall not apply to the National Court under Subsection (1) unless that person has first exhausted all other remedies provided under this Act.

#### **PART XIV. — OFFENCES, PENALTIES AND ENFORCEMENT.**

##### *Division 1. — Simplified Outline.*

#### **264. SIMPLIFIED OUTLINE.**

The following is a simplified outline of this Part -

(a) Criminal offences are prescribed for certain activities relating to ICT services;

(b) NICTA may prosecute criminal proceedings for offences created by this Act in consultation with and with the consent of the Public Prosecutor.

(c) Non-criminal proceedings may also arise in relation to certain conduct in contravention of this Act and mandatory instruments for which NICTA may seek remedies, including injunctions and pecuniary penalties.

(d) NICTA may issue non-binding warnings and binding desist orders if it has reasonable grounds to believe that a person is contravening the Act or a mandatory instrument.

##### *Division 2. — Criminal Offences and Penalties.*

#### **265. NO OPERATOR LICENCE.**

A person who intentionally contravenes any of Sections 49, 50 or 51 is guilty of an offence.

Penalty — In the case of an individual, a fine not exceeding K500,000.00 for a first offence or, for a subsequent offence, the greater of K1,000,000.00 or three (3) times the value of the benefit that the individual has obtained directly or indirectly from the contravention.

Penalty — In the case of a body corporate, a fine not exceeding K2,000,000.00 for the

first offence, or, for a subsequent offence, the greater of K10,000,000.00 or three (3) times the value of the benefit that the body corporate has obtained directly or indirectly from the contravention.

## **266. IMPROPER USE OF ICT SERVICES.**

A person who, by means of an ICT service –

(a) sends any content or communication that the person knows is offensive or of an indecent, obscene or menacing character; or

(b) for the purpose of causing annoyance, inconvenience or needless anxiety to another person –

(i) sends any content or communication, that he knows to be false; or

(ii) persistently makes use of that ICT service with that intended purpose,

is guilty of an offence.

Penalty – A fine not exceeding K20,000.00 or to imprisonment for a term not exceeding three (3) months or both.

## **267. PROTECTION OF COMMUNICATIONS.**

(1) Subject to this Section, a person engaged in supplying an ICT service, who –

(a) intentionally intercepts a communication sent by means of that ICT service; or

(b) uses, discloses or records any communication or content sent via an ICT service or any information relating to the ICT services provided to another person, that had come to that person's knowledge or to which they had access, by reason of their position as an ICT licensee or as an employee, agent or contractor of an ICT licensee; or

(c) intentionally modifies or interferes with any communication or content sent via an ICT service, without the consent of the person to whom the communication was sent,

is guilty of an offence.

Penalty — In the case of an individual, a fine not exceeding K10,000.00.

Penalty — In the case of a body corporate, a fine not exceeding K100,000.00 for the first offence, or K500,000.00 for a subsequent offence.

(2) Nothing in this Section prevents an ICT licensee or any of its employees or agents from withholding any content which the ICT licensee considers to be -

- (a) indecent or abusive; or
- (b) in contravention of any law of Papua New Guinea; or
- (c) of a nature likely to endanger or compromise public order or national security.

(3) Subsection (1) does not apply to anything done -

- (a) in the proper course of a person's duty;
- (b) in obedience of any order of the National Court; or
- (c) which is required or authorised by the law of Papua New Guinea; or
- (d) in relation to Subsections (1)(a) or (b), with the consent of all persons to whom the communication or information relates; or
- (e) to preserve the integrity of a network; or
- (f) to reasonably protect against dangerous conduct.

## **268. PROTECTION OF COMMUNICATIONS FACILITIES.**

(1) A person who –

(a) damages, removes, or tampers with, any facility that is maintained, owned or made available by a network licensee; and

(b) has the intention to, or does so with reckless disregard that it may –

(i) prevent, obstruct or impede the transmission or delivery of communications sent via an ICT service; or

(ii) otherwise cause mischief,

is guilty of an offence.

Penalty – A fine not exceeding K200,000.00 or, on indictment, to imprisonment for a term not exceeding fifteen (15) years or both.

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

- (a) in the proper course of a person's duty;
- (b) in obedience of any order of the National Court; or

(c) which is required or authorized by the law of Papua New Guinea.

(3) In determining the quantum of any penalty under this Section, the National Court shall take into account (without limitation) –

(a) the magnitude of any loss or damage caused; and

(b) the relative seriousness of the conduct; and

(c) the importance of deterring any vandalism of core network infrastructure the long term outage of which would cause material harm contrary to the objective of this Act.

#### **269. CRIMINAL LIABILITY OF DIRECTORS, OFFICERS ETC, OF BODIES CORPORATE.**

Where a body corporate commits an offence under this Act or a mandatory instrument, any director, officer, employee or agent of the body corporate who directed, authorised, assented to or acquiesced or participated in the commission of the offence shall be a party to and guilty of the offence, and shall be liable to the punishment provided for that offence in respect of an individual, whether or not the body corporate has been prosecuted or convicted.

#### **270. GENERAL PENALTY, ETC.**

(1) Unless otherwise specified in this Act, the penalty for an offence against this Act or a mandatory instrument is a fine not exceeding K100,000.00 or imprisonment for a term not exceeding two (2) years or both.

(2) In addition to any other punishment that it may impose, the National Court may, if it thinks fit, order the forfeiture of any money or goods in respect of which an offence against this Act has been committed.

#### **271. NICTA TO PROSECUTE OFFENCES.**

With respect to offences created by this Act or any mandatory instrument, NICTA may, in consultation with and with the consent of the Public Prosecutor –

(a) control and exercise the prosecution function of the State; and

(b) provide counsel –

(i) to prosecute persons charged with any offence; and

(ii) to appear on behalf of the State in any appeal before the National or Supreme Court.

## **272. PROSECUTIONS UNDER OTHER LAWS.**

Nothing in this Act shall prevent any person from being prosecuted under any other written law for any act or omission which constitutes an offence under this Act or any mandatory instrument, or from being liable under that other written law to any punishment or penalty higher or other than that prescribed by this Act or mandatory instrument, but no person shall be punished more than once for the same offence.

## **273. COMPENSATION AND COSTS.**

(1) Where a person is convicted of an offence against this Act and as a consequence directly or indirectly of the commission of that offence any other person (including the State) has suffered damage or injury or has incurred expenses, that other person may make an application to the Court for an award for damages or compensation in respect of that damage or injury or expenses, and the Court may make an order accordingly.

(2) An application to the Court under Subsection (1) may be made at the conclusion of the prosecution of the offence, or to the same Court not later than thirty (30) days after the person is convicted.

(3) In an action under this Section, the Court may, where it thinks fit, order that person to -

(a) pay NICTA any reasonable costs and expenses that NICTA has incurred in any investigation of the offence; and

(b) pay NICTA the costs of prosecuting the matter where it considers that it would be just in the circumstances to make the order; and

(c) pay an amount of compensation to any persons (including the State) who, because of the commission of the offence, suffered loss of income, loss or damage to property or incurred costs; and

(d) lodge a bond or equivalent security.

(4) Costs and compensation recoverable under this Section are a civil debt and an action may be taken by the person in whose favour the order was made to recover the debt.

### ***Division 3. — Pecuniary Penalties and Damages.***

## **274. PECUNIARY PENALTIES FOR CONTRAVENTIONS OF THE ACT.**

(1) Subject to Subsection (2), where the National Court is satisfied that a person has contravened a provision of this Act or a mandatory instrument, not being an offence against this Act or a mandatory instrument, the Court may order that the person pay to the State such pecuniary penalty as the National Court determines appropriate having regard to all relevant matters including –



(a) the nature and extent of the contravention and of any loss or damage suffered as a result of the contravention; and

(b) the circumstances in which the contravention took place; and

(c) whether the person has previously been found by the National Court in proceedings under this Act to have engaged in any similar conduct.

(2) The pecuniary penalty payable pursuant to Subsection (1) –

(a) by an individual, shall not exceed K20,000.00 for a first contravention or, for a subsequent contravention, the greater of K50,000.00 or three (3) times the value of the benefit that the individual has obtained directly or indirectly from the contravention; and

(b) by a body corporate, shall not exceed –

(i) in the case of a contravention of a term or condition of an ICT licence or the obligations set out in Section 138, Section 147 and Section 162, the greater of K2,000,000.00 or three (3) times the value of the benefit that the body corporate has obtained directly or indirectly from the contravention; or

(ii) in any other case, K200,000 for a first contravention or, for a subsequent contravention, K500,000.00.

(3) Where the conduct involves multiple contraventions of Subsection (1), a proceeding may be instituted under this Section against a person in relation to each contravention, but the person is not liable to more than one pecuniary penalty under this Section in respect of the same conduct.

## **275. CIVIL ACTION FOR-RECOVERY OF PECUNIARY PENALTIES.**

(1) NICTA may apply to the National Court to recover on behalf of the State a pecuniary penalty referred to in Section 274.

(2) The standard of proof in proceedings under Subsection (1) is the standard of proof applying in civil proceedings.

(3) A proceeding under Subsection (1) must be commenced within three (3) years after the relevant contravention concerned.

(4) Any pecuniary penalties payable under this Act are to be paid into the Consolidated Revenue Fund to defray the expenditure of the State and are not a permitted source of funding for NICTA under Section 32.

## **276. REMEDIES MAY BE PURSUED AT THE SAME TIME.**

(1) Nothing in Section 281 prevents the recovery of a pecuniary penalty under Section 275.

(2) Nothing in Section 274 prevents the making of an application, or the granting of relief, under Section 281.

#### **277. ACTION FOR DAMAGES.**

(1) Where a person has engaged, or is proposing or is likely to engage in conduct that involves or would involve a contravention of this Act or a mandatory instrument, an ICT licensee may apply to the National Court for relief.

(2) The relief that may be granted under this Section includes an injunction, and, at the applicant's option, either damages or an account of profits.

(3) Section 281 applies to an application under this Section.

#### **278. CRIMINAL LIABILITY.**

(1) Criminal proceedings do not lie against a body corporate or an individual merely because they have contravened this Act or a mandatory instrument.

(2) A mandatory instrument must not specify an offence unless this Act permits it to do so.

### ***Division 4. — Enforcement and Remedies.***

#### **279. WARNINGS.**

(1) NICTA may issue a written warning to a person if NICTA has reasonable grounds to believe that the person -

(a) has contravened, or is acting in contravention of, or is likely to contravene, this Act or any mandatory instrument that applies to that person; or

(b) has engaged, is engaging, or is likely to engage, in dangerous conduct.

(2) Any warning issued to a person under this Section must summarise the key grounds for NICTA's reasonable belief and the immediate steps that must be taken by that person to address NICTA's concerns.

(3) NICTA is not required to issue a warning before it avails itself of any other remedies in this Division.

#### **280. DESIST ORDERS.**

(1) NICTA may issue a desist order against a person if NICTA has determined that the person -

(a) has contravened, or is acting in contravention of, this Act or any mandatory instrument that applies to that person; or

(b) has engaged, or is engaging, in dangerous conduct.

(2) Before issuing a desist order, NICTA shall serve notice on the person to whom the desist order will be directed –

(a) stating the facts constituting the alleged activity and where appropriate, the name of the person against whom the allegation is made; and

(b) specifying the period within which and a place at which a hearing is to be held to provide the person concerned an opportunity to show good cause why the desist order should not be made.

(3) NICTA shall consider any representations made at the hearing referred to in Subsection (2)(b) and –

(a) where NICTA considers, that the person concerned fails to show good cause why the desist order should not be made, NICTA may issue the desist order; or

(b) if NICTA is satisfied that the alleged activity did not occur, NICTA shall not issue the desist order.

(4) A desist order under Subsection (1) must –

(a) contain a statement of the facts referred to in Subsection (2)(a); and

(b) require the person at whom the desist order is directed to desist from the conduct giving rise to the desist order; and

(c) be accompanied by documents in support of the allegation; and

(d) be served on the person who is the subject of the order.

(5) Upon receipt of a desist order from NICTA, the person to whom the desist order is directed shall comply with the desist order.

(6) NICTA is not required to issue a desist order before it avails itself of any other remedies in this Division.

## **281. INJUNCTIONS.**

(1) This Section applies where a person –

(a) has contravened, or is acting in contravention of, or is likely to contravene, this Act or

any mandatory instrument that applies to that person; or

(b) has engaged, is engaging, or is likely to engage, in dangerous conduct.

(2) NICTA or the Minister or any person may apply to the National Court for -

(a) in a case in which Subsection (1)(a) applies—an interim injunction, an injunction, a declaration, or any combination of these; or

(b) in a case to which Subsection (1)(b) applies—an interim injunction or an injunction or both.

(3) Where NICTA or the Minister applies under this Section for an interim injunction or injunction, the National Court shall not require the applicant or any other person, as a condition of granting an interim injunction or injunction, to give an undertaking as to damages.

## **282. VICARIOUS LIABILITY.**

Any conduct engaged in on behalf of a body corporate –

(a) by a director, servant or agent of the body corporate within the scope of the person's actual or apparent authority; or

(b) by any other person at the direction or with the consent or agreement of a director, servant or agent of the body corporate, where the giving of the direction is within the scope of the actual or apparent authority of the director, servant or agent,

shall be deemed, for the purposes of this Act, to have been engaged in also by the body corporate unless the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.

### ***Division 5. — Investigatory Powers.***

## **283. APPOINTMENT OF INSPECTORS.**

(1) The Chief Executive may, by signed notice, appoint members of the staff of NICTA, or such other persons as NICTA shall determine (including, for example, forensic computer experts), to be inspectors for the purposes of this Act.

(2) The Chief Executive shall cause the notice appointing persons to be inspectors under Subsection (1) to be published in the National Gazette.

## **284. AUTHORITY OF INSPECTORS.**

(1) The Chief Executive of NICTA shall issue to each person appointed under Section 283 an identity card that specifies the name and appointment of the person and to which is attached a

recent photograph of the person.

(2) A person, appointed under Section 283, who, upon ceasing to be an inspector, fails, without reasonable excuse, to return to the Chief Executive the identity card issued to him under this Section, is guilty of an offence.

Penalty — A fine not exceeding K1,000.00.

## **285. IMPERSONATION OF INSPECTORS.**

A person shall not impersonate, hold himself out to be, or represent himself to be, an inspector under this Act unless that person has been appointed as an inspector under Section 283 and has not ceased to be an inspector.

Penalty — A fine not exceeding K20,000.00.

## **286. SEARCHES TO MONITOR COMPLIANCE WITH ACT, ETC.**

(1) Subject to Subsections (2) and (3), an inspector may, to the extent that it is reasonably necessary for the purpose of ascertaining whether this Act and any mandatory instrument has been complied with, enter, at any time during the day or night, any premises that the inspector has reasonable cause to believe are premises to which this Section applies and –

(a) search the premises; or

(b) inspect and take photographs, or make sketches, of the premises or any substance or thing at the premises; or

(c) inspect any book, record or document kept at the premises; or

(d) require persons to decrypt or provide password access to any document; or

(e) remove, or make copies of, any such book, record or document.

(2) An inspector may not, under Subsection (1), enter premises that are a residence unless the occupier of the premises has consented to the entry.

(3) An inspector is not entitled to exercise any powers under Subsection (1) in relation to premises where –

(a) the occupier of the premises has required the inspector to produce –

(i) his identity card for inspection by the occupier; and

(ii) a written notice signed by a Member authorising the person to undertake the search and stating the grounds for that search; and

(b) the inspector fails to comply with these requirements.

(4) This Section applies to premises at which -

(a) activities that are the subject of regulation under this Act are engaged in; or

(b) records relating to any such activities are kept.

### **287. OFFENCE — RELATED SEARCHES AND SEIZURES.**

(1) Where an inspector has reasonable grounds for suspecting that there may be on or in any premises a particular thing that may afford evidence as to the commission of an offence to which this Section applies, the inspector may –

(a) with the consent of the occupier of the premises; or

(b) under a warrant issued under Subsection (2);

enter the premises and –

(c) search the premises for the thing; and

(d) where the inspector finds the thing on or in the premises and that thing is described in the warrant—seize the thing.

(2) Where an information on oath is laid before a Magistrate of a District Court alleging that there are reasonable grounds for suspecting that there may be on or in any premises a particular thing that may afford evidence as to the commission of an offence to which this Section applies and the information sets out those grounds, the Magistrate may issue a search warrant in accordance with the form prescribed for the purposes of this Subsection authorising an inspector named in the warrant, with such assistance, and by such force, as are necessary and reasonable, to enter the premises and exercise the powers referred to in Subsections (1)(c) and (d) in respect of the thing.

(3) A Magistrate shall not issue a warrant under Subsection (2) unless –

(a) the informant or some other person has given to the Magistrate, either orally or by affidavit, such further information (if any) as the Magistrate requires concerning the grounds on which the issue of the warrant is being sought; and

(b) the Magistrate is satisfied that there are reasonable grounds for issuing the warrant; and

(c) if seizure of a thing is contemplated, the seizure of that thing will not disrupt the legitimate supply of ICT services pursuant to an operator licence or radiocommunications

licence.

(4) There shall be stated in a warrant issued under Subsection (2) –

(a) the purpose for which the warrant is issued, and the nature of the offence in relation to which the entry, search and seizure are authorised; and

(b) whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and

(c) a description of the kind of things to be seized; and

(d) a day, not being later than one week after the day of issue of the warrant, upon which the warrant ceases to have effect.

(5) Where in the course of searching, under a warrant issued under this Section, for a particular thing in relation to a particular offence, an inspector finds a thing that the inspector believes, on reasonable grounds, to be –

(a) a thing that will afford evidence as to the commission of the offence, although not the thing specified in the warrant; or

(b) a thing that will afford evidence as to the commission of another offence to which this Section applies,

and the inspector believes, on reasonable grounds, that it is necessary to seize that thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the offence or another offence, the warrant is taken to authorise the inspector to seize that thing.

(6) Where an inspector seizes any thing under this Section, the inspector may retain the thing until the end of ninety (90) days after the seizure or, where proceedings for an offence to which this Section applies in respect of which the thing may afford evidence are brought within that period, until the proceedings (including any appeal to a court in relation to those proceedings) are completed.

(7) In this Section, "offences to which this Section applies" means any offence specified in this Act or mandatory instrument.

## **288. POWER TO REQUIRE INFORMATION, ETC.**

(1) Subject to Subsection (2), an inspector who has entered premises under this Division may, to the extent that it is reasonably necessary for the purpose of ascertaining whether an offence to which this Section applies (as defined in Section 287(7)) has been complied with, require a person to answer any questions put by the inspector and to produce any books, records or documents requested by the inspector.

(2) An inspector is not entitled to make a requirement of a person under Subsection (1) unless –

(a) the occupier of the premises has required the inspector to produce –

(i) his identity card for inspection by the occupier; and

(ii) a written notice signed by a Member authorising the person to undertake the search and stating the grounds for that search; and

(b) the inspector fails to comply with these requirements.

(3) A person who, without reasonable excuse, (the burden of proof of which lies on him) refuses or fails to comply with a requirement made of the person under Subsection (1), is guilty of an offence.

Penalty — A fine not exceeding K100,000.00 or imprisonment for a term not exceeding twelve (12) months or both.

## **289. RETENTION OF BOOKS, RECORDS AND DOCUMENTS.**

Where an inspector removes a book, record or document from the premises under Section 286 or seizes a book, record or document under Section 287 or a person produces a book record or document to an inspector in accordance with a requirement under Section 288 -

(a) subject to Subsection (c), the inspector may retain possession of the book, record or document only for such period as is necessary and reasonable for the purpose of ascertaining whether an offence to which this Section applies (as defined in Section 287(7)) has been committed; and

(b) during that period the inspector shall permit a person who would be entitled to inspect the book, record or document if it were not in the inspector's possession to inspect the book, record or document and make a copy of the whole or any part of it (at that person's cost) at all reasonable times; and

(c) if the book, record or document is required by NICTA to prosecute an offence under this Act, the inspector may retain possession of the book, record or document for such further period as is necessary for NICTA to prosecute that offence.

## **290. POWERS OF NATIONAL COURT UNAFFECTED.**

Subject to Section 263, the powers conferred on the National Court under this Act are in addition to, and not instead of, any other powers of the National Court.

### *Division 6. — Miscellaneous.*

## **291. UNENFORCEABILITY OF AGREEMENTS.**



(1) Where an agreement, or a provision of an agreement, is unenforceable because of a provision of this Act or any mandatory instrument, a party to the agreement is not entitled, as against any other party –

(a) to enforce the agreement or provision, as the case may be, whether directly or indirectly; or

(b) to rely on the agreement or provision, as the case may be, whether directly or indirectly and whether by way of defence or otherwise.

(2) A party to an agreement to which Subsection (1) applies is not entitled to recover by any means (including, for example, set-off, a quasi-contractual claim or a claim for a restitution remedy) any amount that, but for this Section, another party would have been liable to pay to the first mentioned party under or in connection with the agreement or provision, as the case may be.

## **292. SERVICE OF NOTICES.**

(1) If –

(a) an operator licensee is unable, after diligent inquiry, to find out who owns particular land; or

(b) an operator licensee is unable to serve a notice under this Act on the owner of land either personally or by post, the operator licensee may serve a notice under this Act on the owner of the land by publishing a copy of the notice in a newspaper circulating in a district in which the land is situated and –

(c) if the land is occupied—serving a copy of the notice on the occupier; or

(d) if the land is not occupied—attaching, if practicable, a copy of the notice to a conspicuous part of the land.

(2) An operator licensee may treat land as unoccupied land if the operator licensee is unable, after diligent inquiry, to find out –

(a) whether particular land is occupied; or

(b) who occupies particular land.

(3) If the operator licensee is unable to serve a notice under this Act on the occupier of land either personally or by post, the operator licensee may serve a notice under this Act on the occupier by –

(a) publishing a copy of the notice in a newspaper circulating in a district in which the land is situated; and

(b) attaching, if practicable, a copy of the notice to a conspicuous part of the land.

(4) Subsection (3) does not affect the operation of any other law of Papua New Guinea that authorises the service of a document otherwise than as provided in this Section.

## **PART XV. — REPEAL, AMENDMENT, SAVING, AND TRANSITIONAL PROVISIONS.**

### ***Division 1. — Repeals, Amendments and Savings.***

#### **293. INTERPRETATION.**

For the purposes of this Part –

"previous Acts" means the *Telecommunications Act 1996* and the *Radio Spectrum Act 1996* and any regulations made under these Acts;

"relevant ICCC functions" means the powers and functions of the ICCC prior to the Succession Date under –

(a) the *Telecommunications Act 1996*; and

(b) in so far as they relate to the ICT industry, Part III of the *Independent Consumer and Competition Commission Act 2002*.

#### **294. REPEAL OF ACTS AND REGULATIONS.**

The following Acts and Regulations are repealed with effect from the Succession Date –

(a) *Telecommunications Act 1996*; and

(b) *Radio Spectrum Act 1996*; and

(c) *Radio Spectrum Regulation 1997*.

#### **295. AMENDMENTS OF OTHER ACTS.**

Each Act that is specified in Schedule 2 to this Act is amended as set out in Schedule 2 to this Act with effect from the Succession Date.

#### **296. SAVING OF EXISTING LICENCES.**

(1) Notwithstanding the repeal of the previous Acts and subject to Subsection (2), during the transition period –

(a) each existing licence shall remain valid and in force in accordance with its terms until that existing licence is replaced by one or more ICT licences or is surrendered under Section 304; and

(b) to the extent that an existing licence authorises an existing licensee to offer ICT services or use spectrum under the previous Acts, that conduct by the existing licensee is not in contravention of this Act.

(2) From the Succession Date, all provisions of existing licences are subject to the provisions of this Act and all existing licensees shall comply with this Act as if they held an ICT licence and were an ICT licensee. This Act prevails to the extent of any inconsistency between the provisions of any existing licence and the provisions of this Act.

#### **297. SAVING OF INSTRUMENTS MADE UNDER THE PREVIOUS ACTS.**

(1) Subject to Subsection (2), any instrument made or given under the previous Acts that was in force immediately before the Succession Date ("existing instrument") continues in force until amended or revoked by NICTA as if it had been made in the same terms by NICTA as an instrument made or given under this Act.

(2) In the event of any inconsistency between –

(a) on the one hand, this Act or any mandatory instrument; and

(b) on the other hand, the terms and conditions of any existing instrument, then this Act or that mandatory instrument, as applicable, shall prevail and the existing instrument shall have no effect to the extent of that inconsistency.

#### **298. TRANSITIONAL SAVING OF CURRENT INDUSTRY STRUCTURE AND PARTICIPATION.**

(1) On and from the Commencement Date, the ICCC shall not issue or grant a general telecommunications licence or public mobile licence under Part VI of the *Telecommunications Act* 1996.

(2) Subject to Subsection (3), on and from the Commencement Date until the Succession Date -

(a) subject to Subsection (1), any new licences, permits or authorities issued or granted by the ICCC or PANGTEL under the previous Acts shall expire no later than 30 June 2010; and

(b) the ICCC and PANGTEL shall not revoke an existing licence or any permit or authority under the previous Acts without the holder of the licence so requesting; and

(c) the ICCC and PANGTEL shall not vary any existing licences, permits or authorities under the previous Acts (including imposing any new licence conditions under a

declaration of conditions of licences under section 63 of the *Telecommunications Act* 1996 or otherwise); and

(d) the ICCC shall not determine a Code of Practice under Section 66 and Section 66A of the *Telecommunications Act* 1996; and

(e) PANGTEL shall not determine a Code of Practice under Section 66B of the *Telecommunications Act* 1996; and

(f) the ICCC shall not make a Code or rules under Section 40 of the *Independent Consumer and Competition Commission Act* 2002 that relate to the ICT industry; and

(g) any determination made by the ICCC under Section 84 of the *Telecommunications Act* 1996 shall be expressed to be an interim decision only and shall expire no later than 30 June 2010; and

(h) any directions by the Appeals Panel under Section 182A(5) of the *Telecommunications Act* 1996, must not be inconsistent with Subsection (2)(g).

(3) Subsection (2) does not apply to any action for which the ICCC or PANGTEL, as the case may be, has obtained the prior written consent of the Minister.

(4) Where a person has made an application for an existing licence under any of the previous Acts which remains pending at the Succession Date, NICTA shall -

(a) reject that application; and

(b) refund, if applicable, any application fee that has been paid by the applicant; and

(c) invite the applicant to submit an application for one or more ICT licences under this Act.

## **299. TRANSITION COMMITTEE.**

On and from the Commencement Date –

(a) the Departmental Head of the Department responsible for communications and information will establish and Chair a transition committee to coordinate the successful transition to the regulatory regime set out in this Act; and

(b) each of NICTA, the ICCC and PANGTEL shall be members of the transition committee and will be represented, in the case of –

(i) NICTA, by a Member of NICTA; and

(ii) ICCC, by the Commissioner of the ICCC; and

(iii) PANGTEL, by the Director-General of PANGTEL; and

(c) each of NICTA, the ICCC and PANGTEL shall authorise and empower their delegate to the transition committee to resolve transitional issues, agree transitional procedures and make transitional decisions on its behalf; and

(d) each of NICTA, the ICCC and PANGTEL shall co-operate, share relevant information and take such actions as are required by the Chair of the transition committee.

### **300. TRANSITIONAL REGULATIONS.**

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters necessary or convenient to enable the successful transition to the regulatory regime set out in this Act.

### **301. AUDIT OF REGULATORY INSTRUMENTS.**

(1) PANGTEL shall, before the Succession Date –

(a) complete a comprehensive audit of all regulatory instruments, (including any licences, permits, or authorities) issued by it pursuant to the previous Acts sufficient to enable PANGTEL to provide the detailed report identified in Subsection (1)(b); and

(b) provide a detailed report to NICTA and the Minister which identifies –

(i) those regulatory instruments (identifying any that have expired); and

(ii) any missing regulatory instruments or instances where PANGTEL's records are incomplete; and

(iii) instances where regulatory instruments are pending, including any draft regulatory instruments that have not yet been issued and any instances where applications for licences have been received but not yet been processed.

(2) ICCC shall, before the Succession Date –

(a) complete a comprehensive audit of all regulatory instruments, (including any licences, permits, or authorities) issued by it pursuant to the *Telecommunications Act 1996*, or otherwise in performance of relevant ICCC functions, sufficient to enable ICCC to provide the detailed report identified in Subsection (2)(b); and

(b) provide a detailed report to NICTA and the Minister which identifies –

(i) those regulatory instruments (identifying any that have expired); and

(ii) any missing regulatory instruments or instances where ICCC's records are incomplete in relation to the subject matter of this Act; and

(iii) instances where any such regulatory instruments are pending, including any draft regulatory instruments that have not yet been issued and any instances where applications for licences have been received but not yet been processed.

***Division 2. — Non-Applicability of other Regulatory Regimes.***

**302. TELECOMMUNICATIONS IS NOT A REGULATED INDUSTRY.**

(1) This Section applies on and from the Succession Date.

(2) The telecommunications industry is not a regulated industry for the purposes of the *Independent Consumer and Competition Commission Act 2002* and any declaration under Section 32 of that Act to that effect is of no legal effect.

(3) Telikom PNG Ltd and Pacific Mobile Communications Ltd are not regulated entities, and the services they supply are not regulated services, for the purpose of the *Independent Consumer and Competition Commission Act 2002* and any declaration under Section 32 of that Act to that effect is of no legal effect.

(4) The regulatory contract between the ICCC, Telikom PNG Ltd and Pacific Mobile Communications Ltd dated 16 July 2002 is terminated and has no further legal effect.

(5) Part III of the *Independent Consumer and Competition Commission Act 2002* does not apply to any industry to the extent that goods or services supplied within that industry are ICT services under this Act.

***Division 3. — Migration of Existing Licences.***

**303. NOTICE OF TRANSITIONAL PROCEDURES.**

(1) Within 60 days of the Succession Date, NICTA shall, by notice published in the National Gazette, state the procedures by which NICTA plans to undertake the migration of existing licences to ICT licences.

(2) The notice published under Subsection (1) shall specify the following matters —

(a) the identity of all existing licensees and the nature of the existing licence or licences held by each existing licensee;

(b) the information that must be provided to NICTA by existing licensees to assist NICTA in migrating existing licences to ICT licences; and

(c) the process that NICTA plans to follow to migrate existing licences to ICT licences;  
and

(d) any other procedural matter that NICTA considers desirable to facilitate the migration of existing licences to ICT licences.

(3) NICTA shall publish a copy of the notice published under this Section on its website and endeavour to provide a copy of the notice to all existing licensees identified in the notice.

(4) All existing licensees and ICT licensees shall comply with the procedures and requirements specified in the notice published under this Section.

### **304. LICENCE MIGRATION PROCESS.**

(1) This Section applies on and from the Succession Date.

(2) Notwithstanding any other provision of this Act, an existing licensee, and a related company to an existing licensee, is not eligible to be the holder of an ICT licence unless that ICT licence is issued under this Section.

(3) If, within the transition period, an existing licensee applies to NICTA to replace an existing licence with one or more ICT licences, NICTA shall issue one or more ICT licences to the existing licensee.

(4) Notwithstanding any other provision of this Act, the one or more ICT licences issued under Subsection (3) –

(a) unless NICTA and the existing licensee agrees otherwise, shall be issued on terms that confer on the existing licensee –

(i) the right to offer ICT services to at least the same extent as permitted by the existing licence but shall not confer any monopoly or exclusive rights in relation to any ICT Services, including any such rights contained in the existing licence and/or granted by virtue of the previous Acts; and

(ii) the same rights in relation to the use of spectrum and the duration of those rights as the existing licensee was entitled to use under an existing licence; and

(b) shall include an obligation to pay to NICTA amounts that in quantum and timing of payments are identical to the existing licensee's obligations under its existing licence or existing licences, including any amounts that were outstanding or overdue under any existing licence when the replacement ICT licence is issued;

(c) to the extent that the existing licensee holds an existing licence that imposes a mandatory coverage obligation, shall contain an equivalent mandatory coverage obligation; and

(d) in all other respects shall be an ICT licence issued in accordance with this Act on terms and conditions determined under this Act.

(5) Notwithstanding Subsection (4)(b), NICTA may levy licence fees in accordance with this Act in relation to any ICT services in a new ICT licence that are beyond the scope of the relevant existing licence or existing licences.

(6) Upon the commencement of the one or more ICT licences issued under Subsection (3) to replace an existing licence, the existing licence is deemed to have been surrendered and has no further legal effect.

(7) Notwithstanding any other provision of this Act and subject to Digicel (PNG) Limited making application under Subsection (3) to replace its existing licences with one or more ICT licences, NICTA shall, in response to an application, issue to Digicel (PNG) Limited a network licence to operate international gateway facilities on terms and conditions to be determined by NICTA under this Act.

(8) If at the expiry of the transition period, an existing licensee has not applied to NICTA to replace an existing licence with one or more ICT licences, then –

(a) NICTA may by notice published in the National Gazette, specify a date for the purposes of this Subsection; and

(b) the existing licence shall by virtue of this Section be deemed to be surrendered on the date so specified and to have no further legal effect.

#### ***Division 4. — NICTA Succession.***

### **305. NICTA SUCCESSION ARRANGEMENTS.**

(1) On and from the Succession Date –

(a) certain assets and liabilities of PANGTEL are transferred to NICTA in accordance with this Division; and

(b) certain assets and liabilities of the ICCC are transferred to NICTA in accordance with this Section; and

(c) PANGTEL shall cease to exist for all purposes; and

(d) any reference in any Act (other than this Act), regulation, subordinate instrument or any other document, to PANGTEL is to be construed as a reference to NICTA, unless the contrary intention appears.

(2) In relation to PANGTEL –



(a) all assets and liabilities held by PANGTEL, and all rights and all management or control of anything which, immediately prior to the Succession Date were vested, payable to, recoverable by, or which belong to PANGTEL are, as from the Succession Date, taken to have been transferred to, vested in, payable to or recoverable by and belong to NICTA without any transfer, assignment, notice or assurance other than this Act and despite any other Act or law; and

(b) notwithstanding any other Act or law, all assets and liabilities referred to in Subsection (2)(a) shall vest in NICTA, and the legal and equitable title to such assets and liabilities shall not be affected by any failure to comply with, or contravention of any such Act or law or lack of procedure or process and Acts or laws which may impede or constrain the effectiveness of this Subsection may be amended or repealed by regulation to the extent necessary to give effect to this Subsection; and

(c) all suits, actions and proceedings commenced and pending immediately prior to the Succession Date by or against PANGTEL are, on and from the Succession Date, to be taken to be pending and may be carried and prosecuted by or against NICTA, and no such suit, action or proceeding is abated or prejudicially affected by this Act; and

(d) all contracts (excluding for employment), deeds, instruments or other instruments (written or otherwise) entered into by or with PANGTEL and in force immediately prior to the Succession Date are, on and from the Succession Date, to be taken to be contracts, deeds, instruments or other instruments entered into by or with NICTA; and

(e) all employment contracts entered into by or with PANGTEL in force immediately prior to the Succession Date and which are notified in the National Gazette by the Minister, are, as from the Succession Date, to be taken to be employment contracts entered into by or with NICTA; and

(f) all State appropriations in the name, or for the benefit, of PANGTEL shall, as from the Succession Date, accrue to, and be for the benefit of, NICTA.

(3) In relation to the ICCC, but only in respect of relevant ICCC functions, without limiting Subsection (1) –

(a) all assets and liabilities held by the ICCC for the relevant ICCC functions which are notified in the National Gazette by the Minister for Finance and Treasury for that purpose, whether before or after the Succession Date, or which may otherwise be vested in or transferred to NICTA for the purposes of this Act by the Minister for Finance and Treasury by notice in the National Gazette, are, as from the Succession Date, taken to have been transferred to, vested in, payable to or recoverable by and belong to NICTA without any transfer, assignment, notice or assurance other than this Act and despite any other Act or law; and

(b) notwithstanding any other Act or law, all assets and liabilities referred to in

Subsection (3)(a) shall vest in NICTA, and the legal and equitable title to such assets and liabilities shall not be affected by any failure to comply with, or contravention of any such Act or law or lack of procedure, or process and Acts or laws which may impede or constrain the effectiveness of this Subsection may be amended or repealed by regulation to the extent necessary to give effect to this Subsection; and

(c) all suits, actions and proceedings commenced and pending immediately prior to the Succession Date by or against the ICCC in respect of the relevant ICCC functions, which are notified in the National Gazette by the Minister for Finance and Treasury for that purpose, are, as from the Succession Date, to be taken to be pending and may be carried and prosecuted by or against NICTA, and no such suit, action or proceeding is abated or prejudicially affected by this Act; and

(d) all contracts (including for employment), deeds, instruments or other instruments (written or otherwise) entered into by or with the ICCC in respect of the relevant ICCC functions only and in force immediately prior to the Succession Date and which are notified in the National Gazette by the Minister for Finance and Treasury for that purpose, are, as from the Succession Date, to be taken to be contracts, deeds, instruments or other instruments entered into by or with NICTA; and

(e) all State appropriations in the name, or for the benefit, of the ICCC in respect of the relevant ICCC functions shall, as from the Succession Date, accrue to, and be for the benefit of, NICTA; and

(f) a notification made for the purposes of Subsection (3)(a) can be corrected so as to be effective and workable, but otherwise cannot be varied or revoked.

(4) An asset, liability or interest vested in NICTA pursuant to this Act shall, at the time of vesting, be accounted for in a manner determined by NICTA that is consistent with applicable financial reporting standards.

(5) No stamp duty or other tax is payable under any Act in respect of anything done under this Division XV.4.

(6) For the purposes of the transfer under Subsection (2) –

(a) the Minister shall prepare for inclusion in the notice an allocation statement specifying those employees of PANGTEL to be transferred to NICTA; and

(b) each employee of PANGTEL specified in the allocation statement shall, as from the Succession Date, be employed by NICTA on the same terms and conditions on which he was employed by PANGTEL immediately before the Succession Date.

(7) For the purposes of the transfer under Subsection (3) –

(a) the Minister for Finance and Treasury shall prepare for inclusion in the notice an

allocation statement specifying the assets, rights and liabilities of the ICCC relating to relevant ICCC functions; and

(b) the allocation statement shall also specify those employees of the ICCC to be transferred to NICTA; and

(c) the Minister for Finance and Treasury may, at any time within twelve (12) Months after the Succession Date, amend the allocation statement for the purposes of addressing any residual issues not identified in the initial allocation statement and the allocation statement so amended is the allocation statement; and

(d) each employee of the ICCC specified in the allocation statement shall, as from the Succession Date, be employed by NICTA on the same terms and conditions on which he was employed by the ICCC immediately before the Succession Date.

### **306. NICTA TRANSFERRED EMPLOYEES.**

(1) On and from the Succession Date, the initial employees and other staff of NICTA are to be the persons the persons identified in Section 305(6)(a) and 305(7)(b).

(2) Each employee referred to in Subsection (1) is to be referred to in this Section as a "transferred employee".

(3) Each transferred employee is to be regarded as -

(a) having been employed by NICTA with effect on and from the Succession Date; and

(b) having been employed on the same terms and conditions as those that applied to the person immediately before the Succession Date; and

(c) having the same entitlement to leave accrued in Connection with that individual's employment by PANGTEL or the ICCC (as applicable) to the extent that any leave accrues between the time from any payment under Subsection (6) and the Succession Date.

(4) The service of a transferred employee as an employee of NICTA is to be regarded for all purposes as having been continuous with the service of the employee, immediately before the Succession Date.

(5) Subject to Subsection (6), a transferred employee is not entitled to receive any payment or other benefit by reason only of having ceased to be an officer or employee of PANGTEL or the ICCC because of this Section.

(6) Before the Succession Date –

(a) PANGTEL shall pay to each transferred employee identified in Section 305(6)(a), all

accrued leave in connection with that employment by PANGTEL that is equivalent to the entitlement that the person had accrued, as an officer or employee of PANGTEL, immediately prior to the Succession Date; and

(b) the ICCC shall pay to each transferred employee identified in Section 305(7)(b), all accrued leave in connection with that employment by the ICCC that is equivalent to the entitlement that the person had accrued, as an officer or employee of the ICCC, immediately prior to the Succession Date.

### **307. NON-TRANSFERRING EMPLOYEES.**

(1) A person who immediately prior to the Succession Date, was engaged and employed by PANGTEL but who was not identified in Section 305(6)(a) is to be referred to in this Section as a "non-transferring employee".

(2) A non-transferring employee shall, from the Succession Date, be made redundant and, immediately prior to the Succession Date, shall have his entitlements paid to him or her by PANGTEL.

(3) A non-transferring employee shall not be eligible to be employed by NICTA for a period of two (2) years from the Succession Date.

### **308. CONSEQUENCES OF THIS DIVISION.**

The operation of this Division is not to be regarded as –

(a) prejudicially affecting, or a breach of or a default under, any contract, deed, instrument or agreement (written or otherwise) or otherwise civil wrong; or

(b) a breach of or default under any provision of any contract, deed, instrument, or such agreement prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities; or

(c) giving rise to any remedy by a party to, or causing or permitting the termination or discharge of, any contract, deed, instrument or such agreement or any judgment, order and process of a court which creates, modified or extinguishes assets, rights or liabilities (or which would do so if lodged, filed or registered in accordance with any law), because of a change in the beneficial or legal ownership or any asset, right or liability.

### **309. TRANSFER OF ICCC ICT FUNCTIONS TO NICTA.**

(1) On and from the Succession Date, in so far as the functions continue to have operation, there is transferred to NICTA the functions of the ICCC as set out in Section 19F of the *Telecommunications Act 1996*.

(2) The ICCC shall -

(a) do everything that is necessary to facilitate the implementation of any Government Policy relating to the ICT industry in so far as it relates to the ICCC; and

(b) cause to be delivered to NICTA by no later than the Succession Date, all documents that relate to relevant ICCC functions, including without limitation all documents –

(i) identified in the report provided under Subsection 301(2); and

(ii) relating to the ICCC's licensing functions and powers under Part VI of the *Telecommunications Act* 1996, including all documents relating to applications for, or tenders associated with, the grant or issue of licences; and

(iii) relating to the development of any private network class licence under Division VI.3A of the *Telecommunications Act* 1996; and

(iv) relating to the ICCC's functions and powers in connection with Codes of Practice under Part VIA of the *Telecommunications Act* 1996; and

(v) relating to the ICCC's functions and powers in connection with tariffs under Part IX of the *Telecommunications Act* 1996; and

(vi) relating to the ICCC's functions and powers under Parts III and IV of the *Independent Consumer and Competition Act* 2002 in connection with the regulated industry declared by Section 19A of the *Telecommunications Act* 1996 as the telecommunications industry; and

(vii) relating to government policy notified to the ICCC under Section 191 of the *Telecommunications Act* 1996; and

(viii) relating to Part XI of the *Telecommunications Act* 1996, including any arbitration under Section 84 of that Act (whether or not a determination has been made in connection with that arbitration); and

(ix) relating to any public inquiry, investigation or enforcement action by the ICCC under Parts XI, XII, XIII or XIV of the *Telecommunications Act* 1996; and

(b) carry out the ICCC's remaining functions in such a manner so as to best secure that NICTA is able to effectively carry out its functions under this Act; and

(c) carry out its functions in a manner that promotes the interests of NICTA and the objective of this Act.

### **310. OUTSTANDING ACCESS ARBITRATIONS.**

Any arbitration that has been submitted to the ICCC pursuant to Section 84 of the

*Telecommunications Act* 1996 and that is pending a final determination as at the Succession Date will be treated in the following manner –

- (a) the arbitration will be deemed to relate to a declared service and will be subject to determination by NICTA in accordance with Part VI of this Act as if the dispute between the parties to the arbitration had been validly notified to NICTA as an access dispute under Section 143 of this Act; and
- (b) the supplier of the service that is the subject of the dispute will be the "access provider" and the other carrier involved in the dispute will be the "access seeker" for the purposes of Part VI of this Act; and
- (c) NICTA will determine the arbitration in accordance with the provisions of Part VI of this Act; and
- (d) NICTA may call upon the ICCC to provide such assistance as NICTA requires to conduct the arbitration and the ICCC shall provide that assistance; and
- (e) NICTA may (at its discretion) replace any existing interim determination issued under Section 84 of the *Telecommunications Act* 1996 in that arbitration with a fresh interim determination issued under Section 146 of this Act to the extent that the existing interim determination has not expired; and
- (f) notwithstanding Section 155 of this Act, NICTA may backdate any final determination issued under Section 147 of this Act to the date at which the arbitration was commenced by the ICCC, irrespective that such date may have occurred before the Succession Date or the Commencement Date.

### **311. DEVELOPMENT OF PROTOCOLS BETWEEN ICCC AND NICTA.**

From the Succession Date, the ICCC and NICTA shall develop and update protocols, from time to time, that outline the extent to which they will consult with and provide assistance to each other, and the manner of such assistance and consultation, in relation to any market conduct and consumer affairs affecting the ICT industry.

### **SCHEDULE 1. — DEEMED SERVICES.**

Sec.131.

#### **1. DOMESTIC MOBILE TERMINATING ACCESS SERVICE.**

- (1) The "domestic mobile terminating access service" is hereby declared until 31 December 2014.
- (2) The domestic mobile terminating access service -

(a) is a network service for the carriage of any combination of

(i) voice communications; and/or

(ii) short messaging services,

from a point of interconnection, or potential point of interconnection, to any B-party connected to the access provider's mobile network; and

(b) includes such facilities access services as are necessary to enable the access seeker to interconnect its facilities to the facilities of the access provider at points of interconnection to realise any-to-any connectivity; and

(c) is a designated interconnection service for the purposes of the any-to-any connectivity obligation.

(3) Different charges may be applied to different aspects of this service.

(4) Any words or phrases used in this declaration that are defined in the *National Information and Communications Technology Act 2009* have the meaning given in that Act. Other words or phrases that are defined below have that meaning only for the purposes of this declaration –

"call" means a continuous communication;

"cell" means the geographic area served by a base station;

"B-party" is a retail customer located in Papua New Guinea to whom a call is made;

"mobile network" means a network that –

(a) comprises multiple base stations that transmit and receive radiocommunications to and from apparatus of a B-party located in a cell associated with each base station; and

(b) detects the apparatus within which the cell is located and causes the base station in that cell to transmit and receive calls to and from that customer equipment; and

(c) enables calls to continue without interruption when such apparatus moves between cells;

"point of interconnection" is a location in Papua New Guinea which is a physical point of demarcation between the access seeker's network and the access provider's network.

## **2. DOMESTIC FIXED TERMINATING ACCESS SERVICE.**

(1) The "domestic fixed terminating access service" is hereby declared until 31 December 2014.

(2) The domestic fixed terminating access service –

(a) is a network service for the carriage of any combination of voice communications from a point of interconnection, or potential point of interconnection, to any B-party connected to the access provider's fixed network; and

(b) includes such facilities access services as are necessary to enable the access seeker to interconnect its facilities to the facilities of the access provider at points of interconnection to realise any-to-any connectivity; and

(c) is a designated interconnection service for the purposes of the any-to-any connectivity obligation.

(3) Different charges may be applied to different aspects of this service.

(4) Any words or phrases used in this declaration that are defined in the *National Information and Communications Technology Act 2009* have the meaning given in that Act. Other words or phrases that are defined below have that meaning only for the purposes of this declaration -

"call" means a continuous communication;

"cell" means the geographic area served by a base station;

"B-party" is a retail customer located in Papua New Guinea to whom a call is made;

"fixed network" means a network that is not a mobile network.

"mobile network" means a network that —

(a) comprises multiple base stations that transmit and receive radiocommunications to and from apparatus of a B-party located in a cell associated with each base station; and

(b) detects the customer equipment within which the cell is located and causes the base station in that cell to transmit and receive calls to and from that customer equipment; and

(c) enables calls to continue without interruption when the customer equipment moves between cells;

"point of interconnection" is a location in Papua New Guinea which is a physical point of demarcation between the access seeker's network and the access provider's network.

## **SCHEDULE 2. — AMENDMENTS TO OTHER LEGISLATION.**



## **1. INDEPENDENT CONSUMER AND COMPETITION COMMISSION ACT 2002.**

(1) This Section amends the *Independent Consumer and Competition Commission Act 2002*.

(2) Section 2 is amended by adding the following definition after the definition "decision" and before the definition "International Arbitrator" –

"ICT Appeals Panel" has the meaning given to it under the *National Information and Communications Technology Act 2009*."

(3) The existing Subsections (1) to (4) of Section 41 are deleted and replaced with the following new Subsections (1) to (4) of Section 41 –

### **"41. PANEL OF EXPERTS.**

(1) The Head of State, acting with, and in accordance with, the advice of a majority of the members of the Appointments Committee, shall –

(a) appoint a panel of experts who may sit as members of the Appeals Panel and the ICT Appeals Panel established under Part XIII of the *National Information and Communications Technology Act 2009*; and

(b) appoint a member of the panel as the chairman of the panel.

(2) A person is not eligible for appointment to the Panel of Experts unless he –

(a) is a person of integrity, independence of mind and of good reputation; and

(b) has knowledge of or experience in industry, commerce, economics, law, public administration or consumer protection.

(3) At least one of the persons appointed to the Panel of Experts –

(a) shall have international experience in the operation and administration of an economic regulatory regime; and

(b) shall not be a resident of Papua New Guinea; and

(c) shall be known as the 'International Arbitrator'.

(4) A member of either the Commission or the National Information and Communications Technology Authority may not be appointed to the Panel of Experts."

## **2. AMENDMENTS TO CRIMINAL CODE ACT 1974.**

(1) This section amends Schedule 1 of the *Criminal Code Act 1974*, except where it is specified that Schedule 2 of that Act is amended.

(2) The amendments in this section apply only to offences committed after this section commences.

(3) Section 1(1) is amended by –

(a) adding the following definition after the definition "clerk" and before the definition "company" -

"communication" has the meaning given to it under the *National Information and Communications Technology Act 2009*."

(b) adding the following definition after the definition "explosive substance" and before the definition "genocide" –

"facility" has the meaning given to it under the *National Information and Communications Technology Act 2009*."

(c) adding the following definitions after the definition "have in possession" and before the definition "indictment" –

"ICT licensee" means the holder of a licence issued or granted under the *National Information and Communications Technology Act 2009*."

"ICT service" has the meaning given to it under the *National Information and Communications Technology Act 2009*."

(d) omitting the definition "telegram".

(e) omitting the definition "telegraph".

(f) omitting the definition "telegraph office".

(g) adding the following definition after the definition "thing sent by post" and before the definition "uncorroborated testimony" -

"thing sent by post or ICT service" includes a communication sent by or in the course of transmission by an ICT service."

(4) Section 1(4) is amended by –

(a) omitting "or telegraph" in the first place where it appears.

(b) omitting "or telegraph office".

(c) omitting "or telegraph" in the third place where it appears.

(d) omitting "or telegrams".

(5) Section 1 is amended by –

(a) adding the following Subsection (4A) -

"(4A)For the purposes of the definition of "thing sent by post or ICT service" in Subsection (1) a communication shall be deemed to be in the course of transmission by an ICT service if the communication has been collected or received by an ICT licensee for transmission, but has not yet been delivered by the ICT licensee."

(6) The heading of Division 8 is amended by omitting "Telegraphs" and substituting "Telecommunications".

(7) Section 170 is amended by –

(a) omitting "TELEGRAPH" in the first place where it appears and substituting "ICT SERVICE".

(b) omitting "that is in the course of transmission by post or telegraph" and substituting "sent by post or ICT service that is in the course of transmission".

(8) Section 171 is amended by –

(a) omitting "TELEGRAPH" in the first place where it appears and substituting "ICT SERVICE".

(b) omitting "that is in the course of transmission by post or telegraph" and substituting "sent by post or ICT service that is in the course of transmission".

(c) omitting "Telikom PNG Limited" and substituting "an ICT licensee".

(9) Section 172 is amended by -

(a) omitting "TELEGRAPH" in the first place where it appears and substituting "ICT SERVICE".

(b) omitting "telegraph" in the second place where it appears and substituting "ICT service".

(10) Section 173 is amended by -

(a) omitting "Telikom PNG Limited" and substituting "an ICT licensee".

(b) omitting "telegraph" and substituting "ICT service".

(11) Section 174 is amended by omitting "or telegraph".

(12) Section 175(a) is amended by omitting "Telikom PNG Limited" and substituting "an ICT licensee".

(13) Section 176 is amended by –

(a) omitting "Telikom PNG Limited" and substituting "an ICT licensee".

(b) omitting "telegram" and substituting "communication sent by means of an ICT service".

(14) Section 178(a) is amended by omitting "that is or may be transmitted by post or telegraph" and substituting "sent by post or ICT service".

(15) Section 178(b) is amended by –

(a) omitting "Telikom PNG Limited" and substituting "an ICT licensee".

(b) omitting "anything sent by post or telegraph" and substituting "any thing sent by post or ICT service".

(16) Section 182 is amended by omitting "telegraphs" and substituting "telecommunications".

(17) Section 185(a)(ii) is amended by omitting "or telegraph service".

(18) Section 186 is amended by omitting "or telegraph".

(19) Section 187 is amended by -

(a) omitting "AND TELEGRAPH".

(b) omitting "or telegraph office".

(20) Section 188 is amended by -

(a) omitting "TELEGRAPH" in the first place where it appears and substituting "ICT".

(b) omitting "Telikom PNG Limited" in the first place where it appears and substituting "an ICT licensee".

(c) omitting "Telikom PNG Limited" in the second place where it appears and

substituting "an ICT licensee".

(d) omitting "or telegraph office" in the first place where it appears.

(e) omitting "telegraph office" in the second place where it appears and substituting "an ICT service".

(f) omitting "business of the office" and substituting "business of the office or premises".

(g) omitting, "or telegraph office" in the third place where it appears.

(21) Section 189 is repealed.

(22) Section 190 is repealed.

(23) Section 191 is amended by

(a) omitting "in a telegraph office" and substituting "by an ICT licensee".

(b) omitting "telegram" in the first place where it appears and substituting "communication sent by an ICT service".

(c) omitting "telegram" in the second place where it appears and substituting "communication".

(24) Section 192 is amended by –

(a) omitting "TELEGRAPH LINE" in the first place where it appears and substituting "TELECOMMUNICATIONS FACILITY".

(b) omitting "responsible for posts and telegraphs" and substituting "for Communications and Information".

(c) omitting "telegraph line" in the second place where it appears and substituting "facility".

(d) omitting "line" in the third place where it appears and substituting "facility".

(25) Section 193 is amended by –

(a) omitting "AND TELEGRAPHS".

(b) omitting "or telegraph office" in the first place where it appears.

(c) omitting "or telegraph office" in the second place where it appears.

(d) omitting "or telegraph office" in the third place where it appears.

(26) Section 194 is amended by –

(a) omitting "Telikom PNG Limited" and substituting "an ICT licensee".

(b) omitting "telegraphs" and substituting "telecommunications".

(27) Section 462(6) is amended by –

(a) omitting "telegraph" in the first place where it appears and substituting "an ICT service".

(b) omitting "telegraph" in the second place where it appears and substituting "an ICT service".

(28) Section 471 is amended by -

(a) omitting "TELEGRAPH" in the first place where it appears and substituting "ICT SERVICE".

(b) omitting "telegraph" in the second place where it appears and substituting "an ICT service".

(c) omitting "telegraph" in the third place where it appears and substituting "an ICT service".

(29) Section 480 is repealed.

(30) Section 530(4) is amended by -

(a) omitting "Telikom PNG Limited" in the first place where it appears and substituting "an ICT licensee".

(b) omitting "Telikom PNG Limited" in the second place where it appears and substituting "an ICT licensee".

(c) omitting "telegraph" and substituting "ICT service".

(d) omitting "responsible for communications" in the first place where it appears and substituting "for Communication and Information".

(e) omitting "responsible for communications" in the second place where it appears and substituting "for Communication and Information".

(31) Schedule 2 is amended by –

(a) omitting "telegraph" in the first place where it appears and substituting "ICT service".

(b) omitting "telegraph" in the second place where it appears and substituting "ICT service".

(c) omitting "telegraph" in the third place where it appears and substituting "ICT service".

### **3. AMENDMENTS TO PROTECTION OF PRIVATE COMMUNICATIONS ACT 1973.**

(1) This section amends the *Protection of Private Communications Act 1973*.

(2) Section 1(1) is amended by adding the following definition after the definition "Director-General" and before the definition "interception" –

(3) "ICT licensee means the holder of a licence issued or granted under the *National Information and Communications Technology Act 2009*."

(4) Section 10 is amended by -

(a) omitting "Telikom PNG Limited" in the first place where it appears and substituting "an ICT licensee".

(b) omitting "Telikom PNG Limited" in the second place where it appears and substituting "an ICT licensee".

(c) omitting "Telikom PNG Limited" in the third place where it appears and substituting "an ICT licensee".

(5) Section 12(1) is amended by omitting "Telikom PNG Limited" and substituting "an ICT licensee".

(6) Section 22 is amended by –

(a) omitting "Telikom PNG Limited" in the first place where it appears and substituting "an ICT licensee".

(b) omitting "Telikom PNG Limited" in the second place where it appears and substituting "an ICT licensee".

(c) omitting "Telikom PNG Limited" in the third place where it appears and substituting "an ICT licensee".

(d) omitting "Telikom PNG Limited" in the fourth place where it appears and substituting "an ICT licensee".

#### **4. AMENDMENTS TO CIVIL AVIATION ACT 2000.**

(1) This Section amends the *Civil Aviation Act 2000*.

(2) Section 3 is amended by -

(a) adding the following definition after the definition "navigation installation" and before the definition "non-scheduled international air service" —

"NICTA" means National Information and Communications Technology Authority established under the *National Information and Communications Technology Act 2009*".

(b) omitting the following definition after the definition of "owner" and before the definition of "Papua New Guinea Air Traffic Services Ltd." —

"PANGTEL" means Papua New Guinea Telecommunications Authority established under the *Telecommunications Act 1996*".

(3) Section 146 is amended by omitting "PANGTEL" and substituting "NICTA".

#### **5. AMENDMENTS TO DEFENCE (VISITING FORCES) ACT 1975.**

(1) This section amends the *Defence (Visiting Forces) Act 1975*.

(2) Section 38 is amended by omitting "*Radio Spectrum Act*" and substituting "*National Information and Communications Technology Act 2009*".

#### **6. AMENDMENTS TO CLASSIFICATION OF PUBLICATION (CENSORSHIP) ACT 1989.**

(1) This section amends the *Classification of Publication (Censorship) Act 1989*.

(2) Section 24 is amended by omitting "*Radio Spectrum Act*" and substituting "*National Information and Communications Technology Act 2009*".

(a) omitting "*Radio Spectrum Act*" in the first place where it appears and substituting "*National Information and Communications Technology Act 2009*".

(b) omitting "*Radio Spectrum Act*" in the second place where it appears and substituting "*National Information and Communications Technology Act 2009*".

(c) omitting "*Radio Spectrum Act*" in the third place where it appears and substituting "*National Information and Communications Technology Act 2009*".

(d) omitting "*Radio Spectrum Act*" in the fourth place where it appears and substituting



*"National Information and Communications Technology Act 2009".*

## **7. AMENDMENTS TO BROADCASTING CORPORATION ACT 1973.**

- (1) This section amends the *Broadcasting Corporation Act 1973*.
- (2) Section 2 is amended by omitting "*Radio Spectrum Act*" and substituting "*National Information and Communications Technology Act 2009*".
- (3) Section 6 is amended by omitting "*Radio Spectrum Act*" and substituting "*National Information and Communications Technology Act 2009*".
- (4) Section 11 is amended by omitting "*Radio Spectrum Act*" and substituting "*National Information and Communications Technology Act 2009*".

## **8. AMENDMENTS TO PRICES REGULATION ACT (CHAPTER 320)**

- (1) This section amends the *Prices Regulation Act* (Chapter 320).
- (2) Section 3 is amended by adding the following definition after the definition of "declared services" and before the definition "LNG Project Operations" –

*"ICT service" has the same meaning as in the National Information and Communications Technology Act 2009.*

- (3) Section 10 is amended by adding the following new Subsection -

(4) Notwithstanding any contrary provision in this Act, for the purposes of this Act, an ICT service is not, and cannot be, a declared service.

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I hereby certify that the above is a fair print of the *National Information and Communications Technology Act 2009* which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the *National Information and Communications Technology Act 2009* was made by the National Parliament on 24 November 2009, with an absolute majority in accordance with the *Constitution*.

Speaker of the National Parliament.