



CONSULTATION ON THE VANUATU CODE OF PRACTICE FOR BROADCASTING AND MEDIA SERVICES - MAY 2023



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1. CONSULTATION PROCESS

The Telecommunications Radiocommunications and Broadcasting Regulator (TRBR) proposes to consult on the Vanuatu's Code of Practice for broadcasting and media service pursuant to the power set out in Section 7(2A) of the Telecommunications, Radiocommunications and Broadcasting Act (no 30 of 2009), (the "Act") as amended.

The purpose of this consultation is to give members of the public, licensees and stakeholders and other interested parties an opportunity to comment on the draft Code of Practice and complaint-handling procedures that are to be observed by the licensees providing audio-visual media services in Vanuatu.

When the public consultation process is complete and the TRBR is satisfied that the draft Code is fit-for-purpose and contains appropriate community safeguards based on responses received from the public, broadcasters and other stakeholders, the TRBR will issue a final Code and will publish it online on its website.

For this, the TRBR now invites and welcomes comments and submissions from members of the public, licensees and other interested parties on this consultation document. Responses should be submitted to the TRBR by 5:00pm on 30th June 2023. A person may send their written response or comments to the TRBR either:

- a. By hand, to the TRBR office at the Lini Highway opposite Bred Bank
- b. By mail to PO Box 3547, Port Vila, Vanuatu or
- c. By email to *consultation@trbr.vu*

Please contact the TRBR office on telephone number (678) 27621 should you require further clarification or information relating to this public consultation.

2. EXECUTIVE SUMMARY

1. This Code has been prepared by the Regulator pursuant to Section 7(2A) of the Telecommunications, Radiocommunications and Broadcasting Act, 2009 (the “Act”) for the guidance of radio and television broadcasters, and media service providers licensed to provide services in Vanuatu. The Code will be subjected to substantial consultation to enable all stakeholders to make submissions. As a result, the final promulgated version of the Code will better reflect the current norms and expectations of broadcasters and broadcast audiences in Vanuatu.
2. The Code sets out a standard, as provided for in the Act. The Regulator has described that standard as the Community Standard, which is intended to reflect the norms and expectations of the ni-Vanuatu community, allowing for reasonable diversity to be found in a modern, reasonably tolerant, democratic society. The Code also contains clarification of the Standard at two levels, (1) supplementary principles, and (2) illustrations and examples.
3. Ultimately, the Code of Practice for Broadcasting must reflect arrangements that are acceptable to the community of Vanuatu as a whole, not the views of the Regulator or of the industry. Community standards in relation to many matters may develop and change over time. On other matters, especially in relation to fairness, basic morality and ethics, community norms and expectations may be far more constant. This suggests that any Code needs to be reviewed from time to time for adequacy and currency, as the experience of broadcasters increases, and new issues arise.

3. INTRODUCTION

4. Broadcasting plays a central role in people’s lives. Surveys show that people spend more time watching television than consuming any other form of broadcasting media. Radio also plays a pivotal role in everyday life: many people wake up to it and listen to it on their way to and from work; at times of national disasters and emergencies, radio is the main source of potentially lifesaving information. While the growth of the Internet is providing a complementary source of news, information and entertainment, the Internet does not yet match the ubiquity and impact

of TV and radio broadcasting. As a consequence of their ubiquity and impact, radio and TV stations have the primary responsibility for ensuring that the material they broadcast reflects community values and standards.

5. The TRBR is required under Section 7(2A) of the of the Telecommunications Radiocommunications and Broadcasting (Amendment) Act 2009, (“the Act”) to establish a code for broadcasting and media services covering standards in programs, sponsorship, product placement in television programs, fairness and privacy. This Code will be known as the Vanuatu Code of Practice for Broadcasting and Media Services (‘The Code of Practice’).
6. Broadcasters are required by the terms of their TRBR license to observe the Standard Code and Fairness Code, which are to be interpreted as references to this Code of Practice. Any international broadcasters broadcasting through an agreement with the local licensees is required to observe this Code of Practice.
7. In any event, where the Code of Practice has been breached by any licensed broadcaster, TRBR will publish findings and explains why a broadcaster has breached the Code of Practice. The TRBR will investigate and impose regulatory penalties subjected to Section 46 of the TRBR Act to any broadcaster who deliberately, seriously, repeated or recklessly breached these standards in the Code of Practice.
8. The Code of Practice is outlined in terms of principles, meanings and rules, fairness, and privacy. It also includes a set of practices to be adhered to by the broadcasters. The principles are there to help readers understand the standard objectives and to apply the rules. Broadcasters are obliged to comply with the standards and rules set out in this Code of Practice.
9. The Code of Practice may not address each and every situation or case that may arise as broadcaster may and will face a number of individual situations which may not be specifically referred to in this Code of Practice. However, the principles as outlined in this document should make clear what the objectives of this Code of Practice are to help broadcasters make necessary judgements.
10. Broadcasters can create programs and contents on any issue, but each broadcaster must ensure that these programs comply with the laws as well as this Code of Practice.
11. The TRBR can provide guidance on the interpretation of this Code of Practice, however, any advice given that will not affect TRBR’s discretion to judge cases and complaints after

transmission, the broadcasters should seek their own legal advice on any compliance issue arising.

4. SECTION 1 – DEFINITION

12. **Children** – Are people under the age of eighteen.
13. **Watershed** – Time when TV programs which might be unsuitable for children can be broadcast 9:00pm to 5:30am.
14. **Sexual Material** – any materials that depict sexually explicit conduct. This includes materials that contain images and/or languages of a strong sexual nature.
15. **Warranted** – Where broadcasters wish to justify a violation of privacy as warranted, they should be able to demonstrate why the circumstance of the case is warranted. If the reason is that it is in the public interest, then the broadcaster should be able to demonstrate that the public interest outweighs the right of privacy.
16. **Doorstepping** – an attempt to obtain an interview or recording from a contributor without prior arrangement or agreement.
17. **Religious Program** – a program which is religious in nature and which serves to provide religious education, practice or expression.

5. SECTION 2 – PRINCIPLES

18. The Community Standard may be expressed in terms of a number of principles that are considered, in the case of Vanuatu, to be overwhelmingly endorsed by the community, and which are adhered to generally, without being particular to any age, racial, gender, religious, political or geographically defined (province / village) group.

19. The principles are:

- (i) **Truth:** People should tell the truth, and take some care to ensure that they are doing so
- (ii) **The Equality Principle:** All people, despite differences in their character, skills, strengths, and frailties, should be treated equally as human beings.
- (iii) **The Principle of Respect:** All people deserve to be treated with a basic level of respect, and all people should behave in such a way as not to erode the respect that they would like and expect to be extended to them by others.
- (iv) **The Fairness Principle:** All people should be treated fairly and in a just manner and should treat others with the fairness that they themselves expect.
- (v) **The Principle of Tolerance:** It is recognized that people have different moral and ethical perspectives, and that these are often on matters of emphasis and relative importance as well as on substance. However, the context in Vanuatu is usually that there is a wide basis of consensus. The principle is that, within limits which are often defined by situations, all people should tolerate some diversity in the views of others and accept that there will not be unanimity on all matters at all times.
- (vi) **The Reciprocity Principle:** This principle overlaps with many of those listed above, and could be regarded as equivalent to a live-and-let-live approach or a principle of community harmony.
- (vii) **The Principle of Responsibility:** Generally, most people, and adults in particular, are responsible for their actions, and should be accountable for the reasonably foreseeable consequences of their actions.

6. SECTION 3 – PROTECTING THE UNDER-AGE

Principle

Ensuring that the people under the age of eighteen years (Children) are protected.

Rules

20. Broadcasters must ensure there are no materials that might seriously ruin children's physical, mental, and moral development.
21. When providing services, broadcasters must take all reasonable steps to protect people under eighteen and vulnerable.
22. Television broadcasters are required to observe the watershed.
23. Children are particularly likely to be listening during school runs and breakfast times. Radio broadcasters must have a particular for these times.
24. Broadcasters must ensure that the transition to more adult material must not be unduly unexpected (for Televisions) or after the time when children are particularly likely to be listening (in the case of radio).
25. Broadcasters must modify the material broadcast having regard to whether it is likely or very possibly might be heard or seen by audiences that are vulnerable or susceptible. In particular, broadcasters must ensure that programs are suitable to children of the age groups that are likely to be watching or listening at the time of broadcast and reflect the standard that a ni-Vanuatu parent might expect to be applied in such situations.

Alcohol, Smoking and Drugs

26. The consumption of illegal drugs, smoking and abuse of alcohol;
 - (i) Shall not be featured in programs intended to be broadcasted for the children unless there is strong editorial justification.
 - (ii) Must be always avoided and in any case must not be encouraged in other programs broadcast before watershed or when children are particularly likely to listen.
27. Children's programs should avoid behaviour that the community does not want to be imitated by these audiences, such as drug use, smoking and alcohol consumption.

Sexual Content and Nudity

28. Sexual materials must not be broadcast at any time.
29. Nudity of any kind must not be broadcast before watershed or when content is likely to be accessed by children.
30. Broadcasters need to take care when broadcasting materials with adult themes (particularly in terms of sex or violence) to ensure that (a) it meets the overall standards of acceptability of the community; and (b) that it is not broadcast within the hours of 9:00pm to 5:30am

Violence, Bad behaviour, and Offensive Languages

31. Violence whether verbal or physical must be limited as much as possible before watershed, when children are particularly likely to listen or when content is likely to be accessed by children.
32. Violence that can be easily mimic by children that can be harmful and dangerous;
 - (i) must not be featured in programs intended for children,
 - (ii) shall not be broadcast before watershed, while children are particularly likely to listen or when content is like to be accessed by children.
33. Bad Behaviours that can be mimic by children that is harmful,
 - (i) must not be featured in programs intended for children,
 - (ii) shall not be broadcast before watershed, while children are particularly likely to listen or when content is like to be accessed by children.
34. Contents with offensive language must not be broadcast before watershed, while children are particularly likely to listen or when content is like to be accessed by children.
35. Children's programs should avoid behaviours that the community does not want to be imitated by these audiences, such as domestic violence, lack of respect between people, cruelty to others and to animals, anti-social behaviour, and destruction of public property.

7. SECTION 4 – FAIRNESS

Principle

Ensuring that there are just or fair treatment of individuals or organizations in the programs broadcast by the broadcasters.

Rules

36. Broadcasters shall ensure that there are no unjust or unfair treatment of individuals or organizations in programs.
37. When inviting a person to participate or contribute to a program, Broadcasters must ensure that the person is;
 - (i) briefed on the nature and the objective of the program, what the program is about, why they were asked to contribute and when and where it is likely to be first broadcast.
 - (ii) Made aware of any significant changes that the broadcaster intends to do to the program that might affect their original consent to participate, and which might be considered as unfair material.
 - (iii) Broadcasters must give the contributor the opportunity to preview the program to see whether there are any changes that needed to be effected.
38. Where the program participant or contributor is under the age of eighteen, the broadcaster must obtain consent from parents or guardians. When asking for views on a matter to a person under eighteen years, the broadcaster must consider their capacity to answer properly.
39. When broadcasting a factual program, especially programs that had happened in the past, broadcasters must ensure that;
 - (i) the material facts have not been presented, disregarded or omitted in any way that is unfair to an individual or organizations.
40. Where a person refuses to contribute, comment or participate in a program, the broadcaster must make it known that the individual has chosen not to appear in the program and that the personal details remain anonymous.

41. Broadcasters and program makers must ensure that they do not obtain or seek information, audio, pictures or an agreement that may contribute to misrepresentation or deception of a situation, topic or an issue.
42. Where Broadcasters are uncertain, always rely on a credible source of information.
43. Broadcasters must quickly correct mistakes, inaccurate information or factual error clearly and appropriately.
44. Broadcasters should only use content and material of another broadcaster with permission and should attribute the material to that other broadcaster when it is broadcast.
45. Broadcasters should not repeat hate speech, which seeks to demonize or encourage hate to be directed against individuals or sections of the community by others in the community.

8. SECTION 5 – PRIVACY AND INTRUSIVENESS

Principle

Ensuring that broadcasters do not violate any privacy in programs and when obtaining materials included in the programs.

Rules

46. Broadcasters must ensure that any violation of privacy in programs or when obtaining material included in the program must be warranted.
47. Disclosure of personal information such as a person's address or family should not be revealed without permission unless it is warranted.
48. When involving people in an event which is likely to be covered in the news, they still have the right to their privacy in making the program and broadcasting it.
49. Broadcasters, to ensure that prior to broadcasting any words, images or actions filmed or recorded from a place, must obtain individual or organization's consent.
50. People who are not public figures or public office holders should not be interviewed except with their full and prior consent.

51. Identification of private individuals involved in accidents or who have died should not be broadcast until after relatives and kin of the individual concerned have been notified. Police or emergency services confirmation that this has occurred may usually be relied on.
52. Broadcast content should not seek to intrude on or dwell on private grief.
53. Broadcasters must not involve in doorstepping for factual programs unless a request for an interview has been refused or has not been possible, or there is a good reason to believe that an investigation will be frustrated if the subject is approached openly.
54. Broadcasters can record telephone calls between the broadcaster and the other party if they have, from the outset of the call, identified themselves, explained the purpose of the call and that the call is being recorded for possible broadcast (if that is the case) unless it is warranted not to do one or more of these practices.

9. SECTION 6 – RELIGION

Principle

Broadcasters are responsible to respect every religion especially when broadcasting contents that religious programs are.

Rules

55. Broadcasters must ensure that the religious programs broadcast must not create religious discord among the people.
56. Broadcast must not allow abusive treatment from religious views and beliefs from a particular group of people.
57. Religious programs broadcast through television or radio services must not appeal to the audience member to join a religion denomination.
58. There will be no religious programs that seek to promote the views and beliefs of a particular religion.

10. SECTION 7 – NEWS AND PROGRAMMING

Principle

Ensuring that editorial independence and control over programming is retained by all broadcasters.

Rules

59. Broadcasters should respect embargos on the release of news stories or other announcements by persons and organizations.
60. Broadcasters must especially respect embargos and constraints that have been imposed on publication by emergency service organizations and the Government in response to emergency situations, such as, for example, natural disasters or situations involving national security.
61. Broadcasters should comply with undertakings that they have given in the course of collecting news and data for broadcast, including undertakings about anonymity.
62. Broadcasters must ensure that the independency of editorial control over programming must be retained. The editorial contents must be distinguished from advertising.
63. News and current affairs program contents must not be sponsored.
64. Contents and scheduling of channels must not be influenced by a sponsor.
65. Broadcasters should provide balanced coverage of news stories, particularly where there are multiple, reasonable views about the facts and their interpretation.
66. Broadcasters should identify and separate factual news content from the editorial opinion of the broadcaster.
67. Persons about whom allegations or comments are made in news coverage and interviews should be given a reasonable opportunity to respond and for the response to be broadcast in an appropriate manner.

11. SECTION 8 – COMPLAINT PROCESS

Principle

Ensuring that broadcasters have accessible complaint procedures that consumers can voice their complaints.

Rules

68. Broadcasters should ensure that they have accessible complaint processes that enable any person aggrieved about the content or treatment of broadcast material to express that grievance and to seek rectification, in accordance with Section 41 of the Act.
69. Broadcasters should engage meaningfully with complainants and seek to achieve an outcome that is fair in all circumstances. This includes allocating appropriate resources to the complaints process, including senior resources as required.

12. SECTION 9 – ADMINISTRATION AND APPLICATION

70. This Code has been prepared for the guidance of broadcasters and is not necessarily complete in terms of the range of circumstances to which it needs to be applied.
71. The Regulator will monitor adherence to the guidelines in the Code and may, at his own initiative, or in response to interested parties, add or clarify the principles and illustrations in the Code.

Complaints

72. The Regulator will receive and process complaints from interested parties, including audience members of broadcast programs. On receipt of a complaint, the process that the Regulator will follow, is as follows
 - (i) Acknowledge receipt of the complaint to the complainant and advise that the complaint is being referred to the relevant broadcaster for reply in the first instance, and noting—if the complaint has been inadequately addressed by the broadcaster, a dissatisfied complainant may wish to pursue the complaint with TRBR.

- (II) Refer the complaint to the relevant broadcaster with a request that the broadcaster should address the concerns of the complainant by a nominated date (likely within one month from the referral);
- (III) Require the broadcaster to advise the regulator of the status of the complaint (ongoing, resolved, etc.) at the end of the period nominated in (b);
- (IV) If the complainant pursues the matter with the Regulator, the Regulator may deal with it in accordance with Section 41(3) of the Act.

73. TRBR has in place a Customer Advisory Panel comprising representatives of civil society, the churches and other important contributors from ni-Vanuatu society.

74. That same Panel will be re-tasked to operate as a Broadcasting Code Advisory Panel and will be convened by the Regulator as required to advise on emerging and continuing issues of significance in relation to broadcasting standards and principles. The agenda for Panel meetings will be a matter for the Regulator, but will take into consideration issues raised by the broadcast industry and broadcasters, civil society and other institutions. Recommendations of the Panel are accorded the highest respect, but it will be the responsibility of the Regulator to determine if they are to be adopted or published.

13. SECTION 10 – SANCTIONS

75. The Code is for guidance only. Consequently, infringements of the Code do not in themselves attract penalties or other sanctions. In many cases, infringements may be adequately addressed by explanations, apologies or retractions by the broadcaster concerned.
76. The Regulator reserves the right to publicise continuing infringements or ignoring of the standard and principles in the Code by an individual broadcaster. In egregious or continuing cases, the Regulator may seek community comment on Code violations when an individual broadcast licence needs to be renewed or otherwise considered. In such situations, the licence itself might be withdrawn, or it might be renewed or continued with a specific licence condition added to address past unacceptable practices.

**** END ****



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