



# **BROADCAST CONTENT REGULATION 2021**

**CONSULTATION PAPER**

## **EXECUTIVE SUMMARY**

National Information and Communication Authority (NICTA) has developed this draft regulation pursuant to section 217 of the NICT Act, 2009, to address Content but not limited to broadcast content.

The development of this draft regulation is in consideration to:

1. though NICTA issues content license to broadcasters, there is no regulatory conditions applied to the license; and
2. there are no sector specific regulations were developed, especially in the broadcasting area to regulate the increasing carelessness to broadcast indecent and vulgar content; and
3. noting the lack of self-regulation by some of the broadcasters

This draft regulation sets necessary standards in line with the National Censorship Policy 2010, and codes of practice, to guide the broadcasters whom are required by the NICT Act to obtained Content License. In addition, it gives the broadcast audience the right to complaint and have recurs.

This draft regulation is based on guidance and regulatory conditions will be applied when issued NICTA content License.

***(NOTE: The executive summary will be removed from this regulation on the final draft)***

*Broadcast Content Regulation 2021*

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## ***Broadcast Content Regulation 2021***

Being a Regulation to regulate all Broadcast Content, and provide all broadcast audiences to have the right to complaint on indecent broadcast material.

Made by the Head of State, in accordance with Section 217 of the **National Information and Communications Technology Act 2009**.

### **PART I. - PRELIMINARY**

#### **1. INTERPRETATION.**

- (1) In this Regulation, unless the contrary intention appears -
- “Act” means the National Information and Communications Technology Act, 2009 and any regulations made under the NICT Act;
  - “advertisement” means an announcement made in radio or television to promote a product, service, or event;
  - “advertiser” means a person or persons on whose behalf any advertisement is announced in radio or television;
  - “audience” means the viewers and listeners of both radio and television;
  - “authorities” means the regulators mention in this regulation;
  - “broadcast material” means broadcasting of programmes, advertisements and sponsorships;
  - “broadcast relay station” means a broadcast station equipped to re-broadcast radio or television programmes to an area not covered by the originating station;
  - “broadcasting” means unidirectional conveyance of sounds or television programmes, whether encrypted or not by radio or other means of telecommunications, for reception by the public;
  - “broadcaster” means any legal organisation or natural person who composes or packages or distributes television or radio programme services for reception by the public or sections of the public or subscribers to such a service, irrespective of technology used;
  - “broadcasting service” means an application service that supplies content to the general public;
  - “broadcasting station” means a station equipped to broadcast radio/television programmes;
  - “children” means persons under the age of 18 years;
  - “classification” means the classifications prescribed under the classification of publication (censorship) Act 1989;
  - “commercial advertisement” means the advertisement as prescribed under the Commercial Advertisement (Protection of Public) Act 1976;
  - “complainant” means a person or persons who is making the complaint on a programme or advertisement in the radio or television;
  - “complaint” means a statement made by the complainant on a broadcast material that has breached the standards as established under this regulation;
  - “complaint referral” means where a broadcaster has already issued a response on a complaint or where a broadcaster has not issued a response within the relevant timeframe.
  - “content” means information in any combination or form including speech, music or other sounds data, text writing, signals or images (animated or otherwise);

- “copyright” means copyright under PNG Copyright and Neighbouring Act 2000;
- “editorial control” means to ensure that programmes and advertisements in both radio and television comply with the standards established under this regulation;
- “filtering technology” means the use of a program on television applications to block certain programmes that are not suitable for children;
- “ICT licensee” means the holder of an ICT license issued under the NICT Act 2009;
- “National Censorship Policy” means policy developed by the PNG Office of Censorship through its Censorship Board;
- “NICTA” means the National Information and Communications Technology Authority established under NICT Act 2009;
- “PNG” means Papua New Guinea;
- “public interest” means the broadcasters are to serve the interest of the public;
- “Regulation” means any regulations made under this regulation;
- “subscription service” means a broadcasting service provided to a subscriber upon payment of a fee.
- “webcast” means broadcast of a live or previously recorded audio and/or video event that is digitized and delivered over the internet to many simultaneous listeners/viewers online.

(2) Unless the contrary intention appears, any word or phrase used in this Regulation and not defined in this regulation but used in the Act have the same meaning or interpretation as given to them in the Act.

## **PART II. – SCOPE AND OBJECTIVE**

### **2. OBJECTIVE.**

(1) This Regulation sets the framework necessary for broadcasters to be more decent, truthful, accurate and mindful on the type of content they intend to broadcast to their audiences taking into consideration the PNG constitution, Section 46 freedom of expression, Subsection 2 and 3;

(2) provide all broadcast audiences to have the right to complaint and have recourse.

### **3. APPLICATION.**

This Regulation shall apply to;

- (a) locally based broadcasters, both radio and television that transmits free – to- air broadcasting services including both local and international content;
- (b) international broadcasters, both radio and television, that provides free-to-air broadcast services through their broadcast relay stations established by an ICT licensee in PNG;
- (c) subscription broadcasters, both radio and television that provides subscription broadcast services, including local and foreign pass through channels in their contents for broadcast in PNG;

- (d) webcasters, both radio and television that are offered simultaneously over the internet by a broadcast licensee in PNG
- (e) all the broadcast audiences

**Q1. NICTA invites comments on the objective and scope of this draft regulation**

**PART III. – BROADCAST CONTENT COMPLIANCE**

**4. CONTENT SHARING AND COPYRIGHT**

- (1) All broadcasters must comply to Section 13 under the PNG Copyright and Neighbouring Rights Act 2000, when broadcasting their content to the public; and
- (2) Any broadcaster intending to transmit content or programmes of another broadcaster must have an agreement in place with the concerned broadcaster and a copy of such agreement be provided to NICTA, just prior to or shortly after broadcast.

**5. CENSORSHIP**

All broadcasters must comply with the PNG National Censorship Policy 2010, and existing censorship laws and regulations when broadcasting their content to the public.

**Q2. Are there any other compliance matters that NICTA needs to take into consideration?**

**PART IV. - GENERAL BROADCAST STANDARDS**

**6. NATIONALITY**

- (1) Local broadcasters should;
  - (a) at all times emphasis on the developments of the nation as a major priority in their broadcasting programmes when operating in PNG;
  - (b) promote PNG values and norms;
  - (c) not promote values and attitudes which are contrary to national Interest;
  - (d) endeavour at all times to reflect and promote national development in their programmes including protection of the environment, family planning and gender issues;
  - (e) ensure that due objectivity is observed in programmes dealing with matters of the public policy or controversial issues of public importance in Papua New Guinea;
  - (f) in particular, facilitate the participation of nonentity individuals and communities in national priority – setting and decision-making by providing them access to express their views and share their knowledge in programmes;
  - (g) not broadcast information or events in such a manner that may mislead or cause alarm to the public;
  - (h) not broadcast materials that contain propagandist and ideologist on behalf of any foreign country group or organisation;

- (i) not broadcast extremist or anarchic messages that may incite violence for political matters; and
  - (j) promote and support creation of local content for broadcast.
- (2) International and subscription broadcasters;
- (a) should not broadcast a programme which is likely in all circumstances to seriously offend the cultural sensitivity of local Papua New Guineans or culturally and linguistically diverse communities in Papua New Guinea; and
  - (b) the content of the programme material delivered must be consistent with the standards acceptable to the relevant specific audiences involved and within the standards under Subsection (1).

## **7. DECENCY**

(1) Broadcast programmes should not make careless reference to any class or group of persons as being inherently inferior.

(2) Programmes should not encourage or in any way discriminate against any section of the community on gender, age disability or occupational status.

(3) Broadcasters should promote informational programmes against domestic violence and promoting development of family protection in Papua New Guinea.

(4) Broadcasters should make diligent checks on the contents in advance before transmission, based on the nature of the programmes to be broadcast to the expected audience

(5) Broadcasters should take care not to offend the sensibilities of disabled and handicapped persons

(6) Different PNG cultural rites and practices of value should be promoted with accuracy and care.

(7) Cult practices should not be broadcast and or to be promoted in broadcast

## **8. ACCURACY**

(1) All broadcasts intended to supply information and help form public opinion should be thoroughly researched and assertions of the fact should be verifiable.

(2) Broadcasters should take great care that on-air broadcasting does not blur the distinction between truth and fiction.

(3) Undisputed or acknowledged facts must be respected, and broadcasters have the obligation to do what they can to ensure that the opinions expressed, however partial, do not rest upon false or inaccurate facts.

(4) Fictional events, including reconstructions, must be identified as such so that the events are not misleadingly presented as fact.

(5) Opinion should be clearly distinguished from facts in all factual programmes, which the programme must clearly identified as one which contains personal opinions or views both in advance announcements and at the start of the programme.

(6) All statements or information that could be ambiguous or misleading should be avoided.

## **9. PRIVACY**

Broadcaster should not broadcast programme materials or information relating to an individual's personal or private affairs or intrudes on an individual privacy unless:

- (a) that person has been informed in advance or is aware that the material may be broadcast; or
- (b) required by law and/or the material is necessary in the public interest.

## **10. LAW AND ORDER**

(1) Broadcasting of scenes or languages used that a likely to encourage or incite crime or lead to disorder should be avoided.

(2) Broadcasters should not broadcast any information from any sources which could endanger lives or prejudice the success of attempts to deal with any crime such as hijacking or kidnapping.

(3) Programmes should not glamorise or in any way promote persons (e.g. gangsters, vandals, delinquents etc..) groups or organisations who use or advocate the use of violence or engage in any criminal activity within PNG or elsewhere.

(4) Broadcast of Law enforcement should be upheld at all times in a manner that affirms that law and order are the universally-accepted norms of society.

## **11. NEWS AND CURRENT AFFAIRS**

(1) In order to promote diversity, broadcasters should endeavour to have regular news programmes in their broadcast schedules.

(2) All news reporting in PNG must abide by the PNG Media Council code and follow guidelines as set under their code of ethics

(3) Commercial and paid-for items in news and current affairs programmes should be presented in a manner that will be distinguishable from the programmes.

- (4) The presentation of the news must observe the following guidelines;
  - (a) news reports or bulletins should always be presented with due impartiality and without the injection of personal views by presenters;
  - (b) sensational, or alarming details not essential to factual reporting should be avoided;
  - (c) news reports must be sensitive to the use of materials or information relating to person's personal or private affairs. The broadcast of such materials is acceptable only if there is an identifiable public interest for doing so;

- (d) particular care must be exercised when reporting on sexual crimes and suicide or attempted suicide unless there is a public interest reason to do so, and exclude any detailed description of the method used and exclude graphic details or images.
- (e) sexual or other sensational materials should not be exploited as news items without justification, or clearance from the management; and
- (f) reports must not carry information which could lead to the identification of the victims.

(5) Any simulation of a radio news bulletin or news flash should be clearly distinguishable from an actual news bulletin.

## **12. RELIGIOUS PROGRAMMES**

(1) All religious broadcasters must broadcast their content in accordance with PNG Constitution, section 45.

(2) All broadcasters shall not broadcast religious matters that compare nor attack on or ridicule of, any other religion

(3) References to religion must be presented accurately and in a dignified and sensitive manner.

(4) Broadcast presentations of religious matters must be made available to the various religions in the community, but caution should be applied that expectations of audience are not abused.

## **13. LANGUAGE IN BROADCAST**

(1) Local Broadcasters;

- (a) must ensure at all times that their presenters and participants in their programmes speak language appropriate to the programme and of the highest possible standard;
- (b) use standard English, which is grammatically correct, for programmes such as news, current affairs and info-educational programmes. Local English, which is also grammatically correct but pronounced with Papua New Guinean accent (varies from different provinces), and which may include local terms and expressions, could be used for programmes like music programmes, talkback shows, dramas and live interviews.

(2) Local Tok pisin and Hiri Motu broadcast stations should promote decency, morality and social values in their broadcast.

(3) International and subscription radio broadcast;

- (a) must be in English; and
- (b) should not be gratuitous to content, or theme of the content and likely to offend the international audiences.

(4) all television Broadcast programmes in a foreign language must have a proper English subtitle included in the broadcast and displayed on the screen.

#### **14. MUSIC AND SONGS ON RADIO**

- (1) Music and songs that does not meet the criteria of the PNG National Censorship Policy 2010, must not be broadcasted.
- (2) Broadcasters should endeavour on promoting local songs which features Papua New Guinea lifestyle and cultures
- (3) The provision covering decency, morality and social values, shall apply to all music and songs, particularly lyrics.

#### **15. SEXUAL ACTS AND THEMES ON RADIO**

- (1) The programme content should not include sound that relates to sexual act.
- (2) Sexual themes may be broadcasted if it is in the public interest or the programme content is included in a discussion or debate about current events.
- (3) In other cases, the international broadcaster that proposes to broadcast the sexual programme content should not decide whether to broadcast the content until the broadcaster has had regard to the composition of the major component of the audience.
- (4) If the broadcaster decides to broadcast the content, in accordance with Subsection (2) and (3), the broadcaster should broadcast a warning that gives a reasonable indication of the nature of the content;
  - (a) before any broadcast of the content; and
  - (b) at hourly intervals during any broadcast of the content
- (5) Each warning should be broadcast in the principle language used in the broadcast and should not include anything that is likely to seriously offend or distress a substantial component of the international audience.

#### **16. DRAMA, FILMS AND MUSIC VIDEOS**

- (1) All broadcasting of dramas, films and music videos must comply with the PNG Classification of Publication (Censorship) Act 1989 and National Censorship Policy.
- (2) Local Broadcasters should endeavour on promoting local video clips which features Papua New Guinea lifestyle and cultures
- (3) The provision covering decency, morality and social values, shall apply to music videos particularly lyrics and visual presentation.
- (4) Local Broadcasters should endeavour on broadcasting local dramas and films that promotes national consciousness, education, social values, and cultural objectives of the nation.

**Q3. NICTA invites comments on the general standards as outlined under section 6-16.**

## **PART V. - BROADCAST TO CHILDREN**

### **17. CHILDREN'S PROGRAMMES**

- (1) Programmes targeted at children should generally reflected a respect for law and order, good morals and encourage family values. They should impart appreciation of sound moral and social concepts, and contribute to the healthy development of personality, character and intelligence.
- (2) Programmes should not be presented in a manner which may be disturbing or distressing to children or which may in any way adversely affect their general well-being.
- (3) Programmes that contain swearing or blasphemous language of any kind should not be broadcasted when children are likely to be in the audience.
- (4) Broadcast of violence or crimes should not be glamorised but should be portrayed as punishable.
- (5) Children should be protected from ethnic or other complexes resulting from careless or deliberate comparison of information.
- (6) School programmes must be of high quality and broadcast in consultation with appropriate educational authority
- (7) Local Television Broadcasters should support and promote projects for Enhancing Quality in Teaching through TV programmes (EQUITV Projects)

### **18. PROMOTIONS IN CHILDREN'S PROGRAMMES**

- (1) The programme should not include an attempt by a host of a program, or a presenter of a program, or a guest in program, to sell, to promote, or to recommend, products or services.
- (2) If the programme includes content that in attempt to sell, to promote, or to recommend, a product or service, the broadcaster must inform its audience that the content presented as a discrete part of the programme, during the programme and immediately before the presentation of the content, in a way that it would be reasonable to expect children to understand.
- (3) The programme should not include content in an attempt to sell, to promote, or to recommend;
  - (a) an alcoholic beverage; or
  - (b) medicine; or
  - (c) a narcotic substance.

### **19. FREE-TO-AIR RADIO BROADCAST SCHEDULING**

- (1) Unlike Television, Radio does not have a watershed. Radio broadcast scheduling decisions should be based on the audience expectations of each radio services and informed

through broadcasters' knowledge of when children are particularly likely to be in the audience, (usually up until 9:00pm and especially before school and after school).

(2) Broadcasters must take extra care when different generations may be listening together. This typically applies during the morning and afternoon school runs or during school holidays. Unexpected or challenging material should be clearly signposted to avoid causing unjustifiable offence.

(3) Radio Broadcasters should consider using on-air announcements to inform listeners about programmes which contain difficult or controversial material which would otherwise be unexpected on their speech services and these services are predominantly for adult listeners and their audiences expect to hear a full range of issues and events explored throughout the schedule.

(4) Apart from the most exceptional circumstances, Radio Broadcasters must not include coarse language which causes offence in pre-school children's programmes (for four years and under) and programmes made for younger children.

## **20. FREE-TO-AIR TELEVISION BROADCAST SCHEDULING**

(1) Television scheduling decisions need to balance the protection of young people and particularly children with the rights of all viewers, to receive a full range of subject matter throughout the day.

(2) The scheduling decision must be in accordance with PNG Classification of Publication (Censorship) Act 1989 and National Censorship Policy, 2010.

(3) Channels targeted at children should only contain content appropriate for children.

## **21. SUBSCRIPTION BROADCAST SCHEDULING**

(1) Broadcasters must provide channels that have taken effective steps to inform their audience of the nature of the programmes, and enable their audience to regulate their own and their children's behaviour.

(2) For pay television, children are frequently protected through security systems, e.g., filtering technology. Where these are available, they should be clearly and regularly promoted to customers.

(3) Context must always be considered, including whether filtering technology is available so that parents can protect children from viewing unsuitable content, the nature of the programme and the channel, and the public significance.

**Q4. In regards to children's protection, please provide comments that NICTA can take into consideration on,**

- i. Programmes; and**
- ii. schedule**

## **PART VI. – PROGRAMME CLASSIFICATION AND SUITABILITY**

### **22. RADIO PROGRAMME SUITABILITY**

- (1) Radio Broadcasters must exercise particular care when putting 'live' calls on air especially where topics involved are sensitive ones, and comments made may be offensive.
- (2) Radio Broadcasters should always be mindful of their audiences listening time and make judgements on programmes that suits their expected audiences.
- (3) Radio Broadcaster should carryout complete assessment before the programme is broadcast
- (4) If the programme is deemed not suitable for its audience, the broadcaster should make every reasonable effort to modify the programme to make it suitable.

### **23. TELEVISION PROGRAMME CLASSIFICATION**

- (1) The classification of programmes must comply with Section 48, Classification of Films or Advertising Matter as defined under the Papua New Guinea Classification of Publication (Censorship) Act 1989.
- (2) The classification should be broadcast on all content accept news, current affairs, sports and live contents.
- (3) News, current affairs, sports and live content is not subject to classification, because of its distinct nature. However, broadcasters must be mindful of children's interests and other broadcasting standards and include advisories where appropriate.
- (4) Classifications should screen at the beginning of programmes, be included in electronic programme guides, and accompany printed guides where possible.
- (5) Audience advisories should be broadcast immediately prior to content which is likely to disturb, distress or offend a significant number of viewers.
- (6) Television Broadcasters must ensure to rate all their programming with the rating clearly visible on screen and are rated according to age suitability.

**Q5. As Radio broadcast does not have classification on their programmes, provide your comments on how best Radio Broadcaster can do to make aware to their listeners on the type of programmes, they intend to broadcast**

## **PART VII. – ADVERTISING AND SPONSORSHIPS**

### **24. ADVERTISEMENTS**

(1) All broadcast of commercial advertisements should be in accordance with the Commercial Advertisement (Protection of the Public) Act 1976.

(2) All advertisements;

- (a) should be decent;
- (b) no offence caused;
- (c) should not cause fear or violence;
- (d) should not degrade other products; and
- (e) should not contain illegal products or services

(3) Advertisement of products or services must be schedule on timing that suits the type of audience expected, example; adult products advertisement should not be broadcast when children are likely to be listening or watching.

(4) No advertisement or advertisement for a promotion shall contain any obscenities or profanities unsuitable for young persons and children or contain any racial or prejudicial content relating to national origin, religion, sex, gender or age.

(5) No ICT licensee, group of people, organisation and or individual shall imitate the slogans or illustrations of another advertiser in such a manner as to mislead the consumer.

### **25. IDENTIFICATION BETWEEN PROGRAMMES AND ADVERTISEMENTS**

(1) Advertisements should be clearly distinguishable as such, whatever their form and whatever the medium used; when an advertisement appears in a medium which contains news or editorial matter, it must be presented so that it is readily recognized as an advertisement.

(2) Advertisements shall be clearly identifiable as such and distinguished from normal programmes. A form of visual or audio breaks must be inserted for listeners and viewers to distinguish between advertisements and programmes.

(3) Advertisements must not utilise news presentation methods or present in a form in which could cause confusion with news information.

### **26. ADVERTISING TO CHILDREN**

(1) All advertisements should be prepared with, and observe, a high standard of social responsibility.

(2) Children should not be urged, in advertisements, to ask their parents, guardians or caregivers to buy particular products for them.

### **27. PROHIBITED ADVERTISEMENTS**

(1) Prohibition of certain advertisements under Part II of the Commercial Advertisement (Protection of Local Industry) Act 1985, should be adhered.

(2) Advertising of Tobacco Product is prohibited under the Tobacco Product (Health Control) Act 1987.

(3) Advertising of prohibited imported items as listed under schedule 2, item 4 in the Customs (Prohibited Import) Regulation 1973.

(4) Advertising of Prohibited materials defined under the Classification of Publication (censorship) Act 1989.

## **28. SPONSORSHIPS**

(1) Broadcasters must not allow any political parties to sponsor any programme other than a political broadcast.

(2) Broadcasters must always have the final editorial control over sponsored programme content.

(3) Prohibited Advertisers must not sponsor any programmes

(4) Broadcast scheduling for advertisements must also apply to sponsorship programmes.

(5) Non-commercial broadcasters that receive sponsorship may acknowledge their sponsors through the broadcast but are not required to do so as in commercial broadcasting.

**Q6. NICTA invites comments on the advertisements and sponsorships**

## **PART VIII. - PAPUA NEW GUINEA NATIONAL ELECTIONS**

### **29. GENERAL GUIDELINES**

(1) Broadcast of National Elections must promote orderly conduct of, the integrity of electoral process and encourage political stakeholders to uphold the electoral laws of Papua New Guinea.

(2) Broadcasters should educate their audience on the process of general election, and the particularities of each of those periods of times on;

(a) issue of writs or nomination;

(b) polling;

(c) counting of votes;

(d) returning of the writs; and

(e) any contestations around the PNG Electoral Commission

(3) Broadcasters should endeavour to promote awareness on election process, 3 months in advance leading up to the Election Period.

(4) Coverage of political activities must include the aim of collecting and disseminating truthful, fair, accurate, unbiased information on political parties and their activities to the public.

(5) Broadcasters must maintain a logbook with detailed records on all Political Broadcasts. Such records must be made available to the appropriate authorities and members of the public.

(6) Reporters, interviewers and broadcast announcers must remain neutral in partisan politics and avoid all associations and activities that may compromise their integrity as journalists or damage their credibility.

(7) Broadcasters should not broadcast controversial or offensive references to opponents at all times, unless there is clear justification.

(8) Conditions applied on Political Broadcast programmes on political and party candidates must be treated equally to all political parties.

**Q6. NICTA invites comments on the PNG National Election**

**PART IX. - PAPUA NEW GUINEA EMERGENCY BROADCAST**

**30. AWARENESS AND DISASTER RISK REDUCTION BROADCASTS**

(1) Broadcasters have a duty to initiate dialogue with PNG National Disaster Centre and provide necessary information to its audience on challenges which can affect them with their families, not only in known areas of danger but also where environmental challenges may occur in the future.

(2) Broadcasters should use all available platforms, including television and radio for their disaster risk reduction coverage.

- (3) All broadcasting stations must endeavour on;
- (a) broadcasting awareness programmes on emergency preparedness daily or weekly, to its audience on how to anticipate uncertainty;
  - (b) help them build mental models that will orient them in a crisis; and
  - (c) give them confidence so they are ready, willing and able to take timely action during a disaster.

(4) All broadcasting stations must develop or have an Emergency Alert System or mechanism in place, that can alert its audience in times of emergency.

**Q7. Are there any alert system in place/should be used by the broadcasters, that NICTA can take into consideration**

## **PART X. – BROADCAST RECORDS**

### **31. BROADCAST RECORDS**

All broadcasters shall retain recordings of all broadcasts for 30 days. In the event of a complaint, this assists the broadcaster to argue their point of view and ensures NICTA gains a correct understanding of the content, context and tone of the broadcast.

#### **Q8**

- i. Are there any records that needs to be included?**
- ii. Is the number of days sufficient?**

## **PART XI. - BROADCAST COMPLAINTS**

### **32. PARTY SUBJECT TO COMPLAINTS**

(1) Any viewer or listener shall make a complaint to the concern broadcaster, if the broadcast material infringes any of the standards under this regulation

(2) All Free-To-Air broadcasters both radio and Television including subscription broadcasters, be they on a local, temporary, institutional, regional, international or national basis, licensed to operate in Papua New Guinea, are subject to this complaint process.

### **33. COMPLAINT PROCEDURE**

(1) Written complaints must firstly be submitted as a formal complaint to the broadcaster, if the broadcaster is locally based in Papua New Guinea. The formal complaint must:

- (a) be in writing;
- (b) specify it is a formal complaint;
- (c) be received by the broadcaster within 14 working days of the broadcast;
- (d) include the following details:
  - (i) Date of the broadcast
  - (ii) Time of the broadcast
  - (iii) Title of the broadcast
  - (iv) Title of the programme
  - (v) Channel or station which the programme was broadcast
  - (vi) The standard that have been breached
  - (vii) An explanation of why the standard have been breached.

(2) NICTA may address a complaint ahead of the broadcaster where;

- (a) the complaint deals with issues of privacy, anonymity and/or the complainant provides an acceptable reason(s) why the complaint should not be referred to the relevant broadcaster first;
- (b) the complaint is related to an international broadcaster;
- (c) the complaint is a referral case. NICTA shall consider the complaint and may carry out an independent review of the complaint and the broadcaster's response or lack thereof.

(3) NICTA considers 14 days as a sufficient period within which to submit a referral complaint. If the referral occurs later than 14 days after a broadcaster's decision or lapse of a broadcaster's timeframe, then NICTA shall request the complainant to provide an explanation for this delay.

(4) NICTA retain discretion to accept referred complaints received later than 14 days after the broadcaster's decision or their failure to respond. If NICTA reasonably believe there has been an undue delay in the submission of a referral complaint NICTA may reject the complaint. Each complaint will be considered on a case-by-case basis.

#### **34. FORMAL COMPLAINTS MADE TO THE BROADCASTER**

(1) A broadcaster has 14 working days to respond in writing of its decision notifying the complainant whether or not the complaint has been upheld, and considers the complainant's right to refer the complaint to NICTA if the complainant is not satisfied with its decision.

(2) The broadcaster is allowed to extend the timeframe to 30 working days, if it lets the complainant know within the initial 14 working days for a response.

(3) Once a complainant has submitted the complaint to the relevant broadcaster, the broadcaster must acknowledge receipt of the complaint.

(4) The broadcaster must consider the content of the complaint and inform the complainant of their decision. The broadcaster should also inform the complainant of the manner in which it will seek to resolve it to the complainant satisfaction in an agreed manner.

(5) The manner in which a complaint will be resolved and will be decided by broadcaster on a case-by-case basis. This may entail an apology, correction, clarification and/or the offer of a rebuttal.

#### **35. REFERRAL COMPLAINTS TO NICTA**

(1) The complainant must write to NICTA asking for a review in such form as NICTA may determine;

(a) If the complainant:

- (i) not satisfied with the broadcaster's decision, and must outline the reasons why;
- (ii) have not received a decision, and must include the date the complaint was lodged with the broadcaster;

(b) The complaint is related to an international broadcaster

(2) NICTA's consideration of complaints submitted will be carried out in private and will be confidential. Upon receipt of the complaint/complaint referral, NICTA will take the following steps if the complaint/complaint referral is considered valid:

(a) NICTA will contact the relevant broadcaster, and where relevant, will forward the complaint to the relevant broadcaster. The broadcaster may then decide whether to reply any time up to 14 days from the date of receiving the complaint;

(b) NICTA will send a copy of the complaint to the broadcaster for comment, and ask for a recording of the broadcast and for copies of all correspondence relating to the complaint;

(c) NICTA will make sure that the complainant has an opportunity to comment on any information provided by the broadcaster.

### **36. COMPLAINT UPHOLD BY NICTA**

- (1) If NICTA upholds a complaint, it may make orders.
- (2) If NICTA considers making an order, it will write to the broadcaster with the following information as appropriate;
  - (a) details of the breach(es);
  - (b) comments on any issues by the broadcaster that is relevant to the case;
  - (c) details of the broadcaster's recent compliance history;
  - (d) a summary of the broadcast material on which it has relied in reaching its preliminary view; but not limited to;
    - (i) the seriousness of the breach, and the number of upheld aspects of the complaint;
    - (ii) the degree of harm caused to any individual or to the audience generally;
    - (iii) the attitude and actions of the broadcaster in relation to the complaint;
    - (iv) whether the decision will sufficiently provide solution to the breach and give guidance to the broadcaster.
- (3) NICTA will conclude the consideration of the imposition of an order within 30 working days from the date NICTA records the breach(es) of the broadcast standards.

#### **Q9.**

- i. **Are there any specific comments on the broadcast complaint?**
- ii. **The duration in handling the complaint, is it sufficient?**

## **PART XII. – PENALTIES AND APPEALS**

### **37. GENERAL PENALTIES**

- (1) Any broadcaster who contravenes any provision of this regulation, NICTA may make orders under the NICT Operator Licensing and Radio Spectrum Regulations 2010.
- (2) NICTA may also make orders to include a decision to:
  - (a) issue a direction not to repeat the broadcast material;
  - (b) issue a direction to broadcast a correction or a statement, a summary of the decision or an apology;

### **38. BREACH SUBJECT TO OTHER AUTHORITIES**

NICTA may refer a breach to the relevant authorities, should, NICTA determine that the breach is in relation to the regulatory framework of that authority.

### **39. APPEALS**

- (1) A broadcaster aggrieved by orders imposed by NICTA by virtue of this Regulation may apply to the ICT Appeals panel pursuant to Section 258 of the Act for review.

#### **Q10. NICTA invites comments on Penalties and Appeals**