



# **PROPOSED REVISION OF THE CODE OF PRACTICE FOR CONTENT REGULATION**

## **PUBLIC CONSULTATION**

**ECS 72/2019**

**Issue Date- 13 December 2019**

**Response Date- 31 January 2020**

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## **1. Introduction**

The Utilities Regulation and Competition Authority (URCA) is the independent regulator of the Electronic Communications Sector (ECS) in The Bahamas with powers under the Communications Act, 2009 (Comms Act) to, inter alia, issue regulatory and other measures for the purpose of carrying into effect the Electronic Communications Policy objectives.

URCA issues this consultation document in accordance with Part IX of the Comms Act and Clause 1.5 of the Code of Practice for Content Regulation (“the Code”). This consultation document comprises URCA’s proposed revisions to the Code, focused on Part 6 - Political Broadcasts and Political Advertisements, Part 7 – Advertising and Sponsorships, and Part 10 – Complaint Handling Process of the Code. The revisions also represent the combined work of URCA and the Content Regulation Industry Group (“CRIG”) which has been established under section 55 of the Comms Act.

URCA therefore encourages the full participation of members of the public, licensees, stakeholders and other interested parties during this consultation process.

### **1.1 Background to this Consultation**

On 2 March 2012 URCA issued its Final Decision on the Code of Practice for Content Regulation<sup>1</sup> (“the Code”) which were to be observed by Licensees providing audiovisual media services in The Bahamas. In 2018, URCA decided to undertake a review of the Code in accordance with its obligation under Clause 1.5 of the Code which requires URCA to formally review the Code after it has been in effect for three (3) years in consultation with the CRIG. In its internal deliberations URCA had itself identified challenges with Part 6 of the Code, which dealt with Political Broadcasts and Political Advertisements, Part 7 dealing with Advertising and Sponsorships, and Part 10 which contains the Complaints Handling Process administered by URCA under the Code.

In June 2019, URCA convened a reconstituted CRIG to work with URCA on the review of the Code, consideration of the need for changes, and preparation of draft amendments where necessary. The review process continued until August 2019. During this period, the Industry Group was invited to consider URCA’s proposed revisions to Parts 6, 7 and 10 of the Code, in conjunction with standards of other jurisdictions and how such jurisdictions treat with similar content related issues. The CRIG was also invited to review the Code as a whole to determine and recommend to URCA any other part of the Code that should be revised.

The Industry Group provided URCA with recommendations and written submissions on the proposed changes to the Code, which have been taken into consideration by URCA.

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<sup>1</sup> ECS 06/2012.

## 1.2 Responding to this Consultation

URCA invites written comments and submissions from members of the public, licensees and interested parties on the issues in this consultation document. Persons may deliver their written comments or submissions to URCA's Director of Electronic Communications either:

- by hand, at URCA's office at Frederick House, Frederick Street;
- by mail, to P. O. Box N-4860;
- by fax, to (242) 393-0237; or
- by email, to [info@urcabahamas.bs](mailto:info@urcabahamas.bs)

All comments to this consultation document should be submitted on or before 31 January 2020. URCA will acknowledge receipt of all responses.

URCA's preferred format for written responses is as follows:

- Respondent's name;
- Name of organisation (or state whether respondent is a consumer);
- Email address of respondent;
- Responses to questions asked under this consultation document; and
- Any other matters you believe URCA should consider under this consultation document.

URCA reserves the right to make all responses available to the public by posting responses online on its website. Responses marked 'confidential' should provide reasons to simplify evaluation by URCA of the request for confidentiality. URCA may, in its sole discretion, choose whether to publish any confidential document or submission.

## 1.3 Structure of the Remainder of this Consultation

The remainder of this consultation document is structured as follows:

- Section 2: Outlines the regulatory framework under which URCA is conducting this consultation;
- Section 3: Sets out the Parts of the Code under review and URCA's rationale for the proposed revision;
- Annex A: Sets out the proposed amendments to the Code; and
- Annex B: Summarizes the questions raised under this consultation.

## 2. Regulatory Framework

This section sets out the regulatory framework under which URCA issues this consultation document.

### 2.1 Communications Act, 2009 (Comms Act)

The Comms Act provides a modern framework for regulation and competition in the electronic communications markets. Section 8(1) of the Comms Act gives URCA the power to issue any regulatory and other measures and in particular gives URCA the power to:

- (a) make determinations in accordance with the terms of sections 99 to 102;*
- (b) make adjudications in accordance with the terms of sections 103 to 106;*
- (c) impose conditions and penalties by order as specified in sections 95 to 98;*
- (d) issue regulations;*
- (e) issue directions, decisions, statements, instructions and notifications;*
- (f) publish and maintain registers or list;*
- (g) issue technical rules and standards;*
- (h) for the purposes of enforcing compliance with this Act, institute prosecutions in accordance with the terms of this Act or any other law;*
- (i) issue, suspend, vary or revoke licenses, permits and exemptions under Part IV;*
- (j) conduct inquiries, investigations and oral hearings;*
- (k) require any licensee or licensees to furnish such information and submit such returns in relation to its operations at such intervals as it may require;*
- (l) conduct market investigations and market reviews and publish regular information and reports; and*
- (m) exercise any other powers assigned to it by this Act or any other law.*

Pursuant to section 11(1) of the Comms Act, URCA is mandated to afford persons with sufficient interest a reasonable opportunity to comment on proposed regulatory and other measures which in its opinion are of public significance, and which may adversely affect or prejudice the rights or interests of persons. Section 13(2) of the Comms Act provides that regulatory and other measures includes the “*sector policy and regulations, technical rules and standards.*”

Under section 52 of the Comms Act “*URCA may by determination issue regulatory and other measures to regulate content services intended for reception by subscribers of carriage services or by broadcasting in The Bahamas.*”

Section 53(1) of the Comms Act requires URCA to develop and issue codes of practice that are to be observed by licensees providing audiovisual media services in The Bahamas. Section 53(2) provides that:

*“Codes of practice issued may include standards which might include:*

- (a) methods of ensuring that the protection of children from the exposure to programme material which may be harmful to them;*
- (b) promoting accuracy and fairness in news and current affairs programmes;*
- (c) preventing the broadcasting of programmes that stimulate news or events in a way that misleads or alarms the audience;*
- (d) in the case of codes of practice developed for broadcasting-*
  - (i) time devoted to advertising;*
  - (ii) standards requiring advertisements to be distinguished from programme content;*
  - (iii) the kinds of sponsorship announcements that may be broadcast; and*
  - (iv) the kinds of sponsorships announcements that particular kinds of programmes may carry;*
- (e) captioning of programmes for the hearing impaired;*
- (f) teletext and ancillary services;*
- (g) party political broadcasts;*
- (h) sports and national events broadcasting;*
- (i) must carry regulations; and*
- (j) national disaster conditions.”*

Section 53(3) of the Comms Act outlines the matters that URCA will take into account when developing codes of practice including:

- (a) the portrayal in programmes of - physical and psychological violence;*
  - (ii) sexual conduct and nudity;*
  - (iii) the use of drugs, including alcohol and tobacco; and*
  - (iv) matter that is likely to incite or perpetuate hatred against, or vilifies, any person or group on the basis of ethnicity, nationality, race, gender, sexual preference, age, religion or physical or mental disability;*
- (b) the use in programmes of offensive language*

Under section 54 of the Comms Act URCA has the power to determine the procedures to be observed in relation to the handling of complaints from the public about programme content or compliance with the codes of practice and reporting complaints to URCA. Pursuant to section 55 of the Comms Act:

- (1) URCA shall have the power to allow industry groups to develop, in consultation with URCA and taking into account any relevant research conducted by URCA, codes of practice that are to be applicable to the content provision operations of each of those sections of the industry and to monitor compliance with such codes.*
- (2) Codes of practice developed under this section shall not have effect until published by URCA.*

## 2.2 The Code of Practice for Content Regulation

Pursuant to Clause 1.5 of the Code URCA is required to *“in consultation with the Industry Group established by URCA in accordance with section 55(1) of the Communications Act, formally review the Code after it has been in effect for three (3) years. If before the next review period, any substantive changes to the Code are needed, URCA will in consultation with the Industry Group, give all stakeholders an adequate opportunity under section 11 of the Communications Act to comment on any proposed changes to the Code.”*

Part 11 of the Code sets out the functions and role of the Industry Group which includes, inter alia:

- (a) Advising and providing recommendations to URCA on any content-related aspects delegated to the Industry Group;
- (b) Examining issues with focus on all aspects of each section of the content provision operations of the broadcasting industry in The Bahamas and monitor the compliance of Licensees with the Code and any other codes of practice applicable to content provision operations; and
- (c) Considering content regulation issues in accordance with the requirements of section 53 of the Comms Act.

### **3. URCA’s Proposals to the Code of Practice for Content Regulation**

Based on its deliberations and URCA’s engagement with the CRIG, URCA’s proposals for amendment to the Code focus on Part 6 - Political Broadcasts and Political Advertisements, Part 7 – Advertising and Sponsorships, and Part 10 – Complaints Handling Process of the Code. In this section, URCA sets out its rationale for the proposed revision of each Part.

#### **3.1 Part 6: Political Broadcasts and Political Advertisements**

For many years, the broadcast media have been subject to the highest level of regulation during election periods. This in part is owing to the fact that the media while being a conveyor of information is also a powerful communications tool. Regulators therefore consider it essential to have in place a regulatory framework that will facilitate a credible election process and ensure that broadcasters exercise a certain degree of caution when disseminating information to the public.

In common with other jurisdictions, and in addition to the general rules through which URCA regulates broadcast content, broadcasters in The Bahamas are subject to an array of additional rules which apply only during election periods.

Clause 6.7 of the Code sets out the following prohibitions which URCA licensees must comply with on polling day:

*“Licensees shall not be permitted to broadcast within any programme the following to the public on any polling day until after the close of the poll:*

- (a) discussion and analysis of election and referendum issues;*
- (b) the result or purported result of the voting in a constituency or electoral district before the close of all of the polling stations in that constituency or electoral district;*
- (c) the results of any opinion poll;*
- (d) any political advertisements, political broadcasts or any other election programming produced by or on behalf of a candidate, political party or other person or entity.”*

These polling day prohibitions within this Clause are based on the recognition that broadcast media can potentially influence voter behavior on polling day, without there being any further opportunity for corrective action to be taken in the event that the information broadcast is subsequently found to be untrue, or misleading. The provisions mirror the prescriptions on canvassing in and around polling stations (noting that free to air broadcasting is available everywhere) and preclude broadcasts from influencing the voting decisions of the electorate on polling day, through information which may not be verifiable before the closure of the polls. As it relates to political advertisements, the prohibition seeks to limit political parties from making last minute untested claims, and to avoid undue influence on voters on the basis of such advertisements.



As the media serves as a link between the political parties and the electorate, and can through publication or broadcasting influence the electorate's decision either in favor or against a political party or candidate, URCA is of the view that strengthening and ensuring clarity within Clause 6.7 of the Code can better ensure that the media remains neutral, objective and unbiased during the electoral process.

In the United Kingdom, the Office of Communications (Ofcom), is tasked with ensuring that the special impartiality requirements in the Communications Act 2003, the Broadcasting Code and other legislation relating to broadcasting on elections and referenda are applied at the time of elections and referenda.<sup>2</sup> Broadcasters within the United Kingdom are required under the Broadcasting Code to adhere to specific requirements during an election and referendum period. The justification for such requirements is to make certain that broadcast coverage on the day of an election does not directly affect the electorate's decision and that due impartiality is maintained throughout the election process.

In The Bahamas all polling stations are required to be open at 8:00 a.m. and close at 6:00 p.m.<sup>3</sup> URCA recognizes that there may be instances however, where polling stations on any given polling day may be delayed due to some extenuating circumstance, and as a result, licensees may be put in a position where they are uncertain as to their ability to report results of the voting in a constituency.<sup>4</sup> In an effort to circumvent any future uncertainty amongst licensees, URCA is of the view that Part 6 of the Code, and in particular clause 6.7 of the Code, should be broadened to effectively address such eventualities. URCA is mindful that licensees may wish to engage in political discussions and report results from polling stations after the period following poll closures. However, URCA considers that Part 6 of the Code must ensure that such political discussions and reporting are not engaged in by broadcast licensees until all polls are closed, including cases where polls are delayed in any particular constituency.

**Question 1:** Do you agree with URCA's proposal to amend Clause 6.7 of the Code to prohibit licensees from reporting results of polling stations and engaging in political discussion or analysis where polls remain open after the time required for polls to be close? If not, please provide reasons for your answer.

**Question 2:** Do you believe that that the prohibitions outlined in Clause 6.7 should be applied during bye-elections, referendum, and advanced polling day? If not, please provide reasons for your answer.

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<sup>2</sup> The Ofcom Broadcasting Code (with the Cross-promotion Code and the on Demand Programme Service Rules), January 2019, [https://www.ofcom.org.uk/data/assets/pdf\\_file/0016/132073/Broadcast-Code-Full.pdf](https://www.ofcom.org.uk/data/assets/pdf_file/0016/132073/Broadcast-Code-Full.pdf)

<sup>3</sup> Section 53 Parliamentary Elections Act.

<sup>4</sup> In the 2017 general elections broadcasters were uncertain whether they could report the results of other polling stations, while the Elizabeth Estates constituency polling stations remained open after the statutory time required for polls to be closed.

**Question 3:** Do you think that URCA should have regard to the inclusion of any other clause within Part 6 of the Code? If yes, please explain your answer.

### 3.2 Part 7: Advertising and Sponsorships

With the introduction in 2014 of a revised regulatory framework for gaming in The Bahamas gambling by Bahamian citizens, which was unlawful prior to that revision, became lawful and existing gaming outlets were regularized. Part 7 of URCA's Code, in its existing form, pertains to the advertisements and sponsorships of, inter alia, alcohol, tobacco, prescription drugs and gambling. Clause 7.9 of this Part, specifically relates to the prohibition on advertisements and sponsorship relating to gambling and provides that: *"Advertisements or sponsorships pertaining to unlawful gambling, gaming, betting, bookmaking, lotteries or any similar activity shall not be broadcast."* In light of the current status of the gaming sector in The Bahamas, URCA proposes to amend clause 7.9 of the Code to correct this anomaly and bring the Code's treatment of gaming into alignment with the local gaming laws, and the treatment of other comparable activities such as the use of alcohol and tobacco.

It is widely acknowledged that the media has a powerful effect on the behaviors and attitudes of persons, and that the objective of any advertisement is to capture consumers' attention and encourage the adoption of the message being broadcast. URCA is of the view that gaming advertisements have the potential to be harmful to vulnerable members of the public, such as children and young persons. For this reason, URCA intends to introduce a watershed period within clause 7.9 of the Code which will have the effect of limiting the exposure of gaming to children and young persons during periods when they are most likely to be part of the audience. While URCA acknowledges that gaming licensees are required to implement responsible gaming programmes, URCA notes that the broadcast of gambling and gaming advertisements should not appear in any programming or other broadcast content that is commissioned for or principally directed at children and young people, or likely to appeal particularly to them.

In reviewing the approaches taken by regulators in other jurisdictions, URCA notes that the implementation of a watershed period is applied as a means to protect vulnerable individuals from the effects of gambling. For example, in Australia, the Australian Communications and Media Authority (ACMA) released rules in March 2018 which restricted gambling advertisements from being broadcast on free-to-air television, radio and pay TV between the hours of 5:00 a.m. and 8:30 p.m. during any live sporting event<sup>5</sup>. In Kenya, the Kenya Film Classification Board (KFCB) has restricted the advertising of gambling between the hours of 5:00 a.m. and 10:00 p.m. in an effort to limit the exposure of vulnerable minds to such activities. The Committee of

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<sup>5</sup> The ACMA: "New gambling ad rules introduced" <https://www.acma.gov.au/theACMA/new-gambling-ad-rules-introduced>

Advertising Practice (CAP)<sup>6</sup> and the Broadcasting Committee of Advertising Practice (BCAP)<sup>7</sup> both situated in the United Kingdom, have codes which set rules to ensure that the marketing and advertising of gambling is “socially responsible” with particular regard to the need to protect children and young persons from being harmed by advertising that features or promotes gambling. More significantly, the codes restrict gambling advertisements from being shown on television channels devoted to children’s programmes, or programmes that are likely to be of particular appeal to children.<sup>8</sup>

As gambling is becoming more prevalent within the Bahamian society, there is a need to ensure that there are regulations which make certain that gambling advertisements do not target or unduly influence children and young persons. URCA views the watershed period as an appropriate preventative measure that will avert gambling advertisements from being broadcast during any television and radio timeslot primarily viewed or listened to by children or young persons.

**Question 1:** Do you agree with URCA’s proposal to introduce a watershed period in clause 7.9 of the Code as a safeguard for children and young persons? If not, please provide reasons for your answer.

**Question 2:** In addition to URCA’s proposal for a watershed period, do you think that URCA should include a provision with Part 7 of the Code that ensures that the marketing and advertising of gambling is socially responsible and not directed at persons under the age of 18? If not, please provide reasons for your answer.

**Question 3:** Do you think that URCA should have regard to the inclusion of any other clause within Part 7 of the Code? If yes, please explain your answer.

### 3.3 Part 10: Complaints Handling Process

During the initial development of the Code, obligations were imposed on broadcast licensees to establish a complaints handling procedure aimed at ensuring that complaints lodged by complainants were handled on a timely basis and in an efficient manner. In accordance with Part 10 of the Code, broadcast licensees are required to, inter alia, respond to and acknowledge Code

<sup>6</sup> Advertising Standards Authority, **CAP Code: 16 Gambling**, [https://www.asa.org.uk/type/non\\_broadcast/code\\_section/16.html](https://www.asa.org.uk/type/non_broadcast/code_section/16.html)

<sup>7</sup> Advertising Standards Authority, **BCAP Code: 17 Gambling**, [https://www.asa.org.uk/type/broadcast/code\\_section/17.html](https://www.asa.org.uk/type/broadcast/code_section/17.html)

<sup>8</sup> Section 32 Scheduling: Broadcasting Committee of Advertising Practice (BCAP) Code, [https://www.asa.org.uk/type/broadcast/code\\_section/32.html](https://www.asa.org.uk/type/broadcast/code_section/32.html)

complaints within the time limits prescribed by the Code. Generally, licensees receive complaints in relation to the broadcast of a particular television or radio show perceived as being inappropriate or offensive to the viewing and listening audience. However, in instances where complainants regard their complaint as not having been acknowledged or resolved by licensees within a reasonable time, complaints are subsequently escalated to URCA for resolution.

Prior to these proposed changes, the complainant was required to wait up to 30 days to have their complaint resolved. URCA considers that having regard to the immediate impact of broadcast media, the waiting period had the effect of rendering any remedy ineffectual. URCA considers that complaints about broadcast content should be addressed immediately, in a timeframe comparable to the immediate impact of any harm caused by the broadcast. URCA therefore intends to reduce the time limits within Part 10 of the Code.

Shorter time limits will allow for a faster resolution of complaints lodged by complainants, and in those cases where a licensee considers that a complaint should be escalated to URCA, shorter time limits will provide for prompt referral of the matter to URCA. URCA considers that most complaints received by licensees should not require a prolonged investigation process due to their nature. Further, URCA notes that digital technologies have introduced the ability for broadcasters to instantly access broadcast content for review purposes. Therefore, URCA proposes to implement provisions within Part 10 of the Code which will address the manner in which licensees should expeditiously treat with the resolution of various complaints.

The proposed provisions will also separate broadcast content complaints into the following two distinct categories, and introduce alternative complaint mechanisms for each:

- (i) general complaints, which comprise complaints that content broadcast is offensive or harmful to the society at large, rather than to any individual person (*e.g. offensive language broadcast on radio and television*); and,
- (ii) personal complaints, which comprise complaints that content broadcast has caused harm to an individual person or entity (*e.g. defamatory or scandalous remarks by a licensee in reference to an individual*).

In an effort to facilitate the complaints handling process, URCA is of the view that general complaints may be made directly to URCA for its resolution of the matter, without first referring the matter to the broadcaster for resolution. URCA considers that the current requirement that complaints be referred first to the broadcaster created a barrier to complainants in cases where the complainant is not personally interested in the matter broadcast. URCA consider that the new provisions along with the reduced time limits will curtail the delay in the resolution of such complaints. Additionally, as URCA considers the interest of consumers to be important, URCA believes that proposed changes should provide complainants with the confidence that their complaints will be addressed and effectively resolved by both the licensee and the regulator.

In the case of personal complaints, the complaint will continue to have to be referred to the broadcaster for resolution prior to escalation to URCA. Resolution of personal complaints tends to relate to either the truth or untruth of statements, or differences in interpretation of facts between the broadcaster and the subject, which must as a matter of natural justice involve both parties. In the case of these complaints, the reduced timeframes should improve the efficiency of complaint handling.

**Question 1:** Do you agree with URCA's proposal to reduce the time limits for licensees to respond to and resolve Code complaints as outlined in Part 10 of the Code? If not, please provide reasons for your answer.

**Question 2:** Do you agree with URCA's proposal to introduce new provisions within Part 10 of the Code which will address complaints that are of a general or personal nature? If not, please provide reasons for your answer.

**Question 3:** Do you agree with URCA's proposal that general complaints should be lodged directly to URCA? If not, please provide reasons for your answer.

**Question 4:** Do you think that URCA should have regard to the inclusion of any other clause within Part 10 of the Code? If yes, please explain your answer.

## Annex A: Proposed Amendments to the Code of Practice for Content Regulation

Under this Part URCA sets out the proposed definitions to Part 1: Interpretation, Purpose and Applicability, and the proposed amendments to Part 6 - Political Broadcasts and Political Advertisements, Part 7 – Advertising and Sponsorships, and Part 10 – Complaints Handling Process of the Code.

Part 1: Interpretation, Purpose and Applicability

### Definitions and Interpretation

**General complaint** means a complaint in relation to:

- (a) the broadcast of offensive language or material; the broadcast by a Licensee of content that may be contrary to the provisions of the Code but does not directly relate to any individual person or entity; or
- (b) any other conduct by a Licensee which is contrary to the provisions of the Code but that does not cause direct harm to any individual person or entity.

**Personal complaint** is a complaint in relation to:

- (a) the broadcast of scandalous, inaccurate or defamatory commentary that can be injurious to a person's character, reputation or integrity;
- (b) the broadcast of material that is contrary to the Code, relates directly to a person or entity, and causes direct harm or loss to that person or entity; or
- (c) any other conduct by a Licensee which is contrary to the provisions of the Code, and causes direct harm or loss to a person or entity.

## Part 6 - Political Broadcasts and Political Advertisements

### 6.7 Prohibitions on polling day

Licensees shall not be permitted to broadcast within any programmes the following to the public on any polling day until after the close of the poll:

- (a) discussion and analysis of election and referendum issues;
- (b) the result or purported result of the voting in a constituency or electoral district before the close of all of the polling stations in that constituency or electoral district;
- (c) the results of any opinion poll;
- (d) any political advertisements, political broadcasts or any other election programming produced by or on behalf of a candidate, political party or other person or entity.

#### ***URCA's Proposed Amendment:***

### 6.7 Prohibitions on polling day

*(1) Licensees shall not be permitted to broadcast the following to the public within any programmes on any polling day until **the close of all polling stations:***

- (a) discussion and analysis of election and referendum issues;*
- (b) the result or purported result of the voting in a constituency or electoral district before the close of all of the polling stations in that constituency or electoral district;*
- (c) the results of any opinion poll;*
- (d) any political advertisements, political broadcasts or any other election programming produced by or on behalf of a candidate, political party or other person or entity.*

*(2) The prohibition in subsection (1) also applies in cases where polling stations in any given constituency remains open after the mandatory scheduled time for poll closure due to an extenuating circumstance.*

*(3) Notwithstanding the prohibition in subsection (1) URCA may exercise its discretion and permit Licensees to broadcast to the public on any polling day the matters listed in subsection (1) where the relevant extenuating circumstance persists for a period exceeding twenty-four hours since the originally schedule closing time of the polls..*

## Part 7- Advertising and Sponsorships

### **7.9 Gambling**

Advertisements or sponsorships pertaining to unlawful gambling, gaming, betting, bookmaking, lotteries or any similar activity or service shall not be broadcast.

#### ***URCA's Proposed Amendment:***

### **7.9 Gambling**

***(1) Advertisements or sponsorships pertaining to lawful gambling, gaming, betting, bookmaking, lotteries or any similar lawful activity or service shall not be broadcast during the watershed period.***

## Part 10- Complaints Handling Process

### **10.6 Time Limits on Responses to Code Complaints**

- (1) Licensees shall within five (5) business days notify the complainant in writing of the receipt of a complaint made under this Code, which acknowledgement shall also notify the complainant of the case or complaint number assigned to the complaint and the time frames and processes that the Licensee envisages are required to investigate and respond to the complaint.
- (2) Subject to Clause 10.7(1) of this Code, Licensees must provide a substantive written response to the complainant regarding any Code Complaint that satisfies the requirements of Clause 10.2(1) of this Code.
- (3) Licensees must respond to Code Complaints as soon as practicable but in any event no later than thirty (30) calendar days after receiving the complaint.
- (4) If the content that is the subject of the Code Complaint was provided on broadcast relay by another Licensee, or was otherwise the responsibility of another Licensee, the Licensee receiving the Code Complaint must refer the Code Complaint to the relevant Licensee within ten (10) calendar days of receiving the Code Complaint for written response direct to the complainant, and send a copy of such referral to the complainant. The second Licensee will have thirty (30) calendar days from receiving the referred Code Complaint to provide a substantive response to the original Code Complainant.



- (5) In all cases where a Code Complaint complies with the requirements of Clause 10.2(1) of this Code (and does not fall within Clause 10.2(2)), the Licensee's substantive reply must also advise the complainant that the complainant may refer the matter to URCA if the complainant is not satisfied with the Licensee's response.
- (6) The Licensee is under no obligation to respond to or record Code Complaints provided anonymously to the Licensee or not made in accordance with this Part of the Code. However, Licensees are prohibited from disclosing on-air to the public the name of any complainant or the particulars of any complaint received by the Licensee except when directed to do so by URCA or consequential to making an on-air apology to the complainant.

### **10.7 Resolution of Code Complaints**

- (1) Except where a Code Complaint is, in the reasonable opinion of the Licensee, clearly frivolous, vexatious or an abuse of the Code process, Licensees must conscientiously consider written Code Complaints and must promptly provide a substantive response in writing to Code Complaints within thirty (30) calendar days of the receipt of the complaint. If the Licensee needs to investigate the complaint or obtain professional advice and a substantive response is not possible within thirty (30) calendar days, the Licensee must, without delay, notify the complainant of the reason for the delay and, in any event, provide a final reply within forty calendar (40) days of receiving the Code Complaint.
- (2) Where the subject matter of a Code Complaint is, or has become, the subject of legal proceedings brought against a Licensee by the complainant or an associated person, the Licensee is not required to provide a substantive written response to the complainant.
- (3) If a Licensee does not provide a substantive written response to a complainant regarding a matter raised by the complainant, the Licensee must:
  - (a) acknowledge the Code Complaint in writing as soon as practicable, but in any event no longer than thirty (30) calendar days after receiving the complaint; and
  - (b) at the same time, inform the complainant that he or she has the right to refer the complaint to URCA.

### **10.9 Referral of Code Complaints to URCA**

- (1) This Clause outlines URCA's procedures for the handling and resolution of Code Complaints (or for the conduct of its own investigations) about Licensees' compliance with the content standards set out in this Code as required by sections 52, 53 and 55 of the Communications Act. All complaints are important to URCA as they help it to understand whether a Licensee may be failing to comply with the applicable provisions of this Code in a particular case.
- (2) If URCA considers that it is necessary to depart from these procedures in any material respect in a particular case for reasons of fairness and/or in order for URCA to properly consider any complaint(s) or carry out an investigation, it shall write to the Licensee concerned (and any other persons with sufficient interest) in advance setting out the nature and extent of its departure, its reasons for doing so and seeking the relevant parties' response.

**URCA's Proposed Amendment:**

**10.6 Time Limits on Responses to Code Complaints**

- (1) Licensees shall within **two (2) business days** notify the complainant in writing of the receipt of a complaint made under this Code, which acknowledgement shall also notify the complainant of the case or complaint number assigned to the complaint and the time frames and processes that the Licensee envisages are required to investigate and respond to the complaint.
- (2) Subject to Clause 10.7(1) of this Code, Licensees must provide a substantive written response to the complainant regarding any Code Complaint that satisfies the requirements of Clause 10.2(1) of this Code.
- (3) Licensees must respond to Code Complaints as soon as practicable but in any event no later than **five (5) calendar days** after receiving the complaint.
- (4) If the content that is the subject of the Code Complaint was provided on broadcast relay by another Licensee, or was otherwise the responsibility of another Licensee, the Licensee receiving the Code Complaint must refer the Code Complaint to the relevant Licensee within **five (5) calendar days** of receiving the Code Complaint for written response direct to the complainant, and send a copy of such referral to the complainant. The second Licensee will have **five (5) calendar days** from receiving the referred Code Complaint to provide a substantive response to the original Code Complainant.

(5) *In all cases where a Code Complaint complies with the requirements of Clause 10.2(1) of this Code (and does not fall within Clause 10.2(2)), the Licensee's substantive reply must also advise the complainant that the complainant may refer the matter to URCA if the complainant is not satisfied with the Licensee's response.*

(6) *The Licensee is under no obligation to respond to or record Code Complaints provided anonymously to the Licensee or not made in accordance with this Part of the Code. However, Licensees are prohibited from disclosing on-air to the public the name of any complainant or the particulars of any complaint received by the Licensee except when directed to do so by URCA or consequential to making an on-air apology to the complainant.*

### **10.7 Resolution of Code Complaints**

(1) *Except where a Code Complaint is, in the reasonable opinion of the Licensee, clearly frivolous, vexatious or an abuse of the Code process, Licensees must conscientiously consider written Code Complaints and must promptly provide a substantive response in writing to Code Complaints within **seven (7) calendar days** of the receipt of the complaint. If the Licensee needs to investigate the complaint or obtain professional advice and a substantive response is not possible within **seven (7) calendar days**, the Licensee must, without delay, notify **URCA** of the reason for the delay and, in any event, provide a final reply within **twenty-one (21) calendar days** of receiving the Code Complaint.*

(2) *Where the subject matter of a Code Complaint is, or has become, the subject of legal proceedings brought against a Licensee by the complainant or an associated person, the Licensee is not required to provide a substantive written response to the complainant.*

(3) *If a Licensee does not provide a substantive written response to a complainant regarding a matter raised by the complainant, the Licensee must:*

(c) *acknowledge the Code Complaint in writing as soon as practicable, but in any event no longer than **five (5) calendar days** after receiving the complaint; and*

(d) *at the same time, inform the complainant that he or she has the right to refer the complaint to URCA.*

### **10.9 Referral of Code Complaints to URCA**

- (1) *This Clause outlines URCA's procedures for the handling and resolution of Code Complaints (or for the conduct of its own investigations) about Licensees' compliance with the content standards set out in this Code as required by sections 52, 53 and 55 of the Communications Act. All complaints are important to URCA as they help it to understand whether a Licensee may be failing to comply with the applicable provisions of this Code in a particular case.*
- (2) *If URCA considers that it is necessary to depart from these procedures in any material respect in a particular case for reasons of fairness and/or in order for URCA to properly consider any complaint(s) or carry out an investigation, it shall write to the Licensee concerned (and any other persons with sufficient interest) in advance setting out the nature and extent of its departure, its reasons for doing so and seeking the relevant parties' response.*
- (3) ***Where a complainant lodges a general complaint to a Licensee, the Licensee shall forthwith inform the complainant that he or she has the right to immediately refer the complaint to URCA for resolution.***
- (4) ***Where a complainant lodges a personal complaint to a Licensee, the Licensee must provide a substantive written response to the complaint in accordance with the requirements of Clause 10.6 of this Code.***

## Annex B: Summary of Public Consultation Questions

In this section URCA summarizes the questions under this consultation document.

### Part 6: Political Broadcasts and Political Advertisements

**Question 1:** Do you agree with URCA’s proposal to amend Clause 6.7 of the Code to prohibit licensees from reporting results of polling stations and engaging in political discussion or analysis where polls remain open after the time required for polls to be close? If not, please provide reasons for your answer.

**Question 2:** Do you believe that that the prohibitions outlined in Clause 6.7 should be applied during bye-elections, referendum, and advanced polling day? If not, please provide reasons for your answer.

**Question 3:** Do you think that URCA should have regard to the inclusion of any other clause within Part 6 of the Code? If yes, please explain your answer.

### Part 7: Advertising and Sponsorships

**Question 1:** Do you agree with URCA’s proposal to introduce a watershed period in clause 7.9 of the Code as a safeguard for children and young persons? If not, please provide reasons for your answer.

**Question 2:** In addition to URCA’s proposal for a watershed period, do you think that URCA should include a provision with Part 7 of the Code that ensures that the marketing and advertising of gambling is socially responsible and not directed at persons under the age of 18? If not, please provide reasons for your answer.

**Question 3:** Do you think that URCA should have regard to the inclusion of any other clause within Part 7 of the Code? If yes, please explain your answer.

### Part 10: Complaints Handling Process

**Question 1:** Do you agree with URCA’s proposal to reduce the time limits for licensees to respond to and resolve Code complaints as outlined in Part 10 of the Code? If not, please provide reasons for your answer.

**Question 2:** Do you agree with URCA’s proposal to introduce new provisions within Part 10 of the Code which will address complaints that are of a general or personal nature? If not, please provide reasons for your answer.

**Question 3:** Do you agree with URCA proposal that general complaints should be lodged directly to URCA? If not, please provide reasons for your answer.

**Question 4:** Do you think that URCA should have regard to the inclusion of any other clause within Part 10 of the Code? If yes, please explain your answer.