

# **MEDIA INDUSTRY DEVELOPMENT DECREE 2010**

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### **MEDIA INDUSTRY DEVELOPMENT DECREE 2010**

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#### **GOVERNMENT OF FIJI (DECREE No.     )**

IN exercise of the powers vested in me as President of the Republic of Fiji and the Commander in Chief of the Republic of Fiji Military Forces by virtue of the Executive Authority Decree 2009, I hereby make the following Decree -

#### **PART 1 – PRELIMINARY**

##### *Short title and commencement*

1. (1) This Decree may be cited as the Media Industry Development Decree 2010.

(2) This Decree comes into force on a date appointed by the Minister by notice in the *Gazette*.

(3) The Minister may appoint different days for the coming into force of different provisions.

*Interpretation*

2. In this Decree, unless the context otherwise requires –

“advertisement” means 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 or space in a print or broadcast media has been given up to the advertiser for remuneration or similar consideration;

“Advertising Codes” means the General Code of Practice for Advertisements set out in Schedule 2 and the Code for Advertising to Children set out in Schedule 3;

“Authority” means the Media Industry Development Authority established by section 3;

“broadcast” means the sending out by broadcast media of any message or other matter to the public or any class of the public;

“broadcast media” means radio, television and public internet websites;

“children” means consumers aged 14 years or under;

“code” means any one of the media codes;

“Company” means a company incorporated under the Companies Act (Cap. 247) for the purposes of delivering media services in Fiji;

“complainant” means a person who makes a complaint to the Authority, Tribunal or the Minister;

“complaint” means a complaint made by any complainant to the Authority, Tribunal or the Minister against any media organisation or any employee, officer, servant or agent of any media organisation;

“director” in relation to an existing company, includes-

- (a) any person occupying the position of director by whatever name called; and
- (b) a person in accordance with whose direction or instructions the persons occupying the position of directors of the company are accustomed to act.

“editor” includes a news editor or editor-in-chief of a print or broadcast medium;

“magazine” means a publication that would be a newspaper if published on a daily or weekly basis;

“media codes” means the Media Code of Ethics and Practice, the Advertising Codes and the Television Programme Classification Code set out in the Schedules;

“media dispute” means any dispute under section 34 of this Decree.

“media organisation” –

- (a) includes any person or other entity however organised who or which disseminates information, news, opinion, entertainment, advertisements and similar items to the public by way of newspaper or magazine publication, radio or television broadcast, audio-visual presentation or other print or electronic means of communication and includes print and broadcast media;
- (b) includes a person or other entity however organised that publishes an electronic version of a newspaper or magazine or that create an internet website capable of being accessed by the public;

“media service” includes a service which is supplied in any manner by a media organisation including print and broadcast media;

“Minister” means the Minister responsible for the administration of this Decree;

“Ministry” means the Ministry administered by the Minister;

“newspaper” means a document containing public news, intelligence, announcements, advertisements or occurrences or any remarks or observations thereon that is printed for sale or for free distribution and published in Fiji on a daily or weekly basis, but does not include any document published in the course of duty by the Government Printer;

“person” includes any company or association or body of persons, corporate or unincorporate, as the case may be;

“political party” means a political party that is registered under the Electoral Act 1998;

“print media” means newspapers, magazines and like publications howsoever disseminated;

“proprietor”, in relation to a magazine or newspaper, means –

- (a) the owner;

- (b) the editor;
- (c) the publisher
- (d) in the case of a magazine or newspaper owned by a corporate body – each director of the body and publisher;
- (e) in the case of a magazine or newspaper owned by a partnership – each partner;

“publisher” includes the editor-in-chief of a magazine or newspaper and like publications howsoever disseminated, and any person acting in that capacity;

“respondent” means a person or media organisation against whom a complaint is made to the Authority, Tribunal or Minister;

“security agencies” means the Republic of Fiji Military Force, the Fiji Police Force and the Prisons & Corrections Service.

“Tribunal” means the Media Tribunal established by section 42.

## **PART 2 – MEDIA INDUSTRY DEVELOPMENT AUTHORITY OF FIJI**

### *Establishment of the Media Industry Development Authority*

**3.** (1) This section establishes the Media Industry Development Authority.

(2) The Authority is a body corporate with perpetual succession and a common seal and may sue and be sued in its own name.

(3) The affixing of the seal of the Authority must be authenticated in the manner specified in section 48 of the Interpretation Act [Cap. 7] and when so authenticated will be judicially noticed.

### *Composition of the Authority*

**4.** (1) The Authority shall consist of a Director appointed by the Minister.

(2) The powers, functions and duties of the Authority as prescribed in this Decree shall be performed by the Director.

(3) The Director must be remunerated in a manner and at rates subject to terms and conditions determined by the Minister.

(4) The Minister may appoint a person to act as the Director during any period when the Director is absent from duty or from Fiji or is for any other reason, unable to perform the duties of the office, or when there is a vacancy in the office.

*Appointment of officers, servants and agents*

5. (1) The Authority shall appoint such officers, servants and agents as it considers necessary for the efficient exercise, performance and discharge of its functions.

(2) Officers, servants and agents appointed under subsection (1) must be remunerated in a manner, and at rates subject to terms and conditions determined by the Authority and approved by the Minister.

*Term of office*

6. (1) The Director holds office for 3 years and is eligible for re-appointment.

(2) The Minister may remove the Director of the Authority at any time from office if the Minister considers it appropriate in the public interest.

(3) The Director of the Authority may resign at any time by giving no less than two months' notice in writing to the Minister.

*Functions of the Authority*

7. The functions of the Authority shall be –

- (a) to encourage, promote and facilitate the development of media organisations and services in Fiji;
- (b) to advise and make recommendations to the Minister on matters, measures and regulations related to or connected with the media;
- (c) to facilitate the provision of a quality range of media services in Fiji which serves the national interest;
- (d) to ensure that media services in Fiji are maintained at a high standard in all respects and, in particular, in respect of the quality, balance, fair judgment and range of subject-matter of their content;
- (e) to ensure that nothing is included in the content of any media service which is against public interest or order, or national interest, or which offends against good taste or decency and creates communal discord; or
- (f) to perform such other matters as the Authority may determine to be in the interests of the media and in furtherance of the objects of this Decree.

*Powers of the Authority*

8. The Authority shall have power to do anything for the purpose of discharging its functions and duties under this Decree or any other written law, or which is incidental or conducive to the discharge of those functions and duties and, in particular, may —

- (a) conduct researches and investigations necessary for the improvement and development of media in Fiji;
- (b) develop and monitor codes of practice relating to content or technical standards for media services or to standards of fair market conduct in the media industry, and monitor compliance with such codes;
- (c) subject to the approval of the Minister –
  - (i) enter into joint ventures or partnerships with other media authorities, international agencies or private organisations for the purpose of promoting media services;
  - (ii) enter into such contracts as may be necessary or expedient for the purpose of discharging its functions or duties;
  - (iii) become a member or an affiliate of any international body, the functions or duties of which are similar to those of the Authority;
  - (iv) acquire and dispose of any property, whether movable or immovable, which the Authority thinks necessary or expedient for the purpose of carrying out its functions or duties;
  - (v) incorporate companies for the purpose of performing things ancillary to its functions or duties;
- (d) provide training schemes, whether by itself or with the co-operation of other persons or bodies as the Authority thinks fit, for the officers and employees of the Authority and others concerned with media services;
- (e) monitor compliance with the ethical standards of the print and broadcast media in accordance with the Media Code of Ethics and Practice;
- (f) monitor the advertising practices of the print and broadcast media in accordance with the Advertising Codes;
- (g) monitor compliance by television broadcasters with the Television Programme Classifications Code;
- (h) oversee the development, implementation, maintenance and review of the media codes of standards;
- (i) provide registration to every media organisation that intends to provide media services in Fiji;
- (j) refer to the Tribunal complaints brought by the public against media organisations alleging a breach of the media codes;
- (k) refer to the Tribunal complaints brought to the Minister by members of the public or public officers or other Ministers against media organisations alleging a breach of the media codes of standards.



*Directions by Minister*

**9.** (1) The Minister may give such directions, not inconsistent with the provisions of this Decree, as to the performance of the functions and duties and exercise of its powers by the Authority.

(2) The Authority shall give effect to any direction given under subsection (1)

*Delegations by Minister*

**10.** The Minister may designate another office to perform the powers and functions of the Authority.

*Procedure of the Authority*

**11.** The Authority may adopt its own rules of procedure for the transaction of business and for carrying out the purposes of this Decree.

*Authority may establish Committees*

**12.** (1) The Authority may, from time to time, establish such committees as it considers necessary or expedient to assist it in the performance of its functions under this Decree.

(2) The Authority may appoint any person to be a member of any committee established under subsection (1), and shall appoint a Chairman of the Committee.

(3) A committee established under this section may regulate its own procedures and, in the exercise of its powers under this subsection, such committee shall be subject to and act in accordance with any direction given to the committee by the Authority.

(4) Meetings of a committee established under this section shall be held at such times and places as the Chairman of the committee may, subject to subsection (3), determine.

(5) A committee may invite any person for the purpose of advising it on any matter under discussion to attend any meeting of the committee, but the person so invited shall not be entitled to vote at any such meeting.

(6) The members of a committee or any person invited to attend any meeting of a committee may be paid such allowances and other expenses as the Authority may determine, subject to approval by the Minister.

*Financial reporting and audit of accounts*

**13.** (1) The financial year of the Authority shall begin on the first day of January and end on the thirty-first day of December of each year.

(2) The funds of the Authority shall consist of any moneys appropriated for the purposes of the Authority, and all other moneys lawfully received by the Authority.

(3) The Authority shall cause proper accounts to be kept and shall, as soon as practicable after the end of each financial year but not more than 3 months, cause to be prepared for that financial year a statement of accounts of the Authority which shall include a balance sheet and an account of income and expenditure.

(4) The Authority shall cause the statement of accounts to be audited by the Office of the Auditor General.

(5) The Authority shall, as soon as possible, send a copy of the statement of accounts certified by the auditors and a copy of the auditor's report to the Minister who shall cause them to be laid before Cabinet.

#### *Annual Report*

**14.** The Authority shall, as soon as practicable after the end of each financial year but not more than 3 months, prepare a report on its activities during that financial year and send a copy of the report to the Minister who shall cause a copy to be laid before Cabinet.

#### *Disclosure of interest*

**15.** (1) A Director or any member of any committee of the Authority having any interest in any matter under discussion by the Authority or committee shall disclose to the Authority or such committee, as the case may be, the fact and nature of his or her interest.

(2) A Director or any member of any committee of the Authority shall be deemed to have an interest referred to in subsection (1), if his or her spouse, partner, parent, son, adopted son, daughter or adopted daughter or immediate family has an interest in the matter under discussion.

(3) A disclosure under subsection (1) shall be recorded in the minutes of the Authority or committee, as the case may be, and, after the disclosure, the Director or any member of any committee of the Authority shall not take part nor be present in any deliberation or decision of the Authority or committee, as the case may be.

(4) For the purpose of determining the interest to be disclosed under subsection (1), it shall include any interest in family companies, associated companies and entities.

(5) The Director or any member of any committee of the Authority who fails to disclose his or her interest as provided under subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or to both.

#### *Protection from Liability*

**16.** (1) No proceedings, civil or criminal, shall lie against the Authority for anything it may do or fail to do in the course of the exercise or intended exercise of its functions, unless it is shown that it did not act in good faith or without reasonable care.

(2) No proceedings, civil or criminal shall lie personally against any member, officer or employee of the Authority or other person acting under the direction of the Authority for anything which is done in good faith, done or intended to be done in the execution or purported execution of this Decree or any other written law.

### **PART 3 – MEDIA CODES**

#### *Media codes (Schedules 1 to 4)*

**17.** (1) The Media Code of Ethics and Practice set out in Schedule 1 governs standards of ethics and practice for all media organisations.

(2) The General Code of Practice for Advertisements set out in Schedule 2 governs the general advertising practice for all media organisations.

(3) The Code for Advertising to Children set out in Schedule 3 governs the practice of advertising for children by all media organisations.

(4) The Television Programme Classification Code set out in Schedule 4 governs the classification and content of television programmes broadcast by media organisations.

(5) The Minister may at any time by order published in the *Gazette* amend any of Schedules 1 to 4, upon recommendation by the Authority.

#### *Additional advertising rules*

**18.** (1) In addition to the requirements of the Advertising Codes, the following rules apply to advertising in all media –

- (a) all advertisements must be clearly identified as such;
- (b) advertisements must not be carried for medicines that are available only on prescription;
- (c) tobacco products must not be advertised except in accordance with the Tobacco Control Act 1998.

(2) A breach of any of the rules in or under this section is to be treated as a breach of the media codes of standards.

#### *Political advertising*

**19.** (1) Except in accordance with this Decree or any regulations made under the Electoral Act 1998, no media organisation may broadcast or publish an advertisement for or on behalf of any political party or candidate for election to political office.

(2) A breach of any of the rules in or under this section is to be treated as a breach of the media codes of standards.

#### *Saving for other laws relating to the media*

**20.** (1) The provisions of this Decree relating to codes of standards for the media do not displace any other written law or rule of law relating to obscenity,

blasphemy, incitement to commit a crime, the publication of details of court cases, protection of witnesses, defamation, sedition or any other law relating to the media whatsoever.

(2) All media organisations must conduct their activities in accordance with this Decree and any regulations made under it, and with the media codes, and have regard to the provisions of all written law including—

- (a) the Official Secrets Acts;
- (b) the Public Order Act (Cap. 20);
- (c) the Defamation Act (Cap.34);
- (d) the Broadcasting Commission Act (Cap 105);
- (e) the Television Decree 1992.

#### **PART 4 – CONTENT REGULATION**

##### *Content regulation*

21. (1) The content of any media service must not include material which –

- (a) is against the public interest or order;
- (b) is against national interest;
- (c) offends against good taste or decency;
- (d) creates communal discord.

##### *Bylines*

22. The content of any print media must include a byline and wherever practical, the content of any other media service must include a byline.

##### *Offences relating to content regulation*

23. A breach of any of the provisions in or under sections 21 and 22 by a media organisation shall constitute an offence and the media organisation shall be liable on summary conviction to a fine not exceeding \$500,000 or in the case of a publisher or editor or journalist a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 5 years or to both.

#### **PART 5 – ENFORCEMENT OF MEDIA STANDARDS**

##### *Power to investigate*

24. The Authority may conduct an investigation if there are reasonable grounds for suspecting that any provision of this Decree or any media code has been infringed and may refer the matter to the Tribunal for determination.

##### *Power to require documents or information*

25. (1) For the purposes of discharging its functions and duties under this Decree, the Authority may, by notice in writing to any person, require any person to produce to the Authority a specified document, or to provide the Authority with

specified information, which the Authority considers relates to any matter relevant to such purposes.

- (2) The Authority may specify in the notice —
- (a) the time and place at which any document is to be produced or any information is to be provided; and
  - (b) the manner and form in which it is to be produced or provided.

(3) The power under this section to require a person to produce a document includes the power —

- (a) if the document is produced —
  - (i) to take copies of it or extracts from it; and
  - (ii) to require such person, or any person who is a present or past officer of his or hers, or is or was at any time employed by him or her, to provide an explanation of the document; or
- (b) if the document is not produced, to require such person to state, to the best of his or her knowledge and belief, where it is.

(4) In subsection (1), “specified” means —

- (a) specified or described in the notice; or
- (b) falling within a category which is specified or described in the notice.

*Power to enter premises and search, seizure under warrant*

**26.** (1) The Authority may apply to the Magistrates Court for a warrant and the Court may issue such a warrant if it is satisfied that —

- (a) there are reasonable grounds for suspecting that there are on any premises documents the production of which has been required under section 25; or
- (b) there are reasonable grounds for suspecting that —
  - (i) there are on any premises documents which the Authority has power under section 25 to require to be produced; and
  - (ii) if the documents were required to be produced, they would not be produced but would be concealed, removed, tampered with or destroyed.

(2) A warrant under this section shall authorise a named officer of the Authority, and any other of its officers whom the Authority has authorised in writing to accompany the named officer —

- (a) to enter the premises specified in the warrant, using such force as is reasonably necessary for the purpose;
- (b) to search the premises and take copies of, or extracts from, any document appearing to be of a kind in respect of which the application under subsection (1) was granted (referred to in this section as the relevant kind);
- (c) to take possession of any document appearing to be of the relevant kind if —
  - (i) such action appears to be necessary for preserving the document or preventing interference with it; or
  - (ii) it is not reasonably practicable to take copies of the document on the premises;
- (d) to take any other steps which appear to be necessary for the purpose mentioned in paragraph (c) (i);
- (e) to require any person to provide an explanation of any document appearing to be of the relevant kind or to state, to the best of his or her knowledge and belief, where it may be found; and
- (f) to require any information which is held in a computer and is accessible from the premises and which the named officer considers to relate to any matter relevant to the investigation, to be produced in a form —
  - (i) in which it can be taken away; and
  - (ii) in which it is visible and legible.

(3) If, in the case of a warrant under subsection (1) (b), the Court is satisfied that it is reasonable to suspect that there are also on the premises other documents relating to the investigation concerned, the warrant shall also authorise the action mentioned in subsection (2) to be taken in relation to any such document.

(4) If there is no one at the premises when the named officer proposes to execute such a warrant, he or she shall, before executing it —

- (a) take such steps as are reasonable in all the circumstances to inform the occupier of the intended entry; and
- (b) if the occupier is informed, afford him or her or his or her legal or other representative a reasonable opportunity to be present when the warrant is executed.

(5) If the named officer is unable to inform the occupier of the intended entry, he shall, when executing the warrant, leave a copy of it in a prominent place on the premises.

(6) On leaving any premises into which he has entered by virtue of a warrant under this section, the named officer shall, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured as he found them.

(7) A warrant under this section continues in force until the end of the period of one month beginning from the day on which it is issued.

(8) Any document of which possession is taken under subsection (2) (c) may be retained for a period of 3 months or such time until it is tendered as evidence in Court.

(9) In this section —

"named officer" means the officer named in the warrant;

"occupier" , in relation to any premises, means a person whom the named officer reasonably believes to be the occupier of those premises.

*Offences relating to enforcement*

27. (1) Any person who fails to comply with a requirement imposed under sections 25 or 26 shall be guilty of an offence and liable on summary conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 5 years or to both.

(2) If a person is charged with an offence under section 25 (1) in respect of a requirement to produce a document, it shall be a defence for him or her to prove that —

- (a) the document was not in his possession or under his control; and
- (b) it was not reasonably practicable for him or her to comply with the requirement.

(3) If a person is charged with an offence under section 25 (1) in respect of a requirement —

- (a) to provide information;
- (b) to provide an explanation of a document; or
- (c) to state where a document is to be found,

it shall be a defence for him or her to prove that he had a reasonable excuse for failing to comply with the requirement.

(4) Failure to comply with a requirement imposed under section 25 is not an offence if the person imposing the requirement has failed to act in accordance with that section.

*Destroying or falsifying documents*

28. Any person who, having been required to produce a document under section 25 or 26 —

(a) intentionally or recklessly destroys or otherwise disposes of it, falsifies it or conceals it; or

(b) causes or permits its destruction, disposal, falsification or concealment,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 5 years or to both.

*False or misleading information*

**29.** Any person who provides information to the Authority or its authorised officer in connection with any function or duty of the Authority under this Decree which is false or misleading shall be guilty of an offence and liable on summary conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 5 years or to both.

*Obstruction of officers, etc.*

**30.** (1) In addition to the powers conferred on him or her by or under this Decree or any other written law, an officer or employee of the Authority may, in relation to any offence under this Decree or any other written law, require any person whom he or she reasonably believes to have committed an offence under this Decree or such other written law to furnish evidence of the person's identity.

(2) Any person who —

(a) refuses to give access to, or assaults, obstructs, hinders or delays, an officer or employee of the Authority in the discharge of the duties by such officer or employee under this Decree or any other written law; or

(b) fails to comply with a lawful demand of an officer or employee of the Authority in the discharge of the duties by such officer or employee under this Decree or any other written law,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 5 years or to both.

## **PART 6 – REGISTRATION OF MEDIA ORGANISATIONS**

*Media Organisation to be registered*

**31.** (1) Every media organisation that provides or intends to provide media services in Fiji must be registered as provided by this Part.

(2) A media organisation is registered when the proprietor deposits with the Authority an affidavit or affidavits duly sworn and signed by the proprietor and in the case of print media by the proprietor or by the persons intended to be the printer and the publisher of the newspaper respectively.

(3) Upon any change of ownership or other registered information, name or other particulars of a media organisation already registered, an affidavit sworn in



the same manner must be deposited to that effect within thirty (30) days of the change.

(4) An affidavit for the purposes of subsection (2) or (3) must contain the following information –

- (a) in the case of radio and television:
  - (i) identity and contact details of the proprietor(s);
  - (ii) location of stations, repeater stations, studios, any buildings associated with the production of broadcasting materials;
  - (iii) any allocated frequencies;
  - (iv) any frequencies used or proposed to be used;
  - (v) coverage maps for media services;
  - (vi) any interest held in any media organisation,
- (b) in the case of internet services:
  - (i) identity and contact details of proprietor(s) of the Internet Service Provider (ISP);
  - (ii) office location;
  - (iii) any interest held in any media organisation,
- (c) in the case of newspaper and magazines:
  - (i) identity and contact details of the proprietor(s);
  - (ii) identity and contact details of the intended printer(s);
  - (iii) identity and contact details of the intended publisher(s);
  - (iv) location of the intended place(s) of publishing;
  - (v) location of the intended place(s) of printing;
  - (vi) any interest held in any media organisation.

(5) The affidavit must further contain full disclosure of all ownership interests held by any person or, in the case of a company, a list of its shareholders.

(6) If a media organisation or person provides false or misleading information or fails to provide, withholds or omits any information which is material to the application for registration under this section or relating to the requirements of this Decree, that media organisation or person commits an offence punishable by a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 5 years or to both, in the case of a person or a fine not exceeding \$500,000 in the case of a company.

(7) Any media organisation that is not registered in accordance with this section commits an offence and is liable on summary conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 5 years or to both, in the case of a person or a fine not exceeding \$500,000 in the case of a company.

(8) All media organisations must submit the affidavit to the Authority in compliance with subsection (2) within thirty days (30) from commencement of this Decree.

*Affidavits as evidence*

**32.** (1) In all civil or criminal proceedings relating to any media organisation, an affidavit deposited under section 31 is conclusive evidence against every person signing it of the truth of its contents.

(2) A person who has sworn an affidavit under section 31 and who ceases to have any connection with the media organisation may deposit with the Authority an affidavit stating that he or she is no longer connected with the media organisation and from that date will not be taken by reason of the first affidavit to be connected with the media organisation.

*Publication of details*

**33.** (1) The Authority must keep a register of all affidavits deposited under this Part and the register must at all reasonable times be open to public inspection without charge.

(2) Every print media must print in some convenient part of it the name and place of business of its proprietor, printer and publisher and details of the place where it is printed.

(3) The proprietor or publisher of a newspaper who does not comply with subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 5 years or to both, in the case of a person or a fine not exceeding \$500,000 in the case of a company.

*Correction of false or distorted statements*

**34.** (1) In the case of print media, if any article, item, report, letter or advertisement is published in a newspaper which in the opinion of the Authority is false or distorted, the Authority may by notice in writing delivered to the principal office of the newspaper, direct to be published without charge, in an issue of the newspaper to be named and in as prominent a position and manner as that in which the original article appeared, a statement containing the facts considered by the Authority to be true.

(2) For the purposes of subsection (1), the correcting statement must –

- (a) be delivered with the direction;
- (b) not contain any comment or expression of opinion;
- (d) be in the same language as the original article.

(3) In the case of broadcast media, if any article, item, report, advertisement or news is broadcast and in the opinion of the Authority is false or distorted, the Authority may by notice in writing delivered to the principal office of the media organisation, direct to be broadcast without charge, in as prominent a position and manner as that in which the original material appeared, a statement containing the facts considered by the Authority to be true.

- (4) For the purposes of subsection (3), the correcting broadcast must –
- (a) be delivered with the direction;
  - (b) not contain any comment or expression of opinion;
  - (c) be in the same language as the original broadcast.

(5) Where a media organisation disputes an opinion of the Authority under this section, that media organisation may refer that matter to the Tribunal as a media dispute.

## **PART 7 – SPECIAL FEATURES OF MEDIA ORGANISATIONS**

### *Definitions*

35. For the purpose of this part –

“foreign person” means any person other than a citizen of Fiji.

“permanently residing” means a person residing in Fiji for 5 out of the last 7 years prior to registration under Part 6 and thereafter residing in Fiji for at least 9 out of 12 months of a year.

### *Special features of Media Organisation*

36. (1) In every media organisation –

- (a) in the case of a company, all the directors and in the case of any other legal entity, partnership, joint venture and of an individual, any person or persons holding analogous powers shall respectively be citizens of Fiji permanently residing in Fiji;
- (b) up to 10% of the beneficial ownership of any share or shares in a company or any interest in the nature of ownership, partial or total, of any other person holding any interest in a media organisation may be owned by foreign persons, but at least 90% of the beneficial ownership of any share or shares in a company or any interest in the nature of ownership, partial or total, of any person holding any interest in a media organisation must be owned by citizens of Fiji permanently residing in Fiji, whether any such interests subsist at the present time or are sought with a view to future ownership.

(2) A person who does not fall within the class of persons described in subsections 1 (a) or (b) respectively must resign or divest themselves of any directorship or ownership interest within three months from the commencement of this Decree.

(3) For the purpose of this section-

“Trustee” includes trustee, nominee, custodian, agent or other representative.

- (a) The Authority may, by notice in writing, direct any media organisation to obtain from any person appearing to have an ownership interest therein, or in the case of a company from any of its shareholders, and to transmit to the Authority in writing, information-
- (i) as to whether that person or shareholder holds any ownership interest or share in the media organisation as beneficial owner or as trustee; and
  - (ii) if the person or shareholder holds the ownership interest or share as trustee, to identify, the person for whom he or she holds the ownership interest or share (either by name or by other particulars sufficient to enable that person to be identified) and the nature of his interest,

and the media organisation shall comply with that direction within such time as may be specified in the notice.

- (b) The Authority may, by notice in writing, require any person appearing to have an ownership interest, or in the case of a company any shareholder of a media organisation, or any person who appears from the information provided to the Authority under subsection 3 (a) or this subsection to have an interest in any such ownership interest or share in a media organisation, to inform the Authority in writing, whether he or she holds any such interest as beneficial owner or as trustee, and if he or she holds the interest as trustee, to identify, the person for whom he or she holds the interest (either by name or by other particulars sufficient to enable that person to be identified) and the nature of interest and the person shall comply with that notice within such time as may be specified in the notice.
- (c) If a media organisation or person provides false or misleading information or fails to provide, withholds or omits any information which is material to this subsection or relating to the requirements of this Decree, that media organisation or person commits an offence punishable by a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 5 years or to both, in the case of a person or a fine not exceeding \$500,000 in the case of a company.

*Cross Media Ownership*

37. (1) For the purpose of this section-

“associate” in relation to a person means-

- (a) the person's spouse or a parent, child, brother, or sister of the person; or
- (b) a partner of the person or, if a partner of the person is a natural person, a spouse or a child of a partner of the person; or
- (c) if the person or another person who is an associate of the person under another paragraph receives benefits or is capable of benefiting under a trust, the trustee of the trust; or
- (d) a person (whether a company or not) who:
  - (i) acts, or is accustomed to act; or
  - (ii) under a contract or an arrangement or understanding (whether formal or informal) is intended or expected to act;
 

in accordance with the directions, instructions or wishes of, or in concert with, the first-mentioned person or of the first-mentioned person and another person who is an associate of the first-mentioned person under another paragraph; or
- (e) if the person is a company, another company if:
  - (i) the other company is a related entity or a related body corporate of the person.
  - (ii) In this subsection-  
 "related entity", in relation to a body corporate, means any of the following:
    - (1) a promoter of the body;
    - (2) a relative, or de facto spouse, of such a promoter;
    - (3) a relative of a spouse, or of a defacto spouse, of such a promoter;
    - (4) a director or member of the body or of a related body corporate;
    - (5) a relative, or de facto spouse, of such a director or member;
    - (6) a relative of a spouse, or of a de facto spouse, of such a director or member;
    - (7) a body corporate that is related to the first-mentioned body;
    - (8) a beneficiary under a trust of which the first-mentioned body is or has at any time been a trustee;
    - (9) a relative, or de facto spouse, of such a beneficiary;
    - (10) a relative of a spouse, or of a de facto spouse, of such a beneficiary;
    - (11) a body corporate one of whose directors is also a director of the first-mentioned body;
    - (12) a trustee of a trust under which a person is a beneficiary, where the person is a

related entity of the first-mentioned body because of any other application or applications of this definition.

“related body corporate” where a body corporate is a holding company of another body corporate; or a subsidiary of another body corporate; or a subsidiary of a holding company of another body corporate, the first-mentioned body and the other body are related to each other.

(2) Where a person or his or her associate owns a beneficial interest in any one media organisation, that person or his or her associate may own a further interest only in one other media organisation, provided that any such interest in that other media organisation shall not include any voting or controlling interest in that other media organisation and that any such interest in that other media organisation shall not exceed 5% non-voting interest in that other media organisation.

(3) Ownership and cognate expressions shall be widely construed to include indirect ownership or interest whether held by family members, friends or other businesses in which the person may be interested financially or in any other indirect manner.

(4) No person may act as a director in more than one media organisation.

(5) Any interest in a media organisation held contrary to this section shall be disposed of by the holder of such an interest within 12 months of commencement of this Decree.

#### *Exception*

**38.** The provisions in sections 36 and 37 do not in any way apply to the State or any State owned enterprise or any enterprises in which the State owns majority shares.

#### *Notification*

**39.** Any change in the existing structure of any media organisation must be notified in the manner prescribed in section 31(3).

#### *Disclosure of Cross Media Relationship*

**40.** (1) Any person who has any interest in more than one media organisation must disclose the same in the manner prescribed in section 31(3).

(2) If a person provides false or misleading information or fails to provide, withholds or omits any information which is material to this section or relating to the requirements of this Decree, that person commits an offence punishable by a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 5 years or to both, in the case of a person or a fine not exceeding \$500,000 in the case of a company

*Offences*

**41.** – (1) Any media organisation or any person in breach of any provisions of this Part shall be liable on summary conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 5 years or to both in the case of a person, or a fine not exceeding \$500,000 in the case of a company.

(2) Any media organisation in breach of the provisions of sections 36(2) or 36(3)(a) or 37(4) may have their registration under section 31(1) cancelled and that media organisation shall cease to operate as a media organisation immediately upon such cancellation until such time as that media organisation is in compliance.

**PART 8 – THE MEDIA TRIBUNAL**

*Establishment of the Media Tribunal*

**42.** (1) This section establishes the Media Tribunal.

(2) The Tribunal has the jurisdiction, powers and functions conferred on it by this Decree or any other written law.

*Membership of the Tribunal*

**43.** (1) The Tribunal consists of a Chairman, who shall exercise the powers, functions and duties of the Tribunal, as prescribed in this Decree or any other written law.

(2) The Chairman shall be appointed by the President, on the advice of the Attorney-General.

(3) The Chairman must be a person who is qualified to be a judge under section 15 of the Administration of Justice Decree 2009.

(4) In advising the President as to the person to be appointed as Chairman pursuant to subsection (2), the Attorney-General must be satisfied that the person-

- (a) is familiar with the nature of the legal system and legal practice in Fiji; and
- (b) possesses appropriate qualities of independence, integrity and fairness.

(5) The President may, acting on the advice of the Attorney-General, appoint a person to act as the Chairman during any period when the Chairman is absent from duty or from Fiji or is for any other reason, unable to perform the duties of the office, or when there is a vacancy in the office.

*Term of office of Chairman*

**44.** The term of appointment of the Chairman of the Tribunal will be determined by the President, on the recommendation of the Attorney-General.

*Vacation of office*

**45.** (1) The Chairman may at any time resign from office by notice in writing to the President.

(2) The Chairman is deemed to have vacated office if he or she dies, or is adjudged bankrupt under the laws of any country.

(3) The Chairman may at any time be removed from office by the President for inability to perform the functions of the office (whether arising from infirmity of body or mind, absence, or any other cause) or for misbehaviour, or may otherwise be removed by giving one month's notice or one month's remuneration in lieu of notice.

*Remuneration and travelling allowances*

**46.** The Chairman is entitled to be paid such remuneration and allowances as may be fixed by the President, upon the advice of the Attorney-General.

*Secretary and other staff of the Tribunal*

**47.** The Chairman may, with the approval of the Attorney-General appoint a secretary of the Tribunal and such other staff of the Tribunal, on such terms and conditions as may be prescribed.

*Jurisdiction of the Tribunal*

**48.** (1) In addition to the powers and functions conferred upon the Tribunal under this Decree or any other written law, the Tribunal has jurisdiction to-

- (a) hear and determine complaints referred by the Authority;
- (b) hear and determine complaints referred by the Authority on behalf of a complainant;
- (c) hear and determine complaints referred by a complainant;
- (d) adjudicate on actions for breach of media standards;
- (e) adjudicate on matters relating to media disputes.

(2) The Tribunal has all powers necessary to perform its functions, including the powers conferred on the Tribunal under this Decree or any other written law.

(3) In the performance of its functions or the exercise of its powers, the Tribunal is not subject to the directions or control of any other person or authority, provided that the Minister may issue policy, administrative and financial guidelines to the Tribunal, and the Tribunal must act in accordance with any guidelines given by the Minister.

*Parties to proceedings*

**49.** (1) The Tribunal may direct that a person or organisation be added as a party to any proceedings before the Tribunal if the Tribunal is satisfied that the person or organisation has a substantial interest in the matter in dispute and either –



- (a) the person or organisation applies to be made a party to the proceedings; or
- (b) the Tribunal of its own motion adds the person or organisation as a party.

(2) If in the opinion of the Attorney-General the public interest is or may be affected by any proceedings before the Tribunal, the Attorney General may, on giving such notice to other parties as the Tribunal directs, appear and be heard, or may present submissions in writing.

#### *Sittings of Tribunal*

**50.** (1) The Tribunal must fix a time and place for its hearings and cause notice to be given to the parties of the time and place so fixed.

(2) The Tribunal may prohibit the publication of any report or description of the proceedings or of any part of the proceeding before the Tribunal.

(3) A person who contravenes an order made under subsection (3) commits an offence and is liable on conviction to a fine of \$50,000.

(4) Sittings of the Tribunal may be adjourned from time to time and from place to place.

### **PART 9 – COMPLAINTS TO THE AUTHORITY**

#### *Complaints to the Authority*

**51.** – (1) Any person or entity may make a complaint against any media organisation to the Authority regarding the failure on the part of any media organisation to comply with the provisions of this Decree, including non-compliance with any media codes.

(2) A complaint under subsection (1) may be made to the Authority orally or in writing.

(3) A complaint under subsection (1) may be made against the media organisation or any employee, officer, agent or servant of that media organisation.

#### *Authority may investigate without a complaint*

**52.** The Authority may carry out an investigation against any media organisation for failure on the part of any media organisation to comply with the provisions of this Decree, including non-compliance with any media codes, even though no complaint has been made or lodged by any person or entity.

#### *Further Information and verification*

**53.** – (1) Upon receipt of a complaint under section 51, the Authority must notify the complainant in writing of receipt of the complaint.

(2) Upon receipt of the complaint, the Authority may –

- (a) require that the complaint be made in writing;
- (b) require the complainant to provide further information or details about the complaint, including –
  - (i) the name and address of the complainant;
  - (ii) the name of the media organisation or any employee, officer, agent or servant of that media organisation, which is the subject of the complaint;
  - (iii) the details of the conduct complained of;
  - (iv) relief, including compensation, being sought by the complainant; or
- (c) require that the complaint or any matters referred to therein be verified by statutory declaration.

*Media organisation to be informed*

**54.** Upon receipt of a complaint under section 51, or commencement of an investigation under section 52, the Authority shall refer the substance of the complaint or the investigation –

- (a) in the case of a complaint or investigation against a media organisation – to the proprietor of the media organisation;
- (b) in the case of a complaint or investigation against any employee, officer, agent or servant of that media organisation – to that employee, officer, agent or servant and the proprietor of the media organisation.

*Authority may require explanation*

**55.** Upon receipt of a complaint under section 51 or commencement of an investigation under section 52, the Authority may require that the proprietor or employee, officer, agent or servant of the media organisation as the case may be, by written notice to furnish to the Authority within the time specified in that notice a sufficient and satisfactory explanation in writing of the matters referred to in the complaint.

*Authority may require production of documents etc*

**56.** The Authority may require by notice in writing to a media organisation, the production by the proprietors of that media organisation to the Authority, at a time specified in that notice, of books, papers, files, securities, other documents or any other record of any type whatsoever (including electronic, digital or audio-visual materials), or copies thereof which are in the custody, possession or control of the media organisation and which may be relevant to or relate to the complaint under section 51 or the investigation under section 52.

*Failure to provide explanation or production of documents etc*

**57.** Where any media organisation or any employee, officer, agent or servant of the media organisation fails to comply with any notice issued under sections 55 and 56, that media organisation or any employee, officer, agent or servant of the media organisation shall be guilty of an offence and shall be liable upon conviction of a fine not exceeding \$100,000 or to imprisonment of a term not exceeding 2 years, or both.

*Role of the Authority*

**58.** Upon receipt of such complaint under section 51, or upon conducting investigation under section 52, or upon receiving information concerning the conduct of a media organisation or any employee, officer, agent or servants of the media organisation, the Authority may, after undertaking such investigations as it sees fit -

- (a) summarily dismiss the complaint under section 59 of this Decree;
- (b) make such efforts as it sees fit to facilitate the resolution of the matter in question, including mediation; or
- (c) refer the complaint to the Tribunal, for determination by the Tribunal in accordance with the provisions of this Decree.

*Summary Dismissal of Complaints*

**59.** – (1) The Authority may summarily dismiss a complaint if -

- (a) further information and details are not provided by the complainant, or if further information and details are not verified by the complainant, as required by the Authority;
- (b) the complaint is vexatious, misconceived, frivolous or lacking in substance;
- (c) the complaint has been the subject of a previous complaint which has been dismissed or dealt with under this Decree;
- (d) the complaint is the subject of another existing complaint;
- (e) the complaint is not one that the Authority or the Tribunal is empowered to deal with under this Decree.

(2) If the Authority summarily dismisses a complaint, then the Authority must give a written notice of the dismissal including the reasons for the dismissal.

(3) If the complaint has been summarily dismissed by the Authority, then the complainant may commence proceedings directly before the Tribunal for determination by the Tribunal in accordance with the provisions of this Decree.

## **PART 10 – PROCEEDINGS BEFORE THE TRIBUNAL**

*Referral of complaints to the Tribunal*

**60.** – (1) The Authority may refer to the Tribunal any complaint received by the Authority in accordance with this Decree, for the Tribunal's determination under this Decree.

(2) Any complainant whose complaint has been summarily dismissed by the Authority under section 59, may on its own accord, refer the complaint to the Tribunal, for the Tribunal's determination under this Decree.

(3) Any media organisation may refer a media dispute to the Tribunal for its determination under this Decree.

*Hearing of a complaint before the Tribunal*

**61.** – (1) Upon receipt of a complaint under section 60, the Tribunal shall conduct a hearing into each allegation particularised in the complaint.

(2) The Tribunal shall give or cause to be given to every proprietor of the media organisation, or any employee, officer, agent or servant of that media organisation as the case may be, against which a complaint has been made under section 61, a reasonable notice of the time when and the place where the Tribunal is to conduct its inquiry, and such proprietor of the media organisation, or any employee, officer, agent or servant of that media organisation as the case may be, may appear and be heard in person or by counsel on that complaint.

(3) The Authority and any complainant shall be entitled to appear at the hearing either in person or by an employee or by counsel, and shall assist the Tribunal in its hearing.

(4) If the proprietor of the media organisation, or any employee, officer, agent or servant of that media organisation as the case may be, against whom a complaint under section 60 is made and to whom notice has been given pursuant to this section, does not attend at the time and place mentioned in the notice, the Tribunal may determine the complaint in the absence of the proprietor of the media organisation, or any employee, officer, agent or servant of that media organisation as the case may be.

*Hearing of a media dispute before the Tribunal*

**62.** – (1) Upon receipt of a media dispute under section 60, the Tribunal shall conduct a hearing into each allegation particularised in the media dispute.

(2) The Tribunal shall give or cause to be given to the Authority reasonable notice of the time when and the place where the Tribunal is to conduct its hearing, and the Authority may appear and be heard by counsel on that media dispute.

(3) If the Authority does not attend at the time and place mentioned in the notice, the Tribunal may determine the complaint in the absence of the Authority.

*Powers of the Tribunal on hearing of a complaint*

**63.** - (1) Upon hearing a complaint referred to it under section 60, the Tribunal, if it considers that a media organisation or any employee, officer, servant or agent of that media organisation has, in any way whatsoever, failed to comply with the provisions of this Decree, including non-compliance with any media codes, may make one or more of the following orders -:

- (a) order the media organisation to pay a financial penalty up to a maximum of \$500,000 and/or in the case of a publisher or editor or journalist or any employee, officer, staff or agent of any media organisation to pay a financial penalty up to a maximum of \$100,000;
- (b) order that the media organisation or any employee, officer, servant or agent of that media organisation, make a written public apology to the complainant or the Authority, as the case may be;

- (c) order that the media organisation or any employee, officer, servant or agent of that media organisation pay such monetary compensation to any person aggrieved or adversely affected by the conduct of the media organisation or any employee, officer, servant or agent of that media organisation, as may be deemed appropriate and satisfactory by the Tribunal;
- (d) order the media organisation or any employee, officer, servant or agent of that media organisation to correct any false or misleading statements, in accordance with section 34 of this Decree.

(2) A financial penalty or any order for monetary compensation is recoverable as if it were imposed by an order of the High Court.

(3) If a media organisation fails to comply with an order of the Tribunal, the Authority or any complainant may apply to the High Court for an order enjoining compliance with the order.

(4) The decision of the Tribunal in respect of a person or a media organisation must be published by the media organisation in full in at least 2 media outlets, and in a form ordered by the Tribunal.

*Powers of the Tribunal on hearing of a media dispute*

**64.** (1) Upon hearing a media dispute referred to it under section 60, the Tribunal may, by order:

- (i) uphold the media dispute; or
- (ii) dismiss the media dispute and order that the correcting statement issued by the Authority under section 34 or as amended by the Tribunal, be published or broadcast by the media organisation.

(2) If the correcting statement issued under this section is not published or broadcast in accordance with an order made under subsection (1), the media organisation commits an offence and is liable on summary conviction in the case of an individual, to a fine not exceeding \$100,000 or imprisonment for a term not exceeding 5 years or to both and in the case of a corporate body, to a fine not exceeding \$500,000.

*Order for publication on conviction*

**65.** (1) A court on convicting a person under section 64(2) may, in addition to any punishment it imposes, order that the correcting statement must be published or broadcast as the case may be, in the print or broadcast media in question, in an issue to be specified and in as prominent a position and manner as that in which the original material appeared.

(2) If the correcting statement is not published or broadcast in accordance with an order made under subsection (1), the proprietor or publisher commits an offence in respect of every issue of the newspaper until the statement appears and is liable on summary conviction in the case of an individual, to a fine not exceeding \$100,000 or imprisonment for a term not exceeding 5 years or to both and in the case of a corporate body, to a fine not exceeding \$500,000.

*Tribunal not bound by formal rules of evidence*

**66.** The Tribunal is not bound by formal rules of evidence other than those in this Decree relating to witnesses, but must give the proprietors of the media organisation, or the employee, officer, servant or agent of the media organisation, in respect of whom the complaint has been referred to the Tribunal, an opportunity to make written submissions and to be heard, and the Tribunal must act fairly in relation to the complaint.

*Witness summons*

**67.** (1) The Tribunal may of its own motion, or on the application of any party to the proceedings, issue a witness summons to a person requiring the person to attend before the Tribunal to give evidence at the hearing of the proceedings.

(2) A witness summons under subsection (1) must state –

- (a) the place where the person is to attend;
- (b) the date and time when the person is to attend;
- (c) the papers, documents, records, or things that the person is required to bring and produce;
- (d) that the person is entitled to be paid a sum in respect of allowances and travelling expenses; and
- (e) the penalty for failing to attend.

(3) The power to issue a witness summons under this section may be exercised by the Tribunal, or by any officer of the Tribunal purporting to act by the direction or with the authority of the Tribunal.

*Service of summons*

**68.** (1) A witness summons under section 67 may be served –

- (a) by delivering it personally to the person summoned; or
- (b) by posting it by registered letter addressed to the person summoned at that person's usual place of residence.

(2) A summons must –

- (a) if served under subsection (1)(a) - be served at least 24 hours before the attendance of the witness is required; or
- (b) if served under subsection (1) (b) - be served at least 10 days before the date on which the attendance of the witness is required.

(3) If a summons is posted by registered letter, it is deemed for the purposes of subsection (2) (b) to have been served at the time when the letter would be delivered in the ordinary course of post.

*Witnesses' allowances*

**69.** A witness attending before the Tribunal to give evidence pursuant to a summons is entitled to be paid witnesses' fees, allowances and travelling expenses as the Tribunal determines in each case.

*Privileges and immunities*

70. Witnesses appearing before the Tribunal have the same privileges and immunities as witnesses have in proceedings in the High Court.

*Non-attendance or refusal to co-operate*

71. (1) A person who, after being summoned to attend to give evidence before the Tribunal or to produce to the Tribunal any papers, documents, records, or things, without sufficient cause –

- (a) fails to attend in accordance with the summons;
- (b) refuses to be sworn or to give evidence, or, having been sworn, refuses to answer any question that the person is lawfully required by the Tribunal or any member of it to answer concerning the proceedings; or
- (c) fails to produce any such paper, document, record, or thing,

commits an offence and is liable on conviction to a fine of \$10,000.

(2) A person summoned to attend before the Tribunal must not be convicted of an offence under subsection (1) unless there was paid to that person travelling expenses in accordance with section 67.

*Contempt of Tribunal*

72. (1) A person who –

- (a) fails to comply with any order of the Tribunal;
- (b) assaults, threatens, intimidates or intentionally insults the Tribunal or any special adviser to or officer of the Tribunal, during a sitting of the Tribunal;
- (c) intentionally interrupts the proceedings of the Tribunal or otherwise misbehaves while the Tribunal is sitting; or
- (d) intentionally and without lawful excuse disobeys an order or direction of the Tribunal in the course of any proceedings before the Tribunal,

commits an offence and is liable on conviction to a fine not exceeding \$100,000 or imprisonment for a term not exceeding 5 years or to both.

(2) The Tribunal may order the exclusion from a sitting of the Tribunal of any person whose behaviour, in the Tribunal's opinion, constitutes an offence under subsection (1), whether or not the person is charged with the offence; and a police officer may take such steps as are reasonably necessary to enforce such exclusion.

*Procedure of Tribunal*

73. (1) A party to proceedings before the Tribunal may appear personally or by a legal practitioner.

(2) The Tribunal may appoint a legal practitioner to appear and be heard in any proceedings as counsel assisting the Tribunal.

(3) A decision of the Tribunal must be in writing and must state the reasons for the decision.

(4) Except as otherwise provided in this Decree, the Tribunal determines its own procedure.

*Costs*

74. (1) The Tribunal, in any proceedings before it under this Decree, may make such order as to costs as it thinks fit.

(2) An order as to costs may be filed in the High Court and may be enforced as a judgment of that Court except that no costs may be entered against the Authority or the State.

*Proceedings to be public*

75. (1) Proceedings before the Tribunal shall be open to the public unless the Tribunal orders otherwise.

(2) If the Tribunal orders any member of the public to be excluded from any proceedings, the Tribunal may nevertheless direct that specified persons shall be entitled to attend and observe the proceedings.

*Decision of the Tribunal*

76. The Tribunal shall deliver its decision within 28 days from the hearing of the complaint or media dispute referred under section 60.

## PART 11 – MISCELLANEOUS PROVISIONS

*Power to make orders in emergency*

77. (1) When the Minister has reason to believe that any broadcast or publication may give rise to disorder and may thereby cause undue demands to be made upon the police or the Republic of the Fiji Military Forces or may result in a breach of the peace, or promote disaffection or public alarm, or undermine the Government and the State of Fiji, the Minister may, by order, prohibit such broadcast or publication.

(2) In order to give effect to subsection (1) above any broadcaster or publisher upon direction by the Minister must submit to the Minister all broadcast or publication material before its broadcast or publication.

(3) Any person or entity which fails in any way whatsoever to comply with the provisions of this section may be ordered by the Commissioner of Police upon advice from the Minister to cease all activities and operations.

*Jurisdiction of court*

78. Notwithstanding any provision to the contrary in the Crimes Decree 2009, a Magistrates Court and a High Court shall have jurisdiction to try any offence



under this Decree and shall have power to impose the full penalty or punishment in respect of the offence.

*Evidence*

**79.** For the purposes of this Decree, the documents obtained under sections 25 and 26 shall be admissible as evidence in any proceedings under this Decree and shall be prima facie evidence of the facts stated therein.

*Limitation of proceedings*

**80.** (1) Proceedings for offences under this Decree may be commenced at any time within 3 years from the date of the alleged offence.

(2) No proceedings may be taken for any offence under this Decree except by, or with the consent of, the Director of Public Prosecutions.

(3) Notwithstanding the above, nothing in this section shall restrict the power of the court to act on its own motion.

*General Penalty*

**81.** Any person or media organisation guilty of an offence under this Decree for which no penalty is expressly provided shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 5 years or to both.

*Power to make regulations*

**82.** The Minister may make regulations prescribing matters that are required or permitted by this Decree to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Decree.

*Repeals*

**83.** The following enactments and any subsidiary legislation made under them are repealed –

- (1) Registration of Newspapers Act (Cap. 106);
- (2) Press Corrections Act (Cap. 107).

*Decree and decisions made under the Decree not to be challenged*

**84.** No Court, Tribunal, Commission or any other adjudicating body shall have the jurisdiction to accept, hear, determine or in any other way entertain any challenge at law, in equity or otherwise (including any applications for judicial review) by any person or body, or to award any compensation or grant any other remedy to any person or body in relation to:

- (a) the validity or legality or propriety of this Decree;
- (b) any decision of the Authority made in the exercise of its powers and functions under this Decree;
- (c) any decision of the Tribunal; or
- (d) any decision of the Minister or of any State official, made under this Decree.

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**SCHEDULE 1**  
(Section [17(1)])

**MEDIA CODE OF ETHICS AND PRACTICE**

Any reference to media or media organisations shall include a reference to any journalist, editor, publisher, producer or any employee, officer, servant or agent of any media organisation.

**1. Accuracy, balance and fairness**

- (a) Newspapers and magazines, radio and television broadcasting organisations, web sites and internet newsletters, and journalists working for them, shall report and interpret news and current affairs honestly. They aim to disclose all known relevant facts and should take care not to publish material which is inaccurate, misleading or distorted by wrong or improper emphasis or any other factor.
- (b) If a significantly inaccurate, misleading or distorted statement is published it must be corrected promptly with due prominence and, where appropriate, an apology.
- (c) Media organisations must distinguish clearly between the news, comment, conjecture, fact and paid advertising.
- (d) Media organisations have a duty to be balanced and fair in their treatment of news and current affairs and their dealings with members of the public.
- (e) Editorial comment in any medium must be clearly identified as such and kept separate from news reports.
- (f) Media organisations shall report fairly the result of any legal action brought against them and have an obligation to publish/broadcast, without diluting the finding, any adjudication by the Media Tribunal on a complaint made against them.

**2. Opportunity to reply**

Media organisations have an obligation to give a fair opportunity to reply to any individual or organisation on which the medium itself comments editorially.

**3. Privacy**

- (a) Publication, whether electronic or traditional, or broadcasting, of information, including pictures, about the private lives or

concerns of individuals without their consent is acceptable only if a serious legitimate public interest outweighs their normal right to privacy.

- (b) Publishing such material and/or making inquiries about the private lives or concerns of individuals without consent is only justified where the material concerned ought to be published in the public interest, outweighing the normal right of privacy.
- (c) 'In the public interest' is not synonymous with 'of interest to the public'. The public interest relied upon to justify investigation must be the serious and proper public interest and not mere curiosity. Entry into public life does not disqualify individuals from the right to privacy about their private affairs, except where the circumstances of these are likely to affect their performance of, or fitness for, the public roles they hold or seek.
- (d) The overriding public interest relied upon in this and other clauses of the Code may include –
  - Detection or exposure of crime
  - Protection of public health and safety
  - Preventing the public from being seriously misled on an important matter by a public statement or action of an individual or institution

#### **4. Harassment and pursuit**

- (a) Media organisations must not seek interviews, information or pictures by intimidation or harassment. Nor should the media invade individuals' privacy by deception, eavesdropping or covert technological means (including the taking of pictures in private places by long lens photography).
- (b) Information and picture gathering by such methods can be justified only in very rare circumstances where the material sought ought to be published in the public interest and could not be obtained in any other way.

#### **5. Subterfuge**

Media organisations must use straightforward means to obtain information and pictures, identifying themselves when doing so. Use of subterfuge, false identity or covert recording can be justified only in rare circumstances when the material sought ought to be published in the public interest and could not be obtained in any other way. (See 3(d) above)

#### **6. Discrimination**

- (a) Media organisations shall avoid discriminatory or denigrating references to people's gender, ethnicity, colour, religion, sexual orientation or preference, physical or mental disability or illness, or age.
- (b) Media organisations shall not refer to a person's gender, ethnicity, colour, religion, sexual orientation, or physical or mental illness in a prejudicial or pejorative context except where it is strictly relevant to the matter reported or adds significantly to readers', viewers' or listeners' understanding of that matter.
- (c) Media organisations shall be sensitive to and particularly careful about the possible effects of discriminatory references to vulnerable minorities in prejudicial or pejorative contexts.
- (d) While media organisations are free to report and comment on all matters of public interest, it is their duty not to publish material in a form likely to promote or encourage communal hatred or discord.

## **7. Children**

- (a) Media organisations shall not interview or photograph a child in the absence of, or without the consent of a parent or other adult responsible for the child.
- (b) Children shall not be approached by the media organisations, interviewed or photographed at school without the permission of school authorities.
- (c) Publication without consent of material about a child's private life cannot be justified solely by the fame, notoriety or position of his or her parents.

## **8. Victims in sexual cases**

- (a) Media organisations must not identify victims of sexual assaults or publish material likely to contribute to their identification even when free by law to do so.
- (b) Media organisations shall not identify children either as victims or witnesses in cases alleging sexual offences.
- (c) Reports of cases alleging sexual offences against a child may identify an adult concerned, providing they are not related, but must not identify the child, and must not include facts which imply a close relationship between an accused adult and a child victim.
- (d) Where either party is identifiable, the word "incest" should not be used.

**9. Sexual relations and conduct**

When reporting, or portraying, sexual activity and conduct, media organisations must be keenly aware of the danger of publishing material that affronts or offends public decency or the likely audience or readership. Particular regard should be paid to the context of publication and time of transmission.

**10. Crime**

- (a) Crime and antisocial behaviour, especially involving violence, should not be glamorised or reported, portrayed or detailed in a manner which on reasonable judgment would be likely to encourage or incite or experiment.
- (b) Media organisations must pay particular regard to the context, time of transmission and probable effect and the likely audience or readership of such items. Special attention should be paid to the likelihood of such material being read, seen or listened to by children.

**11. Payments for articles etc**

- (a) Payments or offers of payment must not be made directly or through agents to people engaged in or convicted of crime for information or articles related to their crimes, or for pictures whose value lies in their association with crime. Nor should such payments or offers be made to associates of persons engaged in or convicted of crime, including their family, friends, neighbours and colleagues.
- (b) No payment or offer of payment shall be made directly or indirectly, to any person known to be, or reasonably expected to be, a witness in criminal proceedings, for information or articles in connection with the proceedings until after their conclusion.
- (c) Payment or an offer of payment as in 11(a) or (b) may be justified in very exceptional circumstances if information which ought to be published in the overriding, public interest cannot be obtained by any other means (see 3(d) above)

**12. Innocent relatives**

Media organisations shall avoid identifying relatives of persons convicted or accused of crime unless the connection is directly relevant to the matter reported.

**13. Religion**

- (a) While all public institutions are properly subject to scrutiny, inquiry and comment, media organisations shall approach and refer to religious bodies in a balanced, fair and sensitive manner, recognising the respect and reverence in which they,

their representatives and their beliefs are likely to be held by adherents.

- (b) Journalists and broadcasters shall avoid intentionally giving offence to believers of all faiths by casual, gratuitous and expletive references to deities, which are unnecessary or unjustified by the context.
- (c) Recognition of the need for sensitive and balanced treatment of religions and religious affairs is particularly necessary in a society of differing faiths.

**14. Strong language**

Media organisations shall avoid gratuitous use of strong swear words or obscene or blasphemous language in copy or broadcasts. Publication or broadcasting of these in direct form can be justified only in rare cases when it is essential to readers or audiences understanding of the story reported or the dramatic development of a programme. In such cases care must be taken in choosing the context and scheduling of the material concerned to avoid unnecessarily causing offence to its likely readers or audience.

**15. Grief and bereavement**

Media organisations shall respect personal grief, taking care to make any necessary approaches and inquiries with sensitivity and discretion.

**16. Advertising**

Advertisements and advertiser-sponsored material must be clearly distinguishable from general editorial and programme matter, where necessary by being clearly labelled in print or on air as 'advertisement', 'advertising feature' etc.

**17. Personal interest and influences**

- (a) Media organisations shall not allow personal or family interest to influence them in their professional duties. There will be occasions where journalists may be pressured by close associates about a story. At all times the journalist must make their editor, or supervisor, aware of such pressure.
- (b) Media organisations shall not accept any consideration, gift or advantage offered to them, or by advertising or other commercial considerations. At all times the journalist must make their editor/supervisor aware of such an offer.
- (c) There will be occasions when journalists will be asked to cover assignments where the journalist may have a conflict of interest or a personal interest. In such cases the journalist must make their editor/supervisor aware of such a conflict.

**18. Financial journalism**

- (a) Media organisations shall not use for their own, or their families' profit, directly or indirectly, financial information received in their professional capacity in advance of its general publication.
- (b) Media organisations must not write or broadcast about shares or securities in which they or their families have an interest without disclosing the interest to their editor (or financial editor) and, where appropriate, to their readers or audience.
- (c) Media organisations shall not buy or sell shares or securities about which they have written recently or which they intend to write about in the near future.

**19. Confidential and other sources**

- (a) Journalists of all media organisations have an obligation to protect confidential sources of information, and to respect confidences knowingly and willingly accepted in the course of their occupation.
- (b) Plagiarism is not acceptable. If material originally prepared by another medium is used, credit should be given to the originator of the item or story.

**20. Taste and decency**

Media organisations shall recognise currently accepted general standards of decency and taste in language and behaviour, bearing in mind the context in which the language and behaviour occur (including humour, satire and drama) and, for broadcasters, the timing of transmission and likely audience of the programme.

**21. Impartiality and balance**

Media organisations shall endeavour to show fairness at all times, and impartiality and balance in any item or programme, series of items or programmes or in broadly related articles or programmes over a reasonable period of time when presenting news which deals with political matters, current affairs, and controversial questions.

**22. Deceptive practices**

Media organisations shall abstain from use of any deceptive practice or technique (including transmission or publication of 'reconstructions' or library pictures, film and recordings which are not clearly identifiable as such) which may diminish viewers' and listeners' or readers' confidence in the integrity of media.

**23. Interviews**

- (a) Interviews for print, electronic media, radio and television must be arranged, conducted, and edited fairly and honestly. Potential interviewees are entitled to know in advance the format, subject and purpose of their interview, whether it will be transmitted live or recorded, when it will be printed, whether

it may be edited, and whether only part of it may be used, or it may not be used at all.

- (b) They are also entitled to know in advance the identity and roles of other people likely to be interviewed at the same time or on the same subject for the same programme or article.
- (c) The presentation and editing of an interview must not distort or misrepresent the views of the interviewee or give a false impression of dialogue or the pretence that a recorded interview is being transmitted live.

**24. Violence**

- (a) Violence shown graphically or realistically indicated by sound must be justifiable in its context and intensity as being necessary to the programme or article.
- (b) Violence combined with sexuality should not be printed or transmitted in a manner designed to titillate its audience.
- (c) Explicit detail and prolonged focus on sexually violent contact must be avoided.

**25. Distressing material**

- (a) Editors, producers and broadcasters of news, current affairs and documentary programmes and articles shall take particular care in deciding whether the inclusion of graphic detail and intensity of violent or distressful material is warranted by its relevance and add to public understanding, of the subject.
- (b) Special consideration must be given before publication or transmission of particularly disturbing images, including –
  - Torture or ill-treatment of people or animals
  - Close-ups of dead or mutilated bodies
  - Images of people in extreme pain or on the point of death
  - Violence to or ill treatment of children

**26. Warning of disturbing or offensive material**

Warnings shall be published or broadcast before or at the beginning of any article or broadcast containing language or pictures which are likely to be disturbing or offensive to normal readers, viewers or listeners bearing in mind for broadcasters the time of transmission, channel or wavelength and the likely audience.

**27. Dangerous and anti-social detail**

Detailed pictures or information about methods of incendiary devices, or illicit use of drugs or solvents must not be transmitted in a way which might encourage or instruct such actions.



- 28. Crime and disorder**  
Programmes or articles likely to promote civil insurrection or encourage crime or public disorder must not be broadcast or published.
- 29. Hijacking and kidnapping**  
No information shall be published or broadcast which is likely to endanger lives in, or prejudice attempts to deal with, a hijack or kidnapping.
- 30. Alarm, hypnotism and subliminal perception**  
Media organisations must refrain from publishing or broadcasting, except as legitimate entertainment or information, any material which, when considered whole –
- Simulates news or events in print, sound or pictures in such a way as to mislead or alarm its audience;
  - Depicts the process of putting a subject into a hypnotic state or is designed to induce a hypnotic state in its audience;
  - Uses ‘subliminal perception’ or any similar technique to try to convey information by transmission of messages below or near the threshold of normal awareness; or
  - In an ostensibly factual programme or article depicts or demonstrates exorcism, psychic or occult practices other than as the subject of a legitimate investigation.
- 31. Cartoons**  
Cartoons, particularly when likely to be seen by children, should not include excessive violence especially when they feature human characters and follow realistic story lines as opposed to obviously fantastic or farcical themes.
- 32. Supplied material**  
Where a strong editorial reason warrants the inclusion in any article, programme or video or other recorded material supplied by or on behalf of official bodies, commercial companies or campaigning organisations, its source should be clearly labelled in print or on air in sound or vision.
- 33. Product placement and reference**  
When media organisations choose to place commercial or other products or promotional material on air or in print in a programme or article context, it shall be a clear policy that the commercial or other organisation thus identified has no influence on the content of the programme or article unless specifically publicized as such.
- 34. Competition fair dealing**  
Media organisations will ensure that in programmes or published competitions there is no collusion between broadcasters or publishers and contestants which results in the favouring of any contestant or contestants over others.



**SCHEDULE 2**  
(Section [17(2)])

**GENERAL CODE OF PRACTICE FOR ADVERTISEMENTS**

Any reference to media or media organisations shall include a reference to any journalist, editor, publisher, producer or any employee, officer, servant or agent of any media organisation.

- 1. Principles**  
Advertising must be legal, decent, honest and truthful.
- 2. Legality**  
Advertisements must comply with any written law of Fiji and must be rejected by media if they do not.
- 3. Spirit of the Code**  
The Media are responsible for ensuring that advertisements comply with the spirit as well as the letter of this Code and any written law and for rejecting them if they do not do so.
- 4. Recognition**  
Advertisements must be clearly distinguishable from news, editorial and other material. In cases which leave any room for doubt, they must be labelled as advertisements in print or on air in sound or vision.
- 5. Deception**  
Advertisements must not contain material likely to deceive or mislead people about any product or service, directly or by implication, by inclusion, omission, ambiguity, or false or misleading, comparison.
- 6. Taste and decency**  
Advertisements shall not include material which is offensive to prevailing general standards of taste and decency, or likely to prejudice respect for human dignity among its audience.
- 7. Portrayal**  
Advertisements shall not portray individuals or groups in a manner likely to expose them to violence, exploitation, hatred, contempt, abuse, denigration, ridicule or discrimination.
- 8. Discriminatory exploitation**  
Advertisements may legitimately be aimed at particular audiences or specialised sections of the population but they must not seek to exploit or denigrate ethnicity, religion, age, gender, sexual orientation or preference, or cultural, political or religious beliefs.

- 9. Sexual exploitation**  
Advertisements shall not employ sexual appeal which exploits or degrades individuals or groups to promote the sale of goods or services. People shall not be portrayed irrelevantly in advertisements in attempts to use sexual appeal to draw attention to unrelated products.
- 10. Threatening situations**  
Advertisements shall not portray people in physically or sexually threatening situations other than relevantly for educational purposes or to promote products intended to increase safety or security.
- 11. Violence**  
Advertisements must not support or encourage the unjustifiable use of violence or appear to do so.
- 12. Trust, superstition and fear**  
Advertisements shall not abuse the trust of consumers or audiences, or exploit their lack of experience or knowledge, exploit superstitions, or play on fears without justification.
- 13. Disparagement**  
Advertisements shall not disparage or denigrate identifiable competitors or other products.
- 14. Comparisons**  
Comparisons with competing products, e.g. of price, durability or quality, must not be misleading, must be fair, and must be based on facts which can be substantiated. Before accepting or transmitting or printing an advertisement which makes comparisons, account should be taken of the relevant code of practice of the commercial broadcasting or publishing organisation concerned.
- 15. Testimonials**  
Advertisements must not include or refer to testimonials or endorsements unless these are genuine, not misleading, and relate directly to the endorser's personal experience. Testimonials by children should not be used.
- 16. Inclusion of living people**  
Advertisements shall not refer to or depict any living person, directly or by inference, in a way which implies his or her endorsement of a product or service without his or her prior written permission.
- 17. Identification**  
The identity and contact details of any advertiser whose advertisement deals with a matter of public controversy or advocates a particular position on an issue should be made clear on air in sound or vision or when published.

**18. Prohibited matter or messages**

Advertisements must not be accepted or transmitted if their effect is likely to –

- Incite communal hatred, discrimination or discord
- Cause offence to adherents of any major religion
- Promote civil insurrection, riot, unrest or disturbance

**19. Advertisements and children**

The possible effects and impact of advertisements which are aimed at children, depict or refer to them, or are transmitted or printed during or immediately before or after programmes or articles principally intended for children must be considered with great care. Before they are accepted or transmitted account must be taken of the Code for Broadcast Advertising to Children and the relevant guidelines and internal codes of individual broadcasting or publishing organisations.

**20. Alcohol, tobacco, road safety and environmental claims**

Similarly, account must be taken of the relevant internal code of practice before accepting or transmitting advertisements dealing with alcohol, tobacco or financial services, or involving road safety, or which make environmental claims.

**21. Use of the words ‘guarantee’ and ‘free’**

- Special care must be taken before allowing the use, in an advertisement, of words such as ‘guarantee’, ‘guaranteed’, ‘warranty’ or ‘warranted’, or ‘free’ or like words capable of misleading the public
- The medium must be satisfied that the full terms of any guarantee etc. referred to are either expressed or available for inspection.
- ‘Free’ products and samples must not be described as ‘free’ unless they are supplied at no cost, or no extra cost, except that of postage or carriage.

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**SCHEDULE 3**  
(Section [17(3)])

**CODE FOR ADVERTISING TO CHILDREN**

In addition to complying with the General Code of Ethics and Practice for Advertisements, publishers and broadcasting organisations, electronic media and advertisers on their services are required to observe the following articles of practice in respect of advertisements aimed at children, i.e. consumers aged 14 years or under

to which Article 19 (Advertisements and children) in the General Code of Ethics and Practice for Advertising relates.

Any reference to media or media organisations shall include a reference to any journalist, editor, publisher, producer or any employee, officer, servant or agent of any media organisation.

**1. Content**

- (a) Violence or aggression must not be portrayed in advertisements aimed at children.
- (b) Advertisements must not contain menacing, or horrific themes, pictures or sounds likely to disturb children.
- (c) Advertisements must not encourage anti-social behaviour or show children behaving anti-socially.
- (d) Advertisements must not urge children to ask parents to buy particular products.
- (e) Advertisements must not suggest that a child who does not own or have the product advertised will be inferior or be regarded as inferior.

**2. Safety**

- (a) Unless specifically advertising safety, advertisements must not contain any oral or graphic representation of children taking part in unsafe acts or in unsafe situations, or encourage them to consort with strangers or to enter strange or hazardous places.
- (b) Unless specifically advertising safety, advertisements must not show products being used unsafely or dangerously, or products which would be unsafe if used by children, without supervision.
- (c) Advertisements must not depict realistic toy weapons which could be confused with real weapons.

**3. Presentation**

- (a) Care shall be taken that advertisements are not ambiguous and do not mislead children about the size, value, nature, durability or performance of the product advertised.
- (b) Advertisements must make clear when additional items (e.g. batteries, paint or costumes) are needed to use the product or produce the effect shown.

- (c) The fact that a product must be assembled should be made clear, and where relevant the source of power and method of operation should be indicated.
- (d) Advertisements must not understate the degree of skill required to use a product. The skill required to obtain results shown or indicated must be attainable by an average child in the age range for which the product is intended.

**4. Price**

If price is mentioned, the complete price of the product shall be shown, preferably in print or sound and vision. Advertisements must indicate clearly the cost of an initial item and of any additional items to be purchased separately.

**5. Competitions**

Rules of any competition referred to must be clearly stated. The value of prizes and the chances of winning must not be exaggerated.

**6. Host selling**

Children's programmes or articles must not contain 'host selling', i.e. where a programme presenter or host endorses or promotes products to children.

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**SCHEDULE [4]**  
(Section [17(4)])

**TELEVISION PROGRAMME CLASSIFICATIONS CODE**

Any reference to media or media organisations shall include a reference to any journalist, editor, publisher, producer or any employee, officer, servant or agent of any media organisation.

**PART A – FREE TO AIR TV**

**1. G - General**

G programmes may be screened at any time. They must not include material likely to be unsuitable for viewing by children aged less than 14 years. They need not, however, be programmes made specifically for children.

**2. PGR - Parental guidance recommended**

- (a) PGR programmes may be screened at any time other than those generally devoted to children's programmes. (Currently 4.00pm to 5.30pm on weekdays and 12.00pm to 1.00pm at weekends.)

- (b) PGR programmes contain material which is more suitable for adult audiences but is not necessarily unsuitable to be seen by children subject to the guidance and discretion of a parent or responsible adult.
- (c) Programme scheduling shall recognise that material unsuitable for children should not generally be broadcast at times when large numbers of children are likely to be watching. No system of classification or code of practice, however, can relieve parents or guardians of the responsibility to judge whether a particular programme is suitable viewing for their particular child.
- (d) To assist such judgments broadcasting organisations should publish or transmit clear warnings when the subject, language or treatment of a forthcoming programme is likely to prove unexpectedly disturbing offensive or upsetting to some viewers, in particular to children or those responsible for guiding their viewing.

**3 AO - Adults only**

- (a) AO programmes must not be screened before 8.30 pm, nor should verbally or graphically explicit trailers for them be screened before 8.30pm.
- (b) Broadcasting organisations are responsible for ensuring that nothing is shown before that time on free to air television which would by its adult nature or treatment be unsuitable, whatever the viewing circumstances, to be seen by people aged under 18.

**4. Criteria and general provisions**

- (a) Broadcasting organisations and schedulers will be aware and shall take into account that in the social and domestic circumstances of Fiji some children are likely to be among unintended potential viewers of any programme at any time. This point is particularly relevant to the scheduling and advertising of films and other programmes made elsewhere and imported for a Fiji audience.
- (b) Adult themes, scenes, references and treatment likely to warrant classification as PGR or AO, according to their intensity and explicitness include sex and sexual orientation, graphically depicted sexual intercourse and sexual innuendo, significant violence, including violence in the course of sexual activity, and violence towards children and animals, crime and antisocial behaviour, suicide and attempted suicide, drugs, alcohol and solvent abuse or dependence and medium and high level coarse language.



**PART B – PAY TV PROGRAMMES**

- (a) Pay TV programmes do not, as free to air television may be said to do, come into viewers' homes uninvited. They are discretionary, seen only where the household or someone on its behalf has decided to invite them in, and paid for them. It is reasonable to place greater responsibility for such programmes being seen on viewers themselves, or in the case of children, on their parents or guardians.
- (b) On Pay TV the operation of programme categories and scheduling, may properly reflect that the standards and choice of what is seen are more obviously under the effective control of the viewer/subscriber. Logically this does not affect the threshold between General and PGR (Parental Guidance Recommended) programmes. It does mean, however, that AO (Adults Only) programmes can appropriately be screened earlier in the evening than on free to air television to their target audience of consenting viewers who know broadly what kind of programmes they are paying for and can expect.
- (c) There is a consequential obligation on broadcasting organisations that offer Pay TV services to make clear in advance to potential subscribers and target audiences the nature of the programmes likely to be shown. There is a particular responsibility to make clear in advance the likelihood of programmes causing concern or embarrassment to audiences, especially to children or their parents, by the choice and treatment of adult themes.

**GIVEN** under my hand this                      day of    2010.

**EPELI NAILATIKAU**  
**President of the Republic of Fiji**