



Government of Papua New Guinea
National Information and
Communications
Technology Authority



PUBLIC CONSULTATION
REPORT ON PROPOSED AMENDMENTS TO
THE NATIONAL INFORMATION AND
COMMUNICATIONS TECHNOLOGY ACT, 2009

3 June 2025

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1. Introduction

1.1 Need for comprehensive review of the Act

The *National Information and Communication Technology Act, 2009* (“the NICT Act”) was enacted in 2009 and came into force in 2010. During the intervening 15 years there have been great changes in the electronic communications landscape, in terms of markets, technologies, and commercial and social behaviour and expectations. New issues have arisen as a result that need to be addressed. Over the past 15 years there have been minor amendments to the NICT Act, often consequential on the passage of other legislation; however, there has been no comprehensive review until now.

1.2 Consultation Process

The National Information and Communication Technology Authority (“NICTA”), in collaboration with the Department of Information and Communication Technology (“DICT”), has undertaken an extensive program of direct meetings and consultation with industry and other stakeholders commencing in 2024. NICTA incorporated the proposals from these meetings into a Discussion Paper which was the basis of a formal public consultation. The public consultation commenced on 4 April 2025, and submissions were invited before 9 May 2025. This deadline was subsequently extended to 16 May 2025 in response to industry requests.

In addition, an online form with key issues and question was posted on the NICTA website to facilitate responses from stakeholders who may not have been able for various reasons to respond fully to discussion paper in the original timescale. The deadline for completion and submission of the online form was 23 May 2025.

1.3 The issues in the Public Consultation Discussion Paper

The Discussion Paper sought comment on 14 specific proposals for amendment to the Act, and, additionally, invited respondents to address the following questions and issues:

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

There is, inevitably, some overlap between NICTA’s specific proposals for amendments and the issues raised by respondents in responses to questions a) to c).

1.4 Submissions

Submissions were received from the following (in alphabetical order):

- Digicel (PNG) Limited (“Digicel”)
- Telekom Limited (“Telikom”)

- Vodafone (PNG) Limited (“Vodafone”)

Two submissions were received in response to the online form. The submissions were from:

- Emstret Holdings Limited
- Russell Deka Harada of the PNG University of Technology

1.5 Structure of this report

Section 2 sets out the comments received on each of the 14 amendments proposed by NICTA, together with NICTA’s responses and conclusions on each.

Section 3 sets out the comments received in relation to questions a), b) and c) in the Discussion Paper (set out above) and NICTA’s response in each case, as well as NICTA’s comments on how the proposals in the comments might or will be taken further, as appropriate.

2. Comments on Amendment Proposals

The proposed amendments are discussed in the same sequence as in the Discussion Paper.

2.1 Section 29 - Application of Public Finances (Management) Act 1995

This proposal involves the harmonization of NICT Act with current Public Finance Management Act (PFMA) provisions. Since the passage of the NICT Act there have been amendments to the structure and money amounts in the PFM Act.

- (a) Digicel: Agrees with the proposal
- (b) Telikom: Agrees with the proposal
- (c) Vodafone: No specific comment

NICTA's position: The proposal to harmonize the provisions by amending the NICT Act to reflect the current provisions of the PFMA Act is for the avoidance of confusion and is not in the least contentious. NICTA therefore confirms its proposal for amendment.

2.2 Section 33 - Application of money received by NICTA

This proposal is to exempt NICTA from application of the Non-Tax Revenue Administration Act of 2022. The NTRA requires all nominated government organisations (which include NICTA) to place all revenue received in accounts so that it can be treated as consolidated revenue by the Department of the Treasury. Until now the Treasury has been prepared to accept placement of only a percentage of revenue in consolidated revenue accounts for some agencies. In the case of NICTA, the Treasury received 40% of revenues received in 2024, 60% in 2025, and is planning on 100% in 2026. NICTA's position is that it is an independent agency, and that all of its revenue has been based on specific formulae and received for specific purposes under the NICT Act. In the case of some receipts, such as payments of levies for the Universal Access and Service Fund, they are intended by law to be managed in a separate UAS Fund for very specific purposes. This arrangement is incompatible with the monies involved being treated as part of the Government's consolidated revenue. The Treasury has to date accepted this argument, but only in relation to UAS levy receipts.

- (a) Digicel

Digicel shares "NICTA's concern that, in practice, the application of the NTRA may conflict with the principles and provisions of the NICT Act" and especially with Section 35(2) of the NICT Act. Digicel agrees "that NICTA should be exempt from the NTRA".

- (b) Telikom

Telikom recommends "to exempt NICTA from blanket remittance obligations or enable self-financing mechanism via legislation (e.g. regulatory fees retained for sector development)".

- (c) Vodafone

Vodafone has no specific comment on this matter "other than to note that Vodafone supports the functions of an independent regulator that is somewhat insulated from the political process."

NICTA's position: Noting that the industry has expressed its concern that revenues received by NICTA are used for the sectoral purposes for which they are collected, NICTA will pursue its argument for exemption from the NTRA Act, based on the principles set out in Sections 32 and 33 of the NICT Act and to ensure NICTA's independence as a statutory authority is maintained pursuant to Section 40 of the NICT Act.

2.3 Section 38 - Accounts and audit

This proposal is to allow NICTA to seek the assistance of an independent auditor to conduct annual audits when necessary. The problem that this proposal seeks to address has existed for a long time and is not unique to NICTA. The Auditor-General's Office, which is currently tasked under the Act with conducting audits of both NICTA's accounts and the accounts of the UAS Fund, has experienced resource issues for many years, with the result that NICTA has been unable to table its Annual Report with audited accounts in the Parliament, and to discharge fully its obligations to be accountable and transparent in these matters. The Auditor-General's Office has not accepted various practical proposals, such as NICTA paying for an external auditor chosen by or agreeable to the Auditor-General's Office.

- (a) Digicel Agrees with the proposal, including audit of the UAS fund (s.106)
- (b) Telikom No comment on this matter
- (c) Vodafone No specific comment on this matter

NICTA's position: None of the responses has disagreed with the approach proposed by NICTA, and Digicel has expressed strong agreement, as it has prior to the consultation. In the light of this position by the industry, NICTA will pursue the proposed amendment. It has always been NICTA's position that the amended provisions (sections 38 and 106) should retain an involvement by the Auditor-General's Office, reflecting that Office's responsibility for public sector audit standards in PNG. That role might take the form, for example, of a right to be notified in advance and an opportunity to disallow, for reason, the appointment of any specific auditor or firm.

2.4 Section 11 - Government Policy

This is a proposal to introduce specific qualifiers to prevent abuse. The concern that the proposal addresses is that there is significant potential in the current wording of Section 11 to permit unintended directions that dictate the outcome of policy applications or to require implementation of policies that extend well beyond the scope of NICTA's accepted remit. It is totally accepted by NICTA that the role of policy-making is one for the Government, and, further that there must be a means by which that policy can be transparently conveyed for implementation by independent agencies, such as NICTA in this case. The requirement for policy to be notified in writing, and for the notification to be published by NICTA, are important requirements going to transparency and accountability. NICTA does not seek to change those arrangements.

- (a) Digicel

Digicel notes that it "understands that section 11 of the NICT Act already provides limitations on the requirement for NICTA to follow Government Policy. That is, the Government Policy must be published and NICTA's obligation to follow such Policy is subject to the NICT Act (and

any other Act)". Digicel's response suggests that, based on its current understanding, that these limitations are adequate but seeks further information from NICTA on what is being sought to be addressed.

(b) Telikom

Telikom recommended that qualifiers be introduced "to restrict ministerial directions to broad policy areas only, and ensure that operational and licensing decisions remain squarely with NICTA". Telikom considered it appropriate "to reference best practice models from regional regulators" such as ACCC¹ and FCC.

(c) Vodafone

Vodafone offered no specific comments on this matter.

NICTA's position: NICTA will seek ways of suitably expressing the additional constraints such as those expressed by Telikom in the legislation, and will have regard to the formulations adopted in other jurisdictions to address similar issues. One such refinement that will be further explored would be to add to subsection 11(3) paragraph (a), the words "to the extent that NICTA has authority under the NICT Act or any other Act". In addition, Section 11 must be interpreted consistently with Sections 9 and 40 of the NICT Act. NICTA will further explore whether Section 11 needs to be amended to explicitly state this.

2.5 Section 40 – Independence

The proposal involves strengthening the independence of NICTA and protection from political influence. The current wording in Section 40 qualifies the independence and autonomy by the words "subject to this Act", but otherwise makes it clear that NICTA "shall perform its functions without favour, prejudice or political or commercial interference". The Minister has decision-making powers in relation to various functions under the NICT Act, including section 129, 130 and 160, dealing, respectively, with Wholesale Access Declarations and Retail Service Determinations by the Minister.

(a) Digicel

Digicel disagrees with the proposed removal of Ministerial oversight under sections 129, 130 and 160 of the Act, seeing the fundamental decisions in those sections as requiring an additional layer of oversight.

(b) Telikom

¹ The ACCC is governed by the *Competition and Consumer Act, 2010 (Cth)*. Section 29 of that Act authorises the Minister (the Commonwealth Treasurer) to give directions to the ACCC in relation to how it performs its functions under the Act. Directions are not restricted to matters of policy. However, Section 29 prohibits directions in relation to a range of matters including under Part XIB (Telecommunications Industry – Anti-Competitive Conduct and Record Keeping Rules) and Part XIC (Telecommunications Access Regime). Other arrangements in the Region might be more useful as inputs on amendments to the NICT Act.

Telikom recommends that Section 40 should be strengthened “to enshrine functional and financial independence, establish a transparent appointment process, and require public disclosure of meetings with government officials.”

(c) Vodafone

Vodafone has no specific comment on this matter “other than to note that Vodafone supports the functions of an independent regulator that is somewhat insulated from the political process.”

NICTA's position: NICTA will continue to seek forms of words which reinforce the independence referred to in Section 40. NICTA accepts that the Minister, DICT and Government generally will have important roles to play on particular matters, and that it would be inappropriate not to recognise those roles and functions in the NICT Act. NICTA also notes that the Minister and others in the Government are elected officials and derive authority and legitimacy from that circumstance in a democracy.

NICTA does not intend to pursue the proposal to maintain a register of meetings with the Minister and other Government personnel, nor to prepare and public minutes of such meetings. The reason is that this is a broader matter than NICTA or the ICT sector, and needs to be taken up within the context of a general government code of conduct. NICTA is prepared to contribute to the development of such practices and codes.

2.6 Section 254(a) – ICT Appeals Panel

This proposal is to remove the constitution of the ICT Appeals Panel from the ICCC and consequently from Department of Treasury, and to make separate arrangements for the Panel under the NICT Act.

(a) Digicel

Digicel agrees that the appointment of the Panel of Experts needs to be addressed, but does not explicitly endorse the proposed removal of the function from the ICCC and Treasury.

(b) Telikom

Telikom agrees that the ICT Appeals Panel should be reconstituted “as a standalone body with independent appointments and mandated internal timelines for determinations”.

(c) Vodafone

Vodafone made no comment on this matter.

NICTA's position: See next position statement, in 2,7 below.

2.7 Part XIII – ICT Appeals Panel

This proposal is linked to the previous one and concerned amendments to Part XIII of the Act which relates to the establishment of the Appeals process and Appeals Panel. The proposal also extends to review of the wording under certain provisions that indicate a timing to appeal (example, 20 days).

(a) Digicel

Digicel has sought further clarification on the proposal because “aside from the current ineffectiveness of the ICT Appeals Panel process, it is not clear what other changes to the existing legislation would be necessary or why the timeframes that are specified in Section 259 are inappropriate”.

(b) Telikom

Telikom considers that “mandated internal timelines for determinations” by a reconstituted ICT Appeals Panel are needed, but has not discussed what they might be.

(c) Vodafone

Vodafone has not commented on this matter.

NICTA's position: Having explored through this consultation the proposal to remove the panel's administration and place it under either the Minister or DICT, NICTA now proposes not to disturb the current appointment arrangements in Part XIII. Since many appeals relate to recommendations to the Minister or to decisions by NICTA that reflect overall government policy as embedded in the Act, it would create an unacceptable perceived conflict of interest for the panel of experts to be nominated by the Minister or DICT.

The issue that is of most concern to NICTA and the industry is the efficiency of the ICT appeals system, rather than the way the panel is constituted. This is important because the ICT appeals process is intended, in appropriate situations, to avoid Court proceedings which would be protracted and relatively costly to all parties. NICTA notes the proposal to stay decisions that have been appealed until the appeal process has been finalised. In practice this happens in most cases, where the stay is ordered by the Panel itself.

As some of the submissions noted, the timelines associated with the appeal process – including the time constraints applying to the establishment and proceedings of any Panel – need to be reviewed further to ensure that they appropriately reflect the balance of considerations involved. To address this, at least in part, the ICT Panel Member and the Appeals Panel should be appointed for fixed terms. The case-by-case approach to appointments contributes to delays in constituting the Panel in a timely manner.

2.8 Section 271 - NICTA to prosecute offences

The proposal is to bring back prosecution functions of NICTA. These were transferred to the police in the 2016 amendments to the Act, and to Section 271, in particular.

- (a) Digicel: Agrees with the proposal.
- (b) Telikom: Agrees with the proposal, but states a preference for highlighting specific offences, such as those relating to licensing, spectrum and service standards, as well as damage to ICT facilities and infrastructure.
- (c) Vodafone: No comment on this matter.

NICTA's position: NICTA will pursue its proposal to reinstate NICTA's prosecutorial authority. NICTA will undertake further analysis to determine whether re-enactment of Section 271 in its

pre-2016 form is appropriate, or whether alternative formulations, including emphasising areas of priority, as suggested by Telikom, are more appropriate in 2025 and future circumstances.

2.9 Section 89(2) - Universal Access and Service Fund

The proposal is to harmonize this provision with the PFMA and allow for interest earned on investment of fund money, to remain with NICTA. Current law is not consistent with PFMA Amended Act 2016 Section 12 provides that investment of any money standing to the credit of any trust fund, the Consolidated Revenue Fund (CRF) or any general revenue fund shall be made in accordance with the written authority of the Finance Departmental Head subject to the terms and conditions specified in the written authority. The written authority in this case being the UAS Trust Instrument outlines that any interest earned on the account should be paid into the CRF.

(a) Digicel

Digicel agrees with the proposal, subject to a modification to make it clear that interest earned on UAS Trust Fund monies shall remain with the UAS Trust Fund, and not with NICTA generally.

(b) Telikom

Telikom does not comment specifically on this proposal, but the tenor of other comments suggests agreement.

(c) Vodafone

Vodafone agrees with the proposal.

NICTA's position: NICTA intends to pursue this proposed amendment, with the modification recommended by Digicel.

2.10 Section 92 - Composition of the UAS Board

The proposal is to increase private sector representation and/or allow for proxies to vote at meetings. It has been difficult to find suitable private sector representatives, who have a good understanding of the sector and related issues, and who are not currently employed by one or other of the network operators or service providers. The UAS Board has been hampered in the past by lack of a quorum, and the proposal for nominated proxies to be able to attend and vote is in the interests of progressing the important work of the Board in a timely manner.

(a) Digicel

Digicel agrees that additional private sector representation on the UAS Board would be desirable, but is not clear that the introduction of proxies “would drive better decision-making”.

(b) Telikom

Telikom agrees with the proposal but makes the further proposal to separate the position of UAS Board chair from the NICTA chair to avoid conflicts of interest.

(c) Vodafone

Vodafone supports the proposed changes.

NICTA's position: The members of the UAS Board include some very senior and very busy public servants. This has the advantage of ensuring that experienced people are being asked to consider matters of significance and importance to the industry and to the communities served through the UAS scheme. But it has the disadvantage that other commitments often intrude, making it difficult on many occasions to achieve a Board meeting quorum. Important decisions are deferred as a result. NICTA considers that the appointment and use of proxies to be a necessity for all Board members. Proxies would be nominated by the individual Board member, but would need to be nominated and approved by the Board in advance, not on a meeting-by-meeting basis. NICTA will develop further details in relation to the use of proxies.

NICTA will pursue the proposal to increase private sector participation, noting that Board members cannot be associated through employment or otherwise with licensed operations in the sector. NICTA does not intend to propose changes to the arrangements whereby the UAS Board is chaired by the NICTA Chair. Experience underlines the need for continuity in UAS matters and administration and a completely non-NICTA UAS Board would not deliver this. There is no actual or perceived conflict between the roles. Although the possible addition of an international expert to the UAS Board was not canvassed in the public consultation discussion paper, or in the submissions, the addition of an international expert member will also be further explored by NICTA.

2.11 Section 108(6) and (7) - UAS Projects

The proposal is to amend these provisions and allow for projects to be “deemed approved” by the Minister if a response has not been received in writing to reject or approve the projects.

(a) Digicel

Digicel disagrees with the proposal. “In our submission Ministerial approval is an important check on the power of NICTA and the UAS Board to make decisions that have a material impact on the industry and its participants.” Digicel also notes that UAS Projects that have been rejected by the Minister can be resubmitted by NICTA at a later date.

(b) Telikom

Telikom has not commented on this matter.

(c) Vodafone

Vodafone “strongly agrees” with the proposal. “The involvement of the Minister in UAS projects is undesirable given the role and composition of the UAS board. Deeming projects as approved is also supported.”

NICTA's position: The submissions received adopt very different positions on the matter. NICTA has not proposed that the Minister should no longer approve UAS Projects. Nor is it NICTA's view that potential increases of private sector voices on the UAS Board should be a reason for the Minister not to be the approving authority. The importance of the Minister is that he has been elected and therefore represents the overall community in a democracy with

a source of authority and legitimacy not available to appointees, such as the members of the NICTA and UAS Boards. The issue for NICTA is entirely a matter of improving administration of the UAS scheme. Under the circumstances, NICTA will not pursue the proposal to deem approval after 60 days. It will address the issues administratively with DICT.

Section 108 is concerned with UAS Projects. Projects need to advance the objectives set out in Section 90. Subsection 90(1) refers to 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”. ICT infrastructure has been traditionally associated with engineering works and hardware, but this is changing with the development of software-based solutions to many service creation and service delivery challenges. In addition, there is a recognition that that the capacity and capabilities of communities and individual users is critically important for the success of universal service schemes. In the light of this, it is important that the reference to “infrastructure” not constrain the types of Projects that may be funded under the UAS scheme, and that a broader interpretation than the traditional one should be explicitly encouraged. It is therefore proposed that Section 90 be expanded to include testing of new technologies and trial applications, research, community training programs, and other grants to communities to enable them to establish community ICT facilities in underserved and unserved parts of the country.

2.12 Section 109 - Competitive selection process

The proposal is to free up the process to allow for ‘pay or play’ model to be introduced.

(a) Digicel

Digicel agrees that ‘pay or play’ would be a useful mechanism to deliver UAS Projects. It has advocated allowing such an approach in the past.

(b) Telikom

Telikom has not commented specifically on this matter.

(c) Vodafone

Vodafone notes that, “while the policy of competitive selection is sound in principle, requiring a competitive selection process can be an unnecessary burden in certain circumstances...” Vodafone suggests “that the ‘default’ be competitive selection but that NICTA be able to bypass the process on provision of written reasons ... Guidelines could be developed to describe circumstances under which NICTA would exercise such powers.”

NICTA’s position:

NICTA intends to pursue the option of enabling ‘play or pay’ as an option in the legislative changes. The important aspect is to empower NICTA to develop regulations, rules or other subordinate instruments to enable licensees to choose to offset part (with a defined maximum proportion or amount) of the UAS levy charged to them, by undertaking one or more of the already formally approved UAS Projects. It should be noted that licensees have opportunities as part of the overall UAS procedures to recommend projects for possible inclusion as UAS Projects. Experience with ‘play or pay’ approaches in other jurisdictions suggests that the

detailed regulations need to be developed with great care to ensure transparency, fairness and good value for money for the public at large.

2.13 New Part on Emergency Services

The proposal is to include a new Part in the NICT Act with new provision/s to regarding Emergency Services and the role of operators and authorities in national emergencies.

(a) Digicel

It is not clear to Digicel why any change is needed to the NICT Act, and what concerns NICTA has about delivery of Emergency Services and support during national emergencies. Digicel therefore seeks further clarification. Digicel considers that prescriptive Emergency Service and national emergency support provisions in the NICT Act would lack flexibility and be inappropriate, especially as technologies and services evolve. “Instead, Digicel PNG suggests that NICTA’s objectives and concerns are something that can be dealt with by way of Rules and Licence conditions following detailed discussions with interested parties.”

(b) Telikom

Telikom agrees that there should be a new Part to the NICT Act, dealing with matters such as the obligations of licensed ICT operators during emergencies; cooperation protocols with emergency services and disaster response agencies; provision of free-to-access emergency communications; and redundancy plans and disaster recovery infrastructure.

(c) Vodafone

Vodafone does not object to the proposal in principle, but “cautions that such powers should not be used to force providers to provide certain services without compensation in the absence of an analysis of the costs and benefits of doing so. NICTA’s primary role should be to facilitate greater coordination to assist responses to emergencies rather than directing networks how to operate their services.”

NICTA’s position: The submissions indicate that further discussion is needed on the detail of the proposal. In the light of that, NICTA’s position is to ensure that the NICT Act is amended to explicitly enable it to develop, in consultation with the industry, Guidelines, Rules and/or Regulations relating to Emergency Services and emergency response procedures, including the items listed in Telikom’s submission. This will enable the procedures and obligations to remain more current than if the substantive detail was to be included in the NICT Act itself. This is one of Digicel’s key points. The powers that NICTA needs to have to develop emergency service plans relevant to the ICT sector and to intervene to provide directions in accordance with such plans should explicitly not be dependent on the declaration of a State of Emergency. Given that emergencies involve many different authorities and agencies, and are concerned with more respondents than those in the ICT sector, it is both appropriate and necessary that NICTA’s powers should be exercised in a coordinated manner with other emergency service organisations. However, the details of the coordination should not be spelled out in the NICT Act, because of the need to respond quickly and effectively in many emergency situations.

The new Part to the NICT Act dealing with Emergency Services, if there is a need for one, should be quite short. The point is to ensure that NICTA has the powers and authority to do

those things set out above. In the process existing Section 70 will need to be reviewed to ensure consistency. NICTA considers that Section 70 would become a key provision in such a new Part.

2.14 New Part on Cybersecurity, Data Governance and Resilience

This is a growing area of keen interest to government, administrators and the sector. There are a number of issues including the relationship between NICTA and other agencies and authorities with responsibilities in the cybersecurity sphere, data governance and security and also the issue of ensuring that NICTA has adequate authority under the NICT Act to undertake whatever is required to coordinate the ICT sector in responding to cybersecurity, data security and governance issues and challenges.

(a) Digicel

Digicel considers that these issues require a whole of Government response. “While the ICT industry and NICTA will no doubt continue to play an essential role in addressing issues relating to cybercrime and data protection, we consider this to be a law enforcement and national security issue that requires a ‘whole of Government’ response that is coordinated as much as possible with regional and international agencies.” Digicel notes that the Cybercrime Code Act 2016 is already in effect. “... we believe it would be better to have [NICTA’s] involvement detailed in the context of relevant subject-matter legislation”.

(b) Telikom

Telikom recommends the establishment of a Cybersecurity and Data Protection chapter in the NICT Act, which would define the obligations of licensed operators for cybersecurity and data protection, and outline the required “coordination with PNG’s National Cybersecurity Agency, Censorship Board and future Data Protection Agency”.

(c) Vodafone

Vodafone states that ‘further clarity on NICTA’s roles in relation to cybersecurity would be beneficial. While Vodafone does not specifically object to NICTA having some powers in relation to cybersecurity and resilience, NICTA should avoid obligations that are overly prescriptive.’

NICTA’s position: The inclusion of this item in the Consultation Discussion Paper was to test the opinions on these matters in the industry. There is a recognition that NICTA should have an important role within the national arrangements for cybersecurity, data governance and security and should have specific authority to implement those elements of the national response on cybersecurity and data governance that require ICT sector involvement. NICTA’s role in coordination and cybersecurity and data governance administration should not extend to a broader or overarching national role beyond ICT. NICTA also notes that the Cybersecurity Code Act of 2016 does not have accompanying regulations and other detailed implementation arrangements at this stage. An important step in terms of national cybersecurity administration was the publication by DICT of the Cybersecurity Standards, Guidelines and Best Practices, 2023. NICTA believes that the new Part proposed on cybersecurity and data governance in the NICT Act would be specific to the ICT sector, and would be simply to ensure that NICTA has the authority it needs to specify and require the implementation of the ICT industry elements of national cybersecurity, data governance and related resilience policies. The new

provisions should also stress that NICTA will exercise its authority in these areas with other agencies and organisations with responsibilities for these matters. Designation and or mandating NICTA to establish and maintain the National Computer Emergency Response Team, (CERT) as envisaged in the Cybersecurity Policy should be considered as part of the sector specific measure. The new Part to the NICT Act will enable NICTA to make regulations outlining in greater detail than is appropriate in primary legislation such matters as the responsibilities of licensed operators in relation to cybersecurity, data privacy governance, standards and related emergencies, resilience and recovery, monitoring and investigation, information keeping and reporting, and protection of essential and critical telecommunication and information networks and infrastructure but not limited to those specific matters.

Consumer Protection including consumer education and awareness as they relate to Cyber security and data governance for the telecommunications and ICT sector should be added to Part VII of the Act.

The need for telecommunication and/or ICT sector specific cyber and data governance legal and regulatory framework is imperative considering telecommunication companies develop, control and run vital infrastructure that is extensively utilized to transport and store vast amounts of sensitive data and information and therefore need protection against interception and unauthorised attacks. Responsibilities and obligations of telecommunication operators on cybersecurity, data protection and governance should be set out in the regulations.

3. Responses on other issues

3.1 Introduction

The Public Consultation Discussion Paper set out three questions on which respondents were invited to respond, namely:

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

The topics covered in the four submissions are wide-ranging, but with some overlap. The major comments in each of the three submissions are addressed below, one submission at a time. Where there is overlap on an issue or question in a submission, the NICTA response takes account of all relevant comments. Note that issues that have been covered in Section 2 of this Report, concerning the 14 proposals advanced by NICTA, are not covered in this Section.

3.2 Digicel: Part III - Operator Licensing

Digicel notes that changes in technology and service delivery “has resulted in uncertainty and apparent inconsistency in the application of the licensing regime, particularly in respect of overseas entities that provide services directly to retail customers in Papua New Guinea”.

Digicel proposes that the licensing arrangements in Parts II and IV of the Act “be improved to provide for additional certainty and ensure there is a consistent and non-discriminatory approach which requires all entities that provide retail services to customers in Papua New Guinea to operate under a licence, contribute to the economy by way of payment of licence fees, levies and taxes, and be held accountable for the quality of services that they provide”.

Digicel specifically mentions “over-The-Top” (OTT) internet-based social media and content services, and Low Earth Orbit (LEO) satellite services. Vodafone also raises issues about new categories of services that come within the scope of Digicel’s comments.

NICTA’s position: NICTA recognises the issues that Digicel and others have raised, and in principle agrees that the licensing regime should impose similar obligations and duties on all operators and service providers competing for retail sales in the PNG market.

Other jurisdictions have considered, and in some cases, addressed the issues in varying ways. The regulatory obligations need to be balanced to prevent distortion of competitive advantage and development of the market. This might be done by relieving licensees providing services in “traditional” ICT categories of some regulatory impositions; imposing obligations on OTT, LEO satellite service providers and others; or some combination of the two.

NICTA has in practice adopted the approach proposed by Digicel. In the case of LEO and other non-geostationary satellite services, NICTA has developed detailed obligations which have been drafted as part of the Rules that contain standard and special terms and conditions

of operator licences. LEO satellite services need to be licensed. It is the service provider that has contract relationships with the retail customer that needs to be licensed, whether this is the LEO satellite service network operator, or a retail partner in PNG. NICTA's view is that the NICT Act does not need amendment to allow for regulation of such services. The subordinate instruments, and particularly the Rules referred to above, do require amendment however. The amendments have been completed for some time, and the delay in their formal approval and promulgation is not because of any inadequacies in the current NICT Act.

The situation with OTT services is different. As Digicel points out, these are provided by internet-based platforms, and are content services. The concern, in terms of competition, is where the services concerned involve communications and may substitute or displace legacy telco voice, text or data communication services. Often these services are nominally free, and sustained by online advertising rather than specific usage charges. NICTA's approach to date has been to regulate, through the licensing regime, the connectivity provider (Internet Service Provider). This regulation takes the form of consumer protection, upholding community standards, and online safety requirements, and involves sanctions such as website and service blocking.

Platform and OTT regulation is an ongoing issue, and involves issues of jurisdictional reach, which are not within the control of NICTA. Further work will need to be undertaken, continuously rather than as a one-off study, to determine how best to address the range of sub-issues involved and the legislative changes that might then arise. For the current series of amendments, NICTA proposes that a short provision be included in the NICT Act, under a heading such as "new and emerging services and technologies", which ensures that NICTA has powers to regulate those aspects of such services and technologies that impact on the development of the ICT industry and services in PNG. The services and technologies should include, without limitation, satellite-based services, cloud-based services, OTT and other services that originate overseas or which involve substantial extra-jurisdictional elements for their delivery within PNG, and internet-based services generally.

3.3 Digicel: Part VII - Retail Price Regulation

Digicel notes that there has been a major new entrant into the PNG mobile services market (Vodafone), and substantial competition via OTT services in recent years, both of which have increased retail competition. Digicel considers that "any instances of alleged anti-competitive behaviour would be addressed through other available mechanisms, including Part VI of the Independent Consumer and Competition Act 2002". Digicel's argument is that the retail price regulation under Part VII of the Act is out of date, and that NICTA, like regulators in Europe and elsewhere, should concentrate on wholesale markets, and there should be a move away from retail market regulation".

NICTA's position: Digicel disagrees with the position put by NICTA, at least in the circumstances of PNG. The concentration on wholesale service regulation in Europe reflects the fact that the European market is large, competitive and much further developed than PNG, with substantial more actual and potential competition as a result. PNG is not yet in that situation, although, as Digicel notes, some recent developments have made it more competitive. Part VII of the NICT Act set out substantial criteria that must first be met before NICTA can recommend that the Minister makes a Retail Service Determination (RSD). RSDs are remedies that can be adapted to the specific industry circumstances and problems to be

addressed. There is no equivalent available to the ICCC under its legislation. The RSD remedy is resorted to sparingly, but remains an important and necessary one in the context of the PNG market conditions.

3.4 Digicel: Section 36 - Valuable State Resources

Digicel considers that Section 36 is unnecessary and “raises an expectation for the Government to be able to generate material revenues from the ‘sale’ of spectrum, numbers and other resources that are essential to the delivery of ICT services. Instead of seeking to generate Government revenues in this way, Digicel PNG suggests that more focus is applied to [make] such resources available for efficient use at the lowest price.”

NICTA’s position: NICTA regards Section 36 as setting out a fundamental policy position on the resources listed in subsection (1)(a), and about the treatment of proceeds from their sale or allocation. There is not expectation that the revenues should be maximised, or how the prices must be calculated. The provision is not to be understood in isolation from other sections of the Act, such as the objective of the Act in Section 2 and the functions of NICTA in Section 9. Ultimately it is a matter of Government policy to determine how the resources of the State should be managed and how revenue from their sale or use should be treated. NICTA is accountable in relation to these matters, and it is always open to the Government to make policies and notify NICTA pursuant to Section 11 of the Act.

3.5 Digicel: Section 131 – Deemed Declarations and Mandated Inquiries

Digicel argues that these provisions are now outdated and should be repealed. The declarations relate to terminating access services (subsection 1) and to other services declared before 31 December 2010 (subsection 2). The declarations so deemed are time-bound, and that time has now expired.

NICTA’s position: NICTA agrees that Section 131 serves no further purpose and should be repealed.

3.6 Digicel: Section 132 – Exempt Services

Section 132 lists services that are exempted and shall not be declared before 1 July 2012. Digicel argues that the section serves no further purpose and should be repealed.

NICTA’s position: NICTA agrees.

3.7 Digicel: Section 160 - Retail Service Determination by the Minister

Digicel raises a further aspect of the Minister’s power to approval Retail Service Determinations (RSD), namely that “the Minister’s review and decision-making process should be stayed in the event that NICTA’s recommendation to declare the service is the subject of a review by the ICT Appeals Panel”.

NICTA’s position: In practice, this is what has been ordered by the Appeals Panel on some occasions in the past. However, the appeal is against NICTA’s recommendation not the Minister’s decision, so that if the Minister has proceeded to make a decision and to approve the RSD, then the appeal will be rendered nugatory, without any force or effect in practice. This has happened on at least one occasion. NICTA agrees that the Section 160 (and Section

130, for consistency) should be amended to include an automatic stay if an appeal has been lodged within the time limit.

3.8 Digicel: Section 188 – Potential Implementation of Pre-selection

Digicel notes that this section is now out of date and can be repealed.

NICTA's position: NICTA agrees that the types of pre-selection that were popular in the 1990s and early 2000s during the early stages of telecommunications liberalisation are no longer needed. However, Section 188 is sufficiently broad to cover new and emerging services, particularly those with extra-jurisdictional elements in their delivery to PNG. NICTA considers that Section 188 may have purpose in the future and should not be repealed.

3.9 Digicel: Section 189 – Potential Implementation of Number Portability

Digicel submits that, “in keeping with the technology neutral principles that are espoused in the NICT Act, any consideration of [number portability] introduction should require the inclusion of both fixed and mobile number portability”.

Digicel adds that “any cost-benefit analysis of the merits of introducing number portability should take into account the significant synergies and consumer benefits that could arise from introducing fixed number portability at the same time as mobile number portability”.

NICTA's position: Technological neutrality has been a principle in the Act from its initial passage, as has the limitation of Section 189 to Number Portability. The reasons for this are unclear. Nevertheless, Digicel's argument is based on principle, and NICTA sees no good reason against amending the section to include fixed number portability. Note however that NICTA's position is that both mobile and fixed number portability need not be both considered, and that both fixed and mobile number portability could be considered separately or together when an assessment is being made. There should be no requirement that number portability, if implemented, must include both fixed and mobile. The costs and benefits may well be different in each case, resulting in a case for one and not the other. The amendment should require only that both fixed and mobile are considered. NICTA does not agree that the Act needs to be amended to require the synergies of introducing both forms of number portability to be considered, and certainly does not agree that the Act should suggest that they will be substantial.

3.10 Digicel: Consequential Changes to the NICT Act

Digicel sets out a number of consequential changes to the NICT Act that, in its view, would follow adoption of the positions in its submission. NICTA considers that it is appropriate to leave most of these changes for consideration when amendments are drafted, assuming they are still required at that stage. However, some of the changes require comment from NICTA at this point, as follows:

Section 4(1) – new definition of “UAS Initiative”: NICTA understands that an additional definition is proposed to cover work undertaken by a licensed operator under the proposed “play or pay” arrangements, which permit provision of infrastructure in kind in lieu of payment of some portion of the UAS levy charge. Even allowing for some form of “play or pay” arrangement (which would need to be specified in considerable detail in regulations or other subordinate instrument), NICTA does not see the need for such work to be considered as

anything other than a Project, or part of a Project, under the Act and subject to all of the requirements and obligations that apply to parties contracted to deliver such Projects.

Section 38 – Auditing of NICTA’s reports and financial accounts: The new subsection (3) that Digicel proposes allows for the Auditor-General, at his discretion, to audit NICTA from time to time. NICTA has no objection to that provision, but considers that it would be prudent to give the Auditor-General a larger role when NICTA and the Head of Treasury (as proposed) appoint independent auditors. That role might be to disapprove of an appointment if the Auditor-General publishes reasons justifying such action.

Section 92 - New Subsection (1) on the constitution of the UAS Board: Digicel proposes that two non-voting members be appointed on the recommendation of the network licensees, with any failure to agree being resolved by the nomination of the Registrar of the National Court picking two persons from list(s) of names submitted by the network licensees. NICTA disagrees that the UAS Board should include any members (whether they have voting rights or not) because of the perceived conflict of interest that must inevitably result. UAS Board meetings are confidential, and the two network licensee nominations would have employment obligations to report back to their licensee employers. In addition, giving the selection of these representatives, potentially, in the hands of the Registrar of the National Court is particularly inappropriate, given that the Registrar would not be expected to have any expertise or experience to make such choices.

Section 158 – Retail Regulation Criteria: Digicel proposes that the competition criterion for retail regulation should be amended from “substantial degree of power” to “monopoly or an effective monopoly”. NICTA strongly disagrees with this proposal, which would weaken the effectiveness of the criterion by raising the bar for market power to effectively unachievable levels. The proposal is out of step with market power criteria best practice. Monopolies and effective monopolies are extremely rare in ICT under current circumstances. The point of the criterion is whether a market is effectively competitive or not, and the current wording allows for ineffective competition but which is assessed to be inadequate in constraining the potential for anti-competitive conduct.

3.11 Other NICT Act provisions no longer required

There are other provisions in the NICT Act, apart from those identified by Digicel, as being no longer required, and which may now be repealed. In particular they include Division 3 of Part XV of the Act, which relates to the migration of licences existing at the time the Act initially came into effect. Sections 303 and 304 no longer serve a purpose. All pre-2010 licences have either lapsed or been individually renewed in the meantime.

3.12 [Telikom: Proposal for a National ICT and Land Acquisition Act 2025](#)

Telikom proposes that a new Act be passed, which it calls the National ICT and Land Acquisition Act 2025, to address a range of issues and challenges concerning access to land by licensed operators, land ownership disputes, etc. The proposed legislation provides for public acquisition of land for ICT purposes under the common law of eminent domain. The proposed legislation provides for just compensation based on fair market value independently determined, but exempts property acquired under the Act from annual rental payments in perpetuity.

NICTA's position: The proposed legislation is a radical approach that affects principles of law generally, with implications far beyond ICT. While some of the problems that the Act seeks to address are well known to NICTA and the many sector participants, this proposal needs to be considered by Government and, if Government agrees, subject to a separate consultative process.

3.13 Telikom: Declaration of ICT Infrastructure as Public Property

This proposal is part of the land acquisition scheme discussed above under 3.11, and needs to be addressed in the same way.

3.14 Telikom: Licence Tiers and Access for Non-Telecom Entities

Telikom raises as an issue, that non-core players (such as banks and universities) operate as telecom providers “with no proper oversight”. Telikom proposes that the licensing regime in the NICT Act be amended by defining “‘core telecom operator’ vs. ‘non-core’”. Non-core licensees would be subject to quarterly or annual compliance audits, and to limit service scope. Telikom also suggests that future amendments could introduce stricter eligibility requirements for ISP licences, but does not state what additional or stricter requirements might apply.

NICTA's position: NICTA disagrees with this proposal. The proposal suggests a solution when there is no problem of the kind that Telikom raises. Pursuant to the current NICT Act, NICTA requires the providers of ICT services to third parties to have an appropriate licence. If an organisation is providing services internally (to itself) it does not need to be licensed. Some related organisations (such as Government departments and agencies, or a firm and its subsidiaries) may share services or provide them internally within the common interest group. Sometimes there are judgments to be made about common interest groups and whether they involve third party service provision. NICTA will rule on such matters as they come to notice or are referred to it. There is nothing to prevent a bank or a university from applying for and being awarded an operator licence if they fulfil the eligibility criteria that apply to all applicants. If a licence is needed and granted the organisation will be subject to the same terms and conditions as all other holders of the relevant licence category.

In the past, Telikom has raised concerns about some firms receiving services (particularly digital capacity services) at wholesale rates when they were not licensed operators and did not supply services to third parties. These circumstances made it much more difficult for licensed operators such as Telikom to compete on price. This problem is one of regulatory administration and does not constitute evidence of any inadequacies in the licensing regime or any other part of the NICT Act. NICTA has addressed the problem through appropriate administrative action and compliance monitoring.

3.15 Telikom: Differentiation of Wholesale and Retail Licences

Telikom states that “overlap between wholesale and retail operators causes anti-competitive behaviour.” Telikom’s solution is to “explicitly define wholesale and retail licences” and to “prohibit retail licences by wholesale-only licensees and vice versa”.

NICTA's position: The current NICT Act defines wholesale and retail services very well, and conforms with international best practice in this respect. The licensing regime enables eligible persons to apply for all available licences, and makes no provision for separate wholesale and retail licences. This is for good reason. Most network operators, including the three

respondents to the present public consultation, are integrated operators – that is, that means that they provide both wholesale and retail services. All three provide wholesale access services such as interconnection and facilities sharing to third parties and are self-providers in relation to their retail offerings. It is open to a licensed operator to choose to be wholesale only, but there is no licence category that requires such an outcome. NICTA disagrees strongly with the proposal. Even if it were to be adopted, it does not necessarily require amendments to the NICT Act. The NICT Act already gives NICTA the power to make certain types of rules or to prepare and recommend regulations for approval by the Head of State.

3.16 Telikom: Tower Moratorium and Regulate LEO/MEO Operators

Telikom seeks clarification on the moratorium that NICTA placed on construction of new towers, and recommends it be lifted. As a possibly separate matter, Telikom wants NICTA to allow LEO/MEO satellite operators to be able to deploy their networks and provide their services under fair, regulated terms.

NICTA's position: These are administrative matters, neither of which requires or suggests changes to the current NICT Act. The moratorium on tower construction in built-up urban areas resulted from significant complaint levels from property owners about construction and siting practices. The moratorium will be lifted when the relevant authorities are able to determine a suitable code of practice for future compliance by operators and other tower owners. The current pause on approvals for LEO/MEO satellite networks and services is the result of an order prohibiting such approvals by the Ombudsman Commission. NICTA managers and others subject to the order have initiated court proceedings to have the order lifted. In neither the tower moratorium or the satellite services approvals pause is the adequacy of the NICT Act an issue.

3.17 Telikom: Mandating ICT Infrastructure in New Public Works

Telikom notes that telecom operators are often required to “retrofit cables due to lack of planning integration”. Telikom recommends that all roads, bridges and buildings be required to include ICT cable ducts. In addition, Telikom proposes that all municipal authorities and other permit-issuing bodies should require adequate spacing and access for telecommunications infrastructure as a mandatory condition of permit approval. Telikom sees NICTA's role as issuing guidelines to define “adequate access and spacing”, and to monitor compliance by municipal authorities and other relevant bodies.

NICTA's position: This is a sweeping proposal that needs a lot more detailed consideration if it is to be adopted. It is not one for NICTA or for amendment to the NICT Act. It goes much broader and affects infrastructure planning and construction obligations across the whole of the economy. It also proposes substantial additional expenditure in its current form, much of which might not be economically beneficial. For example, “all roads” is a very broad term, and many roads would not justify cabling via ducts. Direct burial of cable would in the case of many roads, particularly in rural areas, be more appropriate. The point of mentioning this is to highlight that the proposal needs much more consideration and refinement if it is to be progressed.

3.18 Telikom: Reform Spectrum Fees

Telikom comments that high spectrum fees disincentivise rural rollout of networks and services. Telikom's proposal is to implement “a performance-based model – 2% gross

revenue annually instead of high upfront fees, contingent on subscriber growth”. Telikom also proposes that “all licensed operators shall be subject to a regulatory fee not exceeding 2% of their annual gross income”.

NICTA's position: Telikom is proposing a ceiling for all regulatory charges combined. This includes but is not limited to spectrum fees. The proposal is not supported by any argument or evidence about the adequacy of such fee/charge limits. For that reason, NICTA considers the proposal to be without merit and disagrees. Even more important, the proposal is about regulatory administration, not about amendments that are needed to the NICT Act.

3.19 Telikom: Exempting Duty for Rural Areas and Special Economic Zones

NICTA's position: This is a proposal which goes to Government policy and should be raised in a different forum.

3.20 Telikom: Mandating Joint Participation in Global ICT Conferences

Telikom states: “NICTA attends forums without representing industry interests.” Telikom proposes that the NICT Act should be amended to require licensed telecom operators to attend major forums such as ITU and WRC alongside NICTA.

NICTA's position: In fact, NICTA represents national and PNG industry interests at international conferences. Where the hosts or organisers of international conferences permit broader industry attendance in national delegations – that is, most such conferences – NICTA invites the PNG industry to attend. In almost all cases the invitation is not taken up. If the proposal arises because Telikom considers that there is insufficient engagement of the industry *beforehand* or *feedback after*, then this can be addressed through administrative means. NICTA disagrees with the proposed amendments to the Act. They are impractical. Industry participation in PNG delegations has been arranged in the past and can be organised where the industry considers it appropriate in the future. These are matters for appropriate administrative solutions, and amendments to the Act are neither needed nor desirable.

3.21 Telikom: Mediation of Interconnection Disputes

Telikom states that “disputes between operators go unresolved or to court”. Telikom recommends that the Act be amended to “empower NICTA to mediate and set binding interconnection rates”.

NICTA's position: It is useful to distinguish between mediation and arbitration. All arrangements that Telikom envisages are effectively provided for in the Act already. Section 130 provides for the Minister to declare wholesale services (including interconnection) on the recommendation of NICTA; Section 140 sets out NICTA's role in commercial negotiations over access; and Section 143 and following deal with NICTA arbitration of access disputes.

3.22 Telikom: Broadcasting Content

Telikom notes that Digicel is the only licensed ICT operator with broadcasting rights in relation to NRL broadcasts. Telikom claims that Digicel “cannot hold the Exclusive Broadcasting Rights” and the matter needs regulatory review. Telikom recommends that Broadcasting Content be specifically included in the Act.

NICTA's position: It is not clear what Telikom is proposing or what specific exclusivity prohibitions are being proposed, although it appears that Telikom expects NICTA to have a role in arbitrating exclusive broadcasting rights. These are generally commercial matters, where the rights are auctioned or otherwise sold on a fully commercial basis. It is not clear that what role NICTA might have in such matters. Nor are the facts of the matter stated in the submission sufficiently detailed to respond fully. Under the circumstances NICTA proposes to take no further action as part of the Act review.

3.23 Telikom: Emerging Issues and Internet Governance

Telikom recommends “expanding the scope of the Act (or future policy instruments) to cover OTT and digital platforms, net neutrality, data sovereignty and cross-border data handling, IoT, AI and 5G regulatory readiness.

NICTA's position: NICTA's starting position on *most* of these topics is that the current NICT Act provides sufficient powers to enable NICTA to develop appropriate regulations, rules and guidelines. Each of the topics listed by Telikom is significant in its own right and needs detailed review to determine the sorts of powers that NICTA might need in the future. There is some merit in defining all of them (except 5G regulatory readiness) and amending the Act to include them explicitly within the meaning of ICT services. 5G is a specific technology that falls within NICTA's current remit and NICTA already has adequate powers to regulate its introduction in PNG. In relation to the other topics an indication of Government policy would be useful, and this might well be facilitated by NICTA undertaking studies and then exercising its advisory functions under Section 9(b).

3.24 Vodafone: Mobile coverage issues and spectrum allocation

Vodafone notes its continued lack of 900 MHz spectrum to enable it to provide wide mobile network coverage. Vodafone also refers to current proposals to increase fees paid by it for spectrum and numbering resources and says this is a disconnect with policies designed to enhance coverage.

NICTA's position: NICTA is aware of Vodafone's concerns. They are not concerns that require amendment to the Act. Existing legislated powers are adequate for their resolution. This does not necessarily extend to subordinate instruments such as spectrum rules and guidelines. They are being reviewed in any case to address a range of spectrum issues and to address the issue of freeing up unutilised resources.

3.25 Vodafone: Mobile Number Portability

Vodafone nominates mobile number portability (MNP) as a topic that is missing from the Act.

NICTA's position: MNP is already covered in Section 189 of the NICT Act. NICTA is part-way through a major review that will comply with that section, and be the basis of recommending to the Minister whether and how MNP should be implemented in PNG.

3.26 Vodafone: Infrastructure Sharing (Tower Colocation)

Vodafone nominates infrastructure sharing, and tower colocation, as topics that are missing from the Act.

NICTA's position: These topics are covered in the provisions dealing with facilities access under Part VI of the Act (Interconnection and Wholesale Access). The provisions have proved adequate for the purpose. On a number of occasions NICTA has canvassed stakeholder opinion in relation to mandatory access to towers and sites (topics that cover Vodafone's reference to tower collocation), and the sector has been divided on the merits of a mandatory approach. In any case, the matter is now under active review again, and the current Act has not proven to be a problem for that exercise. Nevertheless, the NICT Act should be amended to give NICTA the authority to mandate infrastructure sharing in rural and remote areas where infrastructure duplication is economically infeasible. The authority to do this would need to be subject to detailed criteria and to public consultation for each category of infrastructure. Criteria would include consideration of the long-term interests of the end-users involved, and the impact on current and future investment by licensees.

3.27 Emstret Holdings Limited: Various subjects

Emstret Holdings provided considerable and thoughtful feedback on a number of principles, issues and objectives for the ICT sector, and, in particular, on the need for consultation with local communities. Emstret made it clear in its feedback that it did not have specific proposals to suggest.

NICTA's position: NICTA appreciates the feedback and affirmation of many of the important principles and objectives that underlie the current NICT Act, and notes that Emstret does not propose legislative changes. In relation to consultation with ICT users on key issues, and with local communities in particular, NICTA notes that it does this in many ways at present, including through public consultation processes. Undoubtedly more can always be done. NICTA notes also that it does not need any additional authority under the NICT Act to do this.

3.28 Russell Deka Harada: Regular legislative reviews

Mr Harada proposed that the NICT Act should be subject to reviews every 3 – 5 years.

NICTA's position: Primary legislation such as the NICT Act should be couched sufficiently generally to be fit for purpose for more than 3 – 5 years, even in a fast-changing sector such as ICT. The current NICT Act is still relatively fit for purpose after 15 years, but most would say the current review is well overdue. The resources required for comprehensive reviews of legislation are significant and therefore a 3 – 5 year review timetable is unrealistic. NICTA's views on matters that are likely to require review and revision in a 3 – 5 year time horizon should be included in other instruments, such as regulations, rules, and guidelines.