



Tuvalu

PUBLIC BROADCASTING ACT

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Tuvalu

PUBLIC BROADCASTING ACT

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Tuvalu

PUBLIC BROADCASTING ACT¹

AN ACT TO PROMOTE QUALITY PUBLIC SERVICE BROADCASTING AND THE FREE FLOW OF INFORMATION IN THE PUBLIC INTEREST

Commencement [1st January, 2015]

1 Short Title

This Act may be cited as the Public Broadcasting Act.

2 Commencement

This Act shall come into effect on such date as the Minister by notice appoints.

3 Purpose

- (1) To promote the provision of high-quality broadcast programming to the public at large;
- (2) To promote and guarantee the independence of the public service broadcaster from political or commercial interference within a framework of accountability to the public; and
- (3) To ensure stable financial provision for the public service broadcaster.

4 Crown bound by Act

This Act binds the Crown.

5 Definitions

In this Act, unless the context otherwise requires: –

“**advertisement**” is any public announcement intended to promote the sale, purchase or rental of a product or service, to advance a cause or idea or to bring about some other effect desired by the advertiser, for which broadcasting time has been given up to the advertiser for remuneration or similar consideration;

“**broadcasting service**” is a defined service which consists in the broadcasting of television or sound material to the public, sections of the public or subscribers to such service;

“**code of broadcasting practice**” is a set of standards relating to programme content and broadcast practices;

“**independent producer**” is an individual or company who produces programmes for radio or television and who is independent of any particular broadcaster;

“**ethnic/minority programming service**” is a unit within a broadcaster devoted to a certain language or ethnic group and which provides news services and other programming by and for that group, in its language, and reflecting its culture and interests;

“**programme schedule**” is a plan indicating the general types of programmes proposed to be broadcast, along with the percentage of broadcasting time to be devoted to such programmes and to advertising, and the target audience;

“**sponsorship**” is the participation of a natural or legal person, who is not engaged in broadcasting activities or the production of audiovisual works, in the direct or indirect financing of a programme with a view to promoting the name, trademark or image of that person.

PART II: ESTABLISHMENT AND GUIDING PRINCIPLES

6 Establishment

- (1) The Broadcasting Corporation of Tuvalu (hereinafter called “TVBC” is established as a non-profit public service broadcasting organisation with its seat in Funafuti and serving the whole of Tuvalu. TVBC is a public institution which is accountable to the public through the parliament.
- (2) TVBC shall enjoy operational and administrative autonomy from any other person or entity, including the government and any of its agencies, and no person or entity shall seek to influence the members or staff of TVBC in the discharge of their duties, or to interfere with the activities of TVBC, except as specifically provided for by law. This autonomy shall be respected at all times.
- (3) TVBC shall have all powers, direct or incidental, as are necessary to undertake its functions as provided for in this law. In particular, it shall have full legal personality, including the power to acquire, hold and dispose of property.

7 Guiding principles

- (1) TVBC has an overall mandate to provide a wide range of programming for the whole of Tuvalu that informs enlightens and entertains, and that serves all the people of Tuvalu, taking into account ethnic, cultural and religious diversity.
- (2) TVBC shall provide innovative and high quality broadcasting, which reflects the range of views and perspectives held in society, satisfies the needs and interests of the general public in relation to informative broadcasting, and complements programming provided by private broadcasters.
- (3) To fulfil its public service broadcasting role, TVBC shall strive to provide a broadcasting service that: –
 - (a) is independent of governmental, political or economic control, reflects editorial integrity and does not present the views or opinions of TVBC;
 - (b) includes comprehensive, impartial and balanced news and current affairs programming, including during prime time, covering national and international events of general public interest;
 - (c) contributes to a sense of national identity, while reflecting and recognising the cultural diversity of Tuvalu;
 - (d) gives a voice to all ethnic groups and minorities, including through the establishment of Ethnic/Minority Programming Services and the provision of programming in ethnic/minority languages;
 - (e) strikes a balance between programming of wide appeal and specialised programmes that serve the needs of different audiences;
 - (f) provides appropriate coverage of the proceedings of key decision-making bodies, including the parliament;
 - (g) includes programmes that are of interest to different regions;
 - (h) ensures the diffusion of important public announcements;
 - (i) provides a reasonable proportion of educational programmes and programmes oriented towards children;
 - (j) promotes programme production within the islands of Tuvalu; and
 - (k) contributes to informed debate and critical thought.
- (4) To encourage and promote programme production within Tuvalu, and to ensure that its programmes reflect a wide variety of views and perspectives, TVBC shall work towards the goal of obtaining 20% of its total broadcasting from independent producers based in Tuvalu/pacific region.
- (5) TVBC shall ensure that the government provide, complement, assist, and support a national policy that will most effectively make public telecommunications services freely available to all citizens of Tuvalu.
- (6) TVBC shall utilize public television and radio stations and public telecommunications services as valuable local community resources for utilizing electronic media

to address national concerns and solve local problems through community programs and outreach programs.

- (7) TVBC shall ensure that all citizens of Tuvalu have access to public telecommunications services through all appropriate available telecommunications distribution technologies.
- (8) TVBC shall provide a private corporation to facilitate the development of public telecommunications and to afford maximum protection from extraneous interference and control.

PART III: STRUCTURE

8 Board of Directors

- (1) TVBC shall be governed by a Board of Directors (hereinafter called “the Board”) with overall responsibility for TVBC’s accountability, through the office of the Parliament, to the people of Tuvalu.
- (2) The Board shall be composed of six (6) members who shall have some relevant expertise, by virtue of their education or experience, including in the fields of broadcasting, policy, law, technology, journalism and/or business.

9 Appointment of the Board²

- (1) Members of the Board shall be appointed by Parliament by simple majority and in accordance with its Rules of Procedure.
- (2) No one shall be appointed to the board if he or she –
 - (a) is a person employed in the public service or any other branch of government;
 - (b) holds or is acting in any office or position in a State Service on a contract basis;
 - (c) is certified to be insane, or otherwise adjudged to be of unsound mind, under an Act of Parliament or by a registered medical institution;
 - (d) holds a position in, receives payment from, or has directly or indirectly significant financial interests in broadcasting or telecommunications;
 - (e) has been adjudged or declared bankrupt under a law of a Commonwealth country, and has not been discharged; or
 - (f) has been sentenced by a Court in a Commonwealth country to death or to imprisonment for a term exceeding 12 months, and has not received a free pardon.

- (3) For the purposes of this section, a person employed in the public service means any person holding any of the following offices or performing the duty thereof, whether acting or a deputy or otherwise –
- (a) any civil office, including the office of Minister or Prime Minister; the power of appointing a power to which or of removing from which is vested in His Majesty or in the Governor-General; or
 - (b) any office to which a person is appointed or nominated by Act or by selection; or
 - (c) any civil office, the power of appointing to which or of removing from which is vested in any person or persons holding an office of any kind included in paragraphs (a) or (b); or
 - (d) a person in the employ of a Kaupule or a member of the Kaupule; or
 - (e) all persons in the employment of any department of the Government.

10 Independence of Members

- (1) All members of the Board shall be independent and impartial in the exercise of their functions and shall, at all times, seek to promote the Guiding Principles set out in section 7.
- (2) Board members shall neither seek nor accept instruction in the performance of their duties from any authority, except as provided by law.
- (3) Board members shall act at all times in the overall public interest and shall not use their appointment to advance their personal interests, or the personal interests of any other party or entity.

11 Tenure

- (1) Members shall serve on the Board for four (4) years and may be re-elected to serve a maximum of two (2) terms.
- (2) Notwithstanding subsection (1), from among the first group of appointees to the Board three (3) individuals shall be identified by lot whose initial term of office shall be just two (2) years and another three (3) individuals whose initial term of office shall be four (4) years and, for these individuals, their first term shall count as a full term.
- (3) The parliament may remove a member from the Board only after a hearing and where that individual: –
 - (a) becomes, by virtue of section 9(2), ineligible for appointment to the Board;
 - (b) is no longer able to perform his or her duties effectively; or
 - (c) fails, without valid excuse, to attend meetings of the Board for a period of more than six (6) months.

- (4) Where a Board member has been removed pursuant to subsection (3), he or she shall have the right to appeal such removal to the courts.

12 Remuneration of the Board³

- (1) Members of the Board shall not receive remuneration for their work.
- (2) Members of the Board shall be paid for actual expenses incurred as a result of their duties as members of the Board. The actual expenses shall consist of the following –
 - (a) all domestic or overseas travel allowances, including accommodation, subsistence and incidental allowances;
 - (b) Board members' sitting allowances; and
 - (c) annual Board members' allowances.
- (3) The Board shall prescribe and determine the rates of such fees and allowances.

13 Role of the Board

- (1) The Board has overall responsibility for the determination of internal policy, for ensuring compliance with all policies and the Guiding Principles set out in section 7, for ensuring that TVBC meets the highest standards of probity and value for money, for appointment of senior staff, including the Managing Director, and for setting the overall strategy of TVBC.
- (2) The Board shall not interfere with the day-to-day management of TVBC or with the editorial independence of the Managing Director and his or her staff, although it does have responsibility for ensuring that, overall, editorial policy respects the Guiding Principles set out in section 7.
- (3) The Board shall, after consultation with the Managing Director, approve the Statutes of TVBC, which shall, in accordance with this law and other relevant legislation, establish policies, operational guidelines and procedures.
- (4) The Board shall, after consultation with the Managing Director, prepare an Annual Report and budget for TVBC, which shall be presented to the parliament for approval.

14 Rules of Procedure

- (1) The Board shall appoint its own Chairperson and Vice-Chairperson, and shall adopt such rules, in relation to meetings and other matters, as it considers necessary and appropriate to enable it to perform its functions.
- (2) The Board shall meet as often as it deems necessary and shall, in any case, meet at least once in every month. Meetings of the Board shall be convened by the Chairperson, provided that the Chairperson shall be required to convene a

meeting at the request of not less than three (3) members. The quorum for meetings of the Board shall be four (4).

- (3) The Managing Director shall attend Board meetings as a non-voting member except where the Board has authorised his or her non attendance.
- (4) Except as otherwise provided, the Board shall take decisions on the basis of a majority vote of those members present, provided that in case of an equal vote, the Chairman shall have a deciding vote.

15 Appointment of Senior Staff

- (1) The Board shall, as soon as is practical after its establishment and by a vote of at least two-thirds of its members present and voting, appoint a Managing Director for TVBC and may, by a similar vote, remove the Managing Director from office, provided that it agrees at the same time on a replacement.
- (2) The provisions of section 9(2) and section 10(2) shall apply, *mutatis mutandis*, to the Managing Director.
- (3) The Board shall not exercise its power to remove the Managing Director from office under subsection (1) unless the Managing Director has breached the provisions of section 9(2) or he or she has committed a serious violation of his or her responsibilities under this law, including by failing to respect the Guiding Principles set out in section 7 or to advance the interests of TVBC.
- (4) A Managing Director shall have the right to appeal any removal from office under this section to the courts.
- (5) The Managing Director shall be appointed for a five (5) year period and may be reappointed. If no successor has been appointed at the end of the tenure of a Managing Director, that person shall remain in office for up to an additional three (3) months until a new Managing Director has been appointed.
- (6) The Managing Director shall, subject to section 13, be responsible for day-to-day management and, along with his or her editorial staff, editorial policy.
- (7) The Board shall appoint other senior staff, in accordance with a list set out in the Statutes, upon nomination by the Managing Director.

16 Staffing

- (1) The Managing Director shall, in accordance with the approved budget, appoint staff as required.
- (2) The Managing Director and staff shall neither seek nor accept instruction in the performance of their duties from any authority other than the Board, except as provided by law.
- (3) The Managing Director and staff shall not use their appointments for personal benefit, or for the benefit of any party or entity other than TVBC.

PART IV: SERVICES

17 Public Service Channels

- (1) TVBC shall, at a minimum, broadcast five international free-to-air terrestrial television channels and two free-to-air terrestrial public service radio channels.
- (2) TVBC shall be guaranteed frequencies appropriate to its broadcasting obligations as provided for in sub-section (1).

18 Additional Channels

TVBC shall be entitled to broadcast channels additional to those specified in section 16, whether this be via terrestrial broadcasting, satellite, cable or any other technical means, whether or not these channels are public service in nature, provided that where such broadcasting is otherwise licensed, TVBC shall also be required to obtain a license in the prescribed manner.

19 Other Services

TVBC may engage in other activities, such as publishing, producing videos or providing teletext services, or otherwise disseminating content, including over the Internet, that are related to its general mandate, as long as these activities are consistent with the Guiding Principles set out in section 7.

20 Competitive Rules

TVBC may not use its public funding to subsidise any commercial services it provides, although it may subsidize its public service operations with profits from its commercial services.

PART V: FUNDING

21 Funding Mechanisms

- (1) TVBC may obtain funding from direct public subsidies, from advertisements, from sponsorship and other commercial activities, and from donations.
- (2) The Board shall formally present a proposed budget for TVBC for the coming year, along with the Annual Report and externally audited accounts, to the parliament for approval.

22 Direct Public Subsidies

- (1) Where the approved budget for TVBC includes a direct public subsidy, this shall be paid for out of the consolidated fund.
- (2) Any direct public subsidy shall not be used to fund programme production but shall instead be used to defray infrastructure and other technical costs.

23 Advertisements

- (1) TVBC may carry advertisements, provided that it shall not: –
 - (a) broadcast advertisements which exceed 7½% of the total broadcast time during any given day or 10% of any given hour or programme;
 - (b) obtain more than 25% of its total revenues from advertising and other commercial activities; or
 - (c) rely on any other public financing to directly subsidise or unfairly promote its advertising.
- (2) All advertisements shall be clearly identifiable as such.
- (3) Advertisements shall be fair and honest, and shall not be misleading or prejudice the interests of consumers.
- (4) Advertisers shall not seek to influence programming.

24 Sponsorship

- (1) Sponsored programmes shall be clearly identified as such by credits at the beginning and end of the programme.
- (2) Sponsorship shall in no way affect the content or scheduling of a programme.
- (3) News and current affairs programmes shall not be sponsored.

PART VI: ACCOUNTABILITY**25 Annual Report**

- (1) The Board shall publish and distribute widely an Annual Report, along with externally audited accounts, for TVBC. Each Annual Report shall include the following information: –
 - (a) a summary of the externally audited accounts, along with an overview of income and expenditure for the previous year;
 - (b) information on any company or enterprise that is wholly or partly owned, whether directly or indirectly, by TVBC;
 - (c) the budget for the following year;

- (d) information relating to finance and administration;
 - (e) the objectives of TVBC for the previous year, the extent to which they have been met and its objectives for the upcoming year;
 - (f) editorial policy of TVBC;
 - (g) a description of the activities undertaken by TVBC during the previous year;
 - (h) the Programme Schedule and any planned changes to it;
 - (i) a list of programmes broadcast by TVBC that were prepared by independent producers, including the names of the producers or production companies responsible for each independent production;
 - (j) recommendations concerning public broadcasting; and
 - (k) information on complaints by viewers.
- (2) The Board shall formally place the Annual Report and externally audited accounts before the parliament for their consideration.

26 Annual Review of Managing Director

- (1) The Board shall conduct an annual review of the Managing Director with a view to assessing his or her performance and to providing feedback on it.
- (2) The annual review referred to in sub-section (1) shall be published and widely disseminated.

27 Public Review

In order to ensure transparency and to improve its service in the public interest, TVBC shall make an effort to ensure that it remains under constant review by the public, including by holding public meetings and seminars to look at ways it might better serve the public interest.

28 Complaints Procedure

- (1) TVBC shall develop a Code of Broadcasting Practice in consultation with interested stakeholders which shall govern its broadcasting practices and programme content.
- (2) The Code referred to in sub-section (1) shall, among other things, address the following issues: –
 - (a) accuracy, balance and fairness;
 - (b) privacy, harassment and subterfuge;
 - (c) protection of children and scheduling;
 - (d) portrayal of sexual conduct and violence, and the use of strong language;

- (e) treatment of victims and those in grief;
 - (f) portrayal of criminal or anti-social behaviour;
 - (g) advertising;
 - (h) financial issues such as payment for information and conflicts of interest;
 - (i) discrimination; and
 - (j) leaked material and the protection of sources.
- (3) Individuals may lodge a complaint against TVBC for breach of the Code referred to in sub-section (1) and such complaints shall be dealt with by TVBC in a fair and balanced manner.
- (4) To give effect to sub-section (3), TVBC shall establish an internal procedure for processing complaints.

PART VII: MISCELLANEOUS PROVISIONS

29 Archives

- (1) TVBC shall keep a master recording of all programmes broadcast for at least twenty-eight (28) days after they have been broadcast.
- (2) Where specific broadcast material is the subject of a dispute or complaint, TVBC shall keep a master recording of that broadcast material until the matter has been fully resolved.
- (3) TVBC shall establish a broadcasting archive, maintaining a store of material that is likely to be of historical interest to the people of Tuvalu.
- (4) TVBC shall, within its resources, endeavour to make as much as possible of this archival material available over the Internet.

30 Political Advertisements

Except in accordance with the Laws of Tuvalu, TVBC shall not carry any advertisement for or on behalf of any political party or candidate for election to political office.

31 Enforcement by Broadcast Regulator

- (1) The Minister for Communication and Transport shall monitor whether or not TVBC has complied with its obligations under the following provisions:–
 - (a) section 7(4), dealing with programming from independent producers;
 - (b) section 19, dealing with anti-competitive behaviour;
 - (c) section 23, dealing with advertising;

- (d) section 24, dealing with sponsorship;
 - (e) section 27, dealing with public review of TVBC;
 - (f) section 28, dealing with complaints;
 - (g) section 29, dealing with archives; and
 - (h) section 30, dealing with political advertising.
- (2) Where the Minister for Communication and Transport has reasonable grounds to believe that TVBC is in breach of one of the obligations specified in sub-section (1), it shall refer the matter to the Board, along with any views it may have as to the manner in which the breach should be addressed.
- (3) Where a period of more than three months has passed since Minister for Communication and Transport has referred a matter to the Board pursuant to sub-section (2), and steps have not been put in place with a view to addressing the breach, the Minister for Communication and Transport shall have the power to refer the matter to the courts.

PART VIII: TRANSITIONAL AND FINAL PROVISIONS

32 Existing Laws and Regulations

Any laws or regulations which affect, or institutions with responsibility over, broadcasting shall not be affected by the coming into force of this Law, provided that any such laws, regulations or institutions are, at that time, deemed to be amended, repealed or terminated to the extent that they have been superseded, supplanted or contradict provisions in this Law.

33 Institutional Arrangements

- (1) The Board shall be appointed in accordance with the provisions of this Law within six (6) months of its coming into force.
- (2) All other institutional arrangements specified in this law shall be made within six (6) months of its coming into force.

ENDNOTES

¹ Act 16 of 2014

Amended by Act 2 of 2016, commencement 3 June 2016

² Amended by Act 2 of 2016

³ Amended by Act 2 of 2016