



**Tuvalu**

**TUVALU MEDIA CORPORATION ACT  
1999**

**Act 9 of 1999**





Tuvalu

## TUVALU MEDIA CORPORATION ACT 1999

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Tuvalu

# TUVALU MEDIA CORPORATION ACT 1999

Act 9 of 1999

**AN ACT TO PROVIDE FOR THE ESTABLISHMENT,  
INCORPORATION AND MANAGEMENT OF THE TUVALU MEDIA  
CORPORATION AND FOR CONNECTED PURPOSES**

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I assent,  
TAUFA'AHAU TUPOU IV,  
17th December, 1999

Commencement [7th February 2000]

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## PART I - PRELIMINARY

### 1 Short title and commencement

This Act may be cited as the Tuvalu Media Corporation Act 1999 and shall come into operation on such date as the Minister shall by notice appoint.

### 2 Interpretation

In this Act, unless the context otherwise requires, —

“**auditor**” means the auditor of the Corporation appointed in accordance with section 28(1) of this Act;

“**Board**” means the Board of Directors of the Corporation established by section 8 of this Act;

“**Chairman**” means the Chairman of the Board of Directors appointed under section 11 of this Act;

“**Corporation**” means the Tuvalu Media Corporation established by section 4 of this Act;

“**Deputy Chairman**” means the Deputy Chairman of the Board appointed under section 11 of this Act;

“**Director**” means a Director of the Board and includes an acting Director appointed under section 10 of this Act;

“**General Manager**” means the General Manager of the Corporation appointed under section 14(2) of this Act;

“**Minister**” means the Minister responsible for broadcasting and information.

### 3 Application

This Act binds the Crown.

## PART II - ESTABLISHMENT, FUNCTIONS AND POWERS OF THE CORPORATION

### 4 Establishment of Corporation

- (1) There is hereby established a Corporation to be called the Tuvalu Media Corporation.
- (2) The Corporation shall be a body corporate with perpetual succession and a common seal and capable of —
  - (a) subject to section 5 of the Native Lands Act (restricting alienation of native land), acquiring, holding and disposing of property of every description;
  - (b) suing and being sued in its corporate name; and
  - (c) doing and suffering all such acts and things as bodies corporate may lawfully do and suffer.

### 5 Functions of the Corporation

Subject to the provisions of this Act, the Corporation shall carry on: —

- (a) the business of the national broadcasting service known as Radio Tuvalu, existing immediately before the commencement of this Act;
- (b) any other business carried on by the Broadcasting and Information Division of the Government immediately before the commencement of this Act; and
- (c) any other business incidental to the foregoing functions within the field of the public media as the Board may in its discretion think fit.

## **6 Charter of the Corporation**

- (1) The principal function of the Corporation shall be to provide a national broadcasting service which informs, educates and entertains the people of Tuvalu and, in doing so, reflects its commitment to the interests of Tuvalu.
- (2) The Corporation, in performing its principal function, shall:
  - (a) make all reasonable endeavours to maintain broadcasting services to all regions of Tuvalu and seek financial assistance by way of grant or loan from any person if the cost of extension of such services to remote areas renders this expedient or necessary;
  - (b) provide adequate coverage of news and information from all parts of Tuvalu and from overseas sources, including the widest possible range of perspective and opinion in its broadcasts and publications;
  - (c) make its broadcasting facilities available as a means of communication, subject to this Act, if for any reason conventional telecommunications are unavailable;
  - (d) maintain a policy of social responsibility by having regard at all times to the interests of the people of Tuvalu and endeavour to accommodate or encourage these when able to do so;
  - (e) be accountable to the people of Tuvalu through their elected representative in Parliament.
- (3) It is hereby declared that the Corporation is not to be regarded as the servant or agent of the Government, or as enjoying any status, immunity or privilege of the government, or (notwithstanding the provisions of any other enactment) as exempt from any tax, duty, rate, levy or any other charge whatsoever and that its property is not to be regarded as property of, or property held on behalf of, the Government.
- (4) Except as otherwise provided by or under this or any other Act, the Corporation and its Board are not subject to direction by or on behalf of the Government or any Minister thereof.

- (5) The preceding provisions of this section constitute the Charter of the Corporation.

## **7 Conduct of business operations**

- (1) The Corporation shall exercise its functions and conduct its business —
- (a) as to ensure consistency with its Charter; and
  - (b) that the return to the Corporation from its activities shall be sufficient to meet its operational costs from year to year.
- (2) The Corporation shall use recognised accrual accounting practices appropriate to a commercial enterprise, showing all revenue and expenses, whether in cash or kind.
- (3) Nothing in this section shall be taken as preventing the Corporation from exercising its functions where the expenses incurred by the Corporation from its activities exceed its revenue sources.
- (4) Any surplus on revenue account shall be applied by the Corporation in furtherance of the purposes and objectives of the Corporation in such manner as the Board may in its discretion decides.

## **PART III - BOARD, MANAGEMENT AND EMPLOYEES OF THE CORPORATION**

### **8 Board of Directors**

There shall be a Board of Directors for the Corporation which —

- (a) shall be the governing body of the Corporation with authority in the name of the Corporation, to perform and exercise the functions of the Corporation under this Act; and
- (b) shall, subject to this Act, be responsible for the policy, control and management of the Corporation.

### **9 Constitution of the Board**

- (1) The Board shall comprise five members appointed by, the Minister, three of whom shall not be members of the public service.
- (2) Directors shall be appointed for a period not to exceed two years but shall be eligible for reappointment.
- (3) No person shall be eligible for appointment as a Director who —

- (a) is a member of Parliament;
  - (b) is an officer or employee of the Corporation;
  - (c) has been declared bankrupt or insolvent by a court in Tuvalu or elsewhere and has not received his discharge;
  - (d) is insane or of unsound mind; or
  - (e) has been convicted anywhere of an offence involving dishonesty.
- (4) A Director may resign by giving notice in writing to the Minister.
- (5) The Minister shall by notice terminate the appointment of a Director if —
- (a) the Director is without the prior written permission of the Chairman absent from three consecutive meetings of the Board; or
  - (b) in relation to the Director any circumstances arise which if the person were not a Director, would make the person ineligible for appointment under subsection (3) of this section.
- (6) A Director shall not be compensated for loss of office.

## 10 Acting Directors

- (1) If any Director is temporarily incapacitated by illness, absence or other sufficient cause from performing the duties of Director, the Minister may appoint a suitably qualified person to act for that Director during such period of temporarily incapacity.
- (2) An acting Director appointed under subsection (1) of this section shall be, while acting as such, deemed for all purposes to be a Director of the Corporation until the expiry of that appointment.

## 11 Chairman and Deputy Chairman

- (1) The Minister shall appoint one of the Directors as Chairman of the Board and another as Deputy Chairman and both appointments shall be for such periods as the Minister determines but the appointments shall cease immediately on the Chairman or Deputy Chairman ceasing to be a Director.
- (2) The Chairman or the Deputy Chairman may resign that appointment by giving notice in writing to the Minister.
- (3) The Minister may by notice terminate the appointment of the Chairman or the Deputy Chairman but shall disclose the reasons for so doing.

## 12 Meetings of the Board

- (1) The Board shall meet as often as the business of the Corporation may require but not less frequently than once in every two months.
- (2) Board meetings shall be at such times and places as the Board shall determine or as the Chairman, or if the Chairman is absent the Deputy Chairman, shall direct.
- (3) The Chairman or if the Chairman is absent the Deputy Chairman, shall be chairman at meetings of the Board and in the absence of both from any meeting or any part of a meeting, one of the Directors shall be appointed by the Board at or during the meeting to be chairman of that meeting or part of a meeting.
- (4) Three Directors shall form a quorum at a meeting of the Board.
- (5) Each Director shall have one vote.
- (6) Questions arising at a board meeting shall be resolved by a simple majority of the votes of the Directors present and voting except that in the event of equality of votes, the chairman of the meeting or part of a meeting shall have a second or casting vote.

## 13 Disclosure of interest

- (1) Where a Director has any interest, direct or indirect in any matter before the Board, that Director shall fully disclose that interest to the Board —
  - (a) at any meeting during the course of which that Director becomes aware of the relevant facts; or
  - (b) at the first meeting next after that Director becomes aware of the relevant facts.
- (2) A Director who has disclosed an interest in any matter before the Board in accordance with subsection (1) of this section, shall not take part in any further deliberation or in any decision of the Board on that matter:

Provided that the holding of any such interest by a Director shall not disqualify that Director for the purpose of constituting the quorum of any meeting or any part of a meeting.

## 14 General Manager

- (1) The chief executive of the Corporation shall be the General Manager.
- (2) The General Manager shall be appointed by the Board with the approval of the Minister.

- (3) The General Manager shall hold office for a period not to exceed three years on such terms and conditions as may be determined by the Board, subject to the approval of the Minister.
- (4) The General Manager shall be eligible for re-appointment on such terms and conditions as the Board may decide, subject to the approval of the Minister.
- (5) The General Manager shall be paid by the Corporations such salary and allowances as shall be determined by the Board and approved by the Minister.
- (6) The General Manager shall act as Secretary to the Board and shall attend all its meetings without any right to vote on any decision of the Board.

## **15 Functions, duties and responsibilities of the General Manager**

- (1) The General Manager shall be responsible to the Board for the effective operation of the day to day activities of the Corporation including supervision and direction of the employees of the Corporation.
- (2) In the exercise of the functions of the General Manager under this Act, the General Manager shall act in accordance with such direction as he may from time to time receive from the Board.
- (3) The whole of the General Manager's services shall be devoted to the Corporation and the General Manager shall not while holding office, without the approval of the Board in writing;
  - (a) receive any remuneration from any office or employment other than the Corporation; or
  - (b) hold any other office or employment, whether for remuneration or not, except as a nominee of the Corporation.

## **16 Acting General Manager**

Where the General Manager is prevented by illness, absence or any other cause, from carrying out the functions of General Manager, the Board with the approval of the Minister may appoint an acting General Manager who shall act in and perform the functions of the General Manager until the General Manager is able to resume the office or in the event that the General Manager is for any reason to resume office permanently, a new General Manager has been appointed.

## **17 Authority to act on behalf of Corporation**

- (1) The Board may by instrument in writing delegate to the General Manager or another officer of the Corporation, either generally or to the extent

provided in the instrument of delegation, all or any of its powers under this Act (other than this power of delegation) so that the delegated powers may be exercised are performed by the General Manager or another officer of the Corporation in accordance with the instrument of delegation.

- (2) A delegation under this section shall be revocable at will and shall not prevent the exercise of any power by the Board.

## **18 Appointment of employees of Corporation**

- (1) The Board shall appoint, employ or dismiss such permanent employees of the Corporation as may be reasonably necessary for the purposes of or in connection with the business of the Corporation upon such terms and conditions as the Board may determine.
- (2) The General Manager shall appoint, employ or dismiss such temporary and casual employees as may be reasonably necessary for the purpose of or in connection with the business of the Corporation on such terms and conditions as the General Manager may, with the approval of the Board, determine.
- (3) All employees of the Corporation appointed in accordance with subsections (1) and (2) of this section shall be under the administrative control of the General Manager subject to any directions given by the Board.
- (4) The Board may provide for the training, career development and discipline of the employees of the Corporation.

## **19 Immunity from liability**

No director, agent, officer or servant of the Corporation shall be personally liable for an act or default of the Corporation done or omitted to be done in good faith and without negligence in the course of the operations of the Corporation.

# **PART IV - FINANCIAL PROVISIONS**

## **20 Funds and resources of the Corporation**

The funds and resources of the Corporation shall be —

- (a) moneys appropriated in each year and from time to time by Parliament and paid to the Corporation in accordance with an operating agreement made between the Corporation and the Government;

- (b) rights, interests and assets of the Government vested in the Corporation by the provisions of section 21 of this Act;
- (c) all moneys received by the Corporation on revenue account for goods or services provided in the course of its business under this Act;
- (d) money derived from the sale of, or dealing with property vested in or acquired by the Corporation;
- (e) moneys derived as income from investment by the Corporation;
- (f) all moneys borrowed by the Corporation in accordance with this Act;
- (g) moneys paid to the Corporation by way of grants, subsidies, donations, loan, rent and repayment of principal or interest;
- (h) accumulations of income derived from any money or property of the Corporation; and
- (i) any other moneys and any property lawfully receives by, or made available to the Corporation under and for the purposes of this Act.

## **21 Vesting of Government Assets etc. on Incorporation**

At the commencement of this Act, the rights, interests and assets of the Government division formerly known as and managed by the Broadcasting and Information Division shall be transferred to and vested in the Corporation.

## **22 Profits**

- (1) The net profits of the Corporation in any financial year shall be determined by the Board after allowing for the expenses of operation for that year and making such provision for depreciation, repayment of any advances, a credit to the reserve fund under subsection (1) of section 23 of this Act, and such contingencies as are usually made by broadcasting and information services.
- (2) The net profits of the Corporation in any financial year shall be allocated in such manner as the Board shall determine for the purposes and objectives of the Corporation.

## **23 Reserve Fund**

- (1) The Corporation shall have a reserve fund which shall consist of such sums of moneys as are placed to the credit of the reserve fund as the Board shall determine.

- (2) There may be transferred from time to time from the reserve fund to the working capital of the Corporation such funds as the Board shall determine.

## **24 Financial year**

The financial year of the Corporation shall end on 31 December in each year or some other date that the Minister, on the advice of the Board, may determine.

## **25 Estimates and books of account**

- (1) For each financial year the Board shall prepare not later than one month before the end of that year, estimates of the income and expenditure for the Corporation, including its capital budget, for the coming financial year and for any longer period specified by the Board.
- (2) The Board shall cause to be kept proper books and records of account of income, expenditure, assets and liabilities of the Corporation.
- (3) Copies of the estimates prepared in accordance with subsection (1) of this section shall be available to members of the public upon payment of an appropriate fee which shall be fixed by the General Manager.

## **26 Annual reports and accounts etc**

- (1) The Board shall, as soon as practicable after the end of each financial year, and in any event not later than 6 months from end of the financial year, prepare —
  - (a) a report of the operations of the Corporation during that year; and
  - (b) accounts and financial statement in the appropriate forms, in respect of that year.
- (2) The report prepared under subsection (1) of this section shall include details of the financial performance and effectiveness of the Corporation, as judged by performance measures that are relevant to broadcasting and information services in Tuvalu and are prescribed by the Minister by notice.
- (3) A copy of the annual report of the Corporation and of its accounts and financial statements shall, as soon as practicable after it is prepared, be sent to the Minister who shall cause the same to be tabled at the next following session of Parliament.
- (4) Copies of the annual report of the Corporation and its accounts and financial statement shall be available to members of the public upon payment of a reasonable fee which shall be fixed by the General Manager.

## 27 Corporate plans

- (1) The Board shall prepare corporate plans.
- (2) The first corporate plan shall be for a period of not less than three years and not more than five years and shall be prepared within six months after the date on which this Act comes into operation.
- (3) Each subsequent corporate plan shall be for a period of not less than three years and not more than five years, beginning immediately after the period of the previous corporate plan.
- (4) The Board may review and revise a corporate plan at any time.
- (5) Each corporate plan must —
  - (a) set out the objectives of the Corporation;
  - (b) outline the overall strategies and policies that the Corporation will follow to achieve its objectives and discharge its functions;
  - (c) include a forecast of the revenue and expenditure of the Corporation, including capital expenditure;
  - (d) include such performance indicators and target as the Board considers appropriate;
  - (e) summarise any aid-funded assistance received and planned; and
  - (f) include such other matters as may be prescribed by the Minister.
- (6) After the Board has prepared or revised a corporate plan, it shall send a copy thereof to the Minister who shall cause the same to be tabled at the next following session of Parliament.
- (7) If the Board shall form the opinion that any matter has arisen which may significantly affect the achievement of the objectives, the strategies and policies to be followed or the forecasts of revenue and expenditure in a corporate plan, it shall send a statement thereof to the Minister including the reasons for its opinion.

## 28 Audit

- (1) At the beginning of each financial year, the Board shall appoint a duly qualified auditor of independent status to hold office until the end of the financial year, upon such terms and conditions as the Board and the auditor shall agree.
- (2) The Auditor shall inspect and audit at least once in that financial year the accounts, finances and property of the Corporation and must be satisfied that —

- (a) the accounts of the Corporation have been properly prepared in accordance with generally accepted accounting principles, taking into consideration the requirement for good stewardship and developing practices with respect to the reporting of corporate finances; and
  - (b) expenditure has been incurred with due regard to economy and the avoidance of waste.
- (3) The auditor in the report required by subsection (2) this section shall state —
- (a) whether the accounts and statements have been properly prepared in accordance with the books and records of the Corporation and give a true view of the financial operations and the current financial position of the Corporation;
  - (b) whether the books and records of the Corporation have been properly kept and contain information adequate for the purposes of the audit;
  - (c) whether the financial affairs of the Corporation have been properly conducted; and
  - (d) all other matters arising out of the accounts and statement which the auditor considers should be made available to members of the public.
- (4) The report of the auditor required by subsection (2) of this section shall be printed and made available to members of the public for a reasonable fee to be determined by the General Manager.

## **29 Grants, loans, subsidy**

The Corporation may request the Government to make grants or loans or to agree to a subsidy scheme for the purpose of fulfilling the objectives for the Corporation as declared by this Act and may for such purpose enter into an operating agreement with the Government for the period in question.

## **30 Borrowing powers**

- (1) Subject to the provisions of this section, the Corporation may borrow —
  - (a) temporarily, by way of overdraft or otherwise, from any person; or
  - (b) from the Government such sums as the Corporation may require for meeting its obligations or discharging its functions under this Act.
- (2) The Corporation shall not have power to borrow money except in accordance with this section but a person lending money to the

Corporations shall not be bound to enquire whether the borrowing of money is within the power of the Corporation.

### **31 Investment of funds**

Any money belonging to the Corporation may from time to time be invested —

- (a) in securities of the Government of Tuvalu;
- (b) on deposit in any trading or savings bank carrying on business in Tuvalu; or
- (c) in any other securities authorised by law for investment by a public authority.

## **PART V - MISCELLANEOUS PROVISION**

### **32 Public Emergency**

- (1) If at any time a period of public emergency is declared by the Head of State under subsection (1) of section 35 of the Constitution, the Minister shall have immediate access to the broadcasting and other communication facilities of the Corporation to inform the public of Tuvalu during the period of the emergency.
- (2) In addition to the provisions of subsection (1) of this section, the Minister shall during the period referred to in subsection (1), by giving notice of not less than 24 hours to the Corporation, have access to the broadcasting facilities of the Corporation in order to address the people of Tuvalu on matters of national importance or on special occasions, provided that no such broadcast shall be of a political nature.
- (3) The Corporation shall be entitled to charge for the cost of providing the services described in subsections (1) and (2) of this section which shall be paid by the Government according to the Corporations standard rate of charges.

### **33 Regulations**

- (1) The Minister may on recommendation of the Board make regulations, not inconsistent with this Act, prescribing all matters, whether general or to meet particular cases, which are required or permitted to be prescribed or which are necessary or convenient for carrying out or giving effect to this Act.

- (2) Without limiting the generality of subsection (1) of this section, regulations may be made for or in respect of all or any of the following purposes, matters and things: —
- (a) the fee payable from time to time by members of the public for any broadcasting service offered or provided by the Corporation whether in the cause of its normal transmission or otherwise;
  - (b) the fee payable from time to time of any publication offered for sale to the public by the Corporation;
  - (c) the fee payable from time to time for any other services offered to the public by the Corporation; and
  - (d) the persons or class of persons (if any) who are entitled to the provisions of goods or services by the Corporation without payment of any price.

## PART VI - TRANSITIONAL PROVISIONS

### 34 Property

- (1) At the commencement of this Act, the Crown shall in pursuance of the provisions of section 21 of this Act, transfer legal title to the assets and interest used for the purposes of the former Broadcasting and Information Division of the Government to the Corporation for its absolute use and benefit.
- (2) From the date of commencement of this Act, the Corporation shall become solely responsible for all costs, charges, levies, rentals, rates and other taxes arising from or attaching to those assets and interests but without responsibility for any liability accrued prior to that date.

### 35 Financial provisions

At the commencement of this Act there shall be appropriated and paid to the Corporation such sums as shall be approved by Parliament for the first year of operations of the Corporation in respect of —

- (a) working capital of the Corporation; and
- (b) capital requirements of the Corporation for the acquisition maintenance and repair of any assets.

**36 Employees**

- (1) At the commencement of this Act, the public officers employed immediately before that date in the service of the Broadcasting and Information Division of the Government shall, subject to the provisions of this section, be deemed to be temporarily in the employment of the Corporation, upon the same terms and conditions of service.
- (2) In consultation with the Board, the General Manager shall establish the staff requirement of the Corporation, prepare a job description for each post and receive applications for permanent employment by the expiry of three months from the commencement of this Act or such longer time as the recruitment of a suitable applicant may in any case require.
- (3) In considering applicants of equal merit for any post the Board shall attach priority to an application by an existing employee transferred to the service of the Corporation under the provisions of subsection (1) of this section.
- (4) Any employee transferred temporarily to the service of the Corporation under subsection (1) of this section, who shall apply for employment in a permanent post under the provisions of subsection (2) of this section and shall fail to be recruited to it or for whom there shall be no permanent post for which such temporary employee can appropriately apply, shall be entitled to the same compensation as is payable at that time to public officers for redundancy and his/her temporary employment by the Corporation shall be thereupon terminated.

**37 Abolition of Radio Tuvalu Advisory Board.**

Upon the commencement of this Act, the body known as the Tuvalu Advisory Board shall be abolished.

**38 Act No. 4 of 1993 to be read with this Act**

The Tuvalu Telecommunications Act 1993 shall be read together with and construed according to the provisions of this Act.

**ENDNOTES****Table of Legislation History**

<b>Legislation</b>	<b>Year and No</b>	<b>Commencement</b>

**Table of Renumbered Provisions**

<b>Original</b>	<b>Current</b>

**Table of Endnote References**