

BROADCAST LICENSING BILL 2006
(BILL No. 10 OF 2006)

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BILL NO. 10 OF 2006**A BILL**

FOR AN ACT TO ESTABLISH THE BROADCAST LICENSING AUTHORITY FOR
THE PURPOSE OF REGULATING BROADCASTING AND FOR RELATED
MATTERS

ENACTED by the Parliament of the Fiji Islands —

PART 1—PRELIMINARY*Short title and commencement*

1.—(1) This Act may be cited as the Broadcast Licensing Act 2006.

(2) This Act comes into force 6 months after the date it is published in the *Gazette* unless the Minister appoints an earlier date by notice in the *Gazette*.

Interpretation

2. In this Act, 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 has been given up to the advertiser for remuneration or similar consideration;

“Advertising Code” means a set of standards governing broadcast content which constitutes an advertisement mentioned in Part 7;

“Authority” means the Broadcast Licensing Authority established by section 4;

- “basic service” means the minimum package of television or radio channels which subscribers to a satellite or cable service are required to purchase;
- “broadcasting” means the dissemination of broadcast programming, including through terrestrial transmitters, cable, satellite or any other medium, for public consumption and for simultaneous reception, whether or not by subscription, through a radio or television broadcast receiver or other related electronic equipment, but does not include communications internal to a private organisation or government body, such as closed circuit television or internal address systems, or internet communications;
- “broadcaster” means an organisation that engages in broadcasting, whether as a public service broadcaster, a private broadcaster or a community broadcaster;
- “Broadcasting Frequency Plan” means a plan prepared under Part 6 for the allocation of the broadcasting frequency spectrum among the various uses such as television and radio, national and local licences, and public, private and community broadcasters;
- “broadcasting frequency spectrum” means that part of the electromagnetic wave spectrum which is part of the public domain and which may from time to time be assigned to be used for broadcasting uses, but does not include other frequencies, such as those used for telecommunications purposes;
- “broadcasting service” means a service which consists in the broadcasting of television, radio or image or sound material to the public, sections of the public or subscribers to such service;
- “cable broadcasting” means the transmission by cables of broadcasting services, including re-transmission by cables of broadcast signals;
- “community broadcaster” means a broadcaster which is controlled by a non-profit entity and operates on a non-profit basis, carries programming serving a particular community including by reflecting the special interests and needs of that community, and is managed and operated primarily by members of that community;
- “Complaints Committee” or “Committee” means the Complaints Tribunal established by section 45;
- “cross-media ownership” means ownership in the print, voice or radio broadcast and television broadcast media or information technology or both;
- “free-to-air” means the provision of terrestrial broadcasting without a direct charge for reception to the recipient;
- “frequency” means the electromagnetic wave spectrum which is assigned for broadcasting uses;
- “independent producer” means an individual or company who produces programmes for radio or television and who is not controlled by one broadcaster only;

- “licence” means a licence issued under this Act by the Authority for purposes of providing a broadcasting service to the public;
- “licensee” means an individual or organisation that has been granted a licence under this Act to provide a broadcasting service to the public;
- “local content” means broadcast material produced by a licensee, by a permanent resident of Fiji or by a company the majority of whose shareholdings are held by permanent residents, or a co-production in which the above mentioned persons have at least a 50% financial interest but does not include advertisements;
- “locator map” means the delineation of the electromagnetic wave spectrum covered by terrestrial broadcast;
- “Ministry” means the Ministry administered by the Minister responsible for this Act;
- “private broadcaster” means a broadcaster that is neither a public broadcaster nor a community broadcaster;
- “Programme Code” means a set of standards relating to general broadcasting content and practices mentioned in Part 7;
- “programme schedule” means a plan indicating the general types of programmes proposed to be broadcast, along with the proportion of broadcasting time to be devoted to such programmes and to advertising, and the target audience but for cable or satellite services the programme schedule means a description of the basic service and of all other services provided;
- “public broadcaster” means a broadcaster subject to public ownership which has a mandate to broadcast in the public interest;
- “satellite broadcasting” means the dissemination of a broadcasting service by means of satellite transmission;
- “sponsorship” means the participation of a natural or legal person who is not engaged in broadcasting activities or the production of audiovisual works in the direct or indirect financing of a programme with a view to promoting the name, trademark or image of that person;
- “subscriber” means a person who receives a broadcasting service at a specific location in exchange for a prescribed fee, without further transmitting that service to any other person;
- “Technical Code” means a set of standards relating to general technical matters mentioned in Part 7;
- “terrestrial broadcasting” means the dissemination of a broadcasting service via the electromagnetic wave spectrum for direct reception by homes or businesses without needing equipment other than radio or television equipment;

Objects

3. The objects of this Act are—
- (a) to establish the Broadcast Licensing Authority and charge it—
 - (i) with the oversight of broadcasting in Fiji;
 - (ii) with such powers as may be necessary to carry out its functions under this Act;
 - (iii) responsibility to issue and renew broadcasting licences;
 - (b) to control and regulate electromagnetic wave spectrum for broadcasting uses;
 - (c) to regulate licensing of various types of broadcasting; and
 - (d) to establish codes for the purposes of the Act and monitor compliance by broadcasters.

PART 2—ESTABLISHMENT OF THE BROADCAST LICENSING AUTHORITY

Establishment of the Authority

4. This section establishes the Broadcast Licensing Authority consisting of the following members—

- (a) a Chairperson; and
- (b) 5 other members.

Appointment of members to the Authority

5.—(1) The Minister has the power to appoint the members of the Authority.

(2) When making appointment to the Authority, the Minister shall consider persons who have wide experience in and knowledge of broadcasting, persons who are known for their integrity, impartiality and competence and shall strive to ensure that membership of the Authority as a whole represents a broad cross-section of the community.

(3) Members of the Authority shall be independent and impartial in the exercise of their functions, shall represent the public interest and not any particular interest, and shall, at all times, seek to promote the objects set out in section 3.

Disqualification of members

6.—(1) A person is not qualified for appointment as a member of the Authority if the person—

- (a) is not a Fiji citizen;
- (b) is a holder of another public office;
- (c) is a member of Parliament or councillor of a city or town council or is a member of the Great Council of Chiefs, or holds an office in, or is an employee of, a political party registered under the Electoral Act;
- (d) holds, directly or indirectly, significant financial interests in any telecommunications or broadcasting business;

- (e) is an undischarged bankrupt or insolvent;
- (f) has been removed from public office.

(2) Where, by virtue of a will, gift or otherwise, a member obtains an interest noted in subsection (1)(d), the member shall, within a period of 2 months, either dispose of the interest or resign from the office of a member.

(3) For the purposes of subsection (2) the member shall not take part in any decision-making process of the Authority until the member has disposed of the relevant interest.

Tenure and removal

7.—(1) Members of the Authority may be appointed for a term not exceeding 5 years and may be re-appointed to serve a maximum of 2 terms, provided that the Minister shall identify 3 persons from among the original group of appointees whose initial term of office shall be 2 years only.

(2) The Minister may, subject to the rules of natural justice, remove a member from office only if the member—

- (a) becomes, by virtue of section 6(1), ineligible for appointment to the Authority;
- (b) commits a serious breach of any function under this Act, including by failing to promote the objects set out in section 3, by engaging in corrupt practices, or for gross negligence of duty;
- (c) is no longer able to effectively perform any function under this Act, whether due to physical or mental disability or any other cause; or
- (d) fails, without valid excuse, to attend 3 consecutive meetings of the Authority.

(3) A member may resign from office by giving 30 days notice in writing to the Minister.

Allowances for members

8. The members are entitled to allowances determined by the Minister.

Rules of procedure

9.—(1) The Authority shall, subject to this Act, adopt such rules and procedures, in relation to meetings and other matters, as it considers necessary and appropriate to enable it to perform its functions and all business shall be conducted in accordance with such rules and procedures.

(3) The Authority shall meet as often as it deems necessary and shall, in any case, meet at least once in every 2 months.

(4) Meetings of the Authority shall be convened by the chairperson or if requested by at least 2 members.

(5) The chairperson or if the chairperson is absent a member elected by the members present, shall preside at a meeting of the Authority.

(6) The quorum for meetings of the Authority shall be 4 members.

(7) A decision at a meeting of the Authority shall be adopted by a simple majority of the members present and voting except as otherwise decided by the Authority, and where there is an equality of votes, the member presiding at the meeting has a casting vote in addition to that member's original vote.

(8) The Secretary of the Authority shall attend all meetings of the Authority as a non-voting member, unless in any particular case the Authority otherwise directs.

(9) Minutes shall be kept in proper form of each meeting of the Authority and shall be confirmed by the Authority at the next meeting and signed by the presiding member.

Authority may invite others to meetings

10. The Authority has the power to invite any person to attend a meeting of the Authority for the purpose of advising it on any matter under discussion, provided that the person so attending shall have no right to vote at the meeting.

Disclosure of interest

11.— (1) A member of the Authority or of a committee thereof who has, directly or indirectly, an interest in a matter under discussion by the Authority or committee shall disclose the fact and nature of his or her interest to the Authority or committee.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the Authority or committee.

- (3) After a disclosure under subsection (1), the member in question—
- (a) shall not take part in nor be present during any discussion, deliberation or decision of the Authority or committee; but
 - (b) may be counted for the purpose of forming a quorum of the Authority or committee.

PART 3—FUNCTIONS AND POWERS OF AUTHORITY

Functions of the Authority

12.—(1) The Authority is charged with the oversight of broadcasting in Fiji, consistent with Chapter 4 of the Constitution and with promoting the public interest in the broadcasting sector.

- (2) The functions of the Authority are—
- (a) in accordance with Government policy, to be responsible for the issuing of licences to provide broadcasting services to the public;

- (b) to oversee the development of the Advertising Code and the Programme Code;
- (c) to oversee the implementation, maintenance and review of the Advertising Code, the Programme Code and the Technical Code;
- (d) to ensure that licence conditions are complied with by licensees; and
- (e) to monitor compliance by recipients of grants for public service broadcasting with their obligations as recipients.

(3) In discharging its responsibilities, the Authority shall promote the objects set out in section 3.

(4) The Authority shall, subject to the provisions of this Act, not be subject to the directions or control by any person in relation to its functions as set out in **subsection (2)**.

- (5) For the purposes of subsection (2)(a), the Minister—
- (a) shall formulate policies relating to broadcasting, including setting the number of broadcasting services that a broadcaster may operate;
 - (b) may give general or specific policy directions in the public interest to the Authority and the Authority shall comply with such directions.

Powers of the Authority

13. The Authority shall have all such powers as may be reasonably necessary for the purpose of carrying out its functions under this Act.

Investigations

14. The Authority shall have the power to conduct investigations and hold hearings as necessary to discharge its responsibilities under this Act.

Committees

15.—(1) The Authority may, for the purpose of assisting it in the effective discharge of its functions, appoint such committees as it deems necessary, consisting of one or more members and such other persons as may be required or desirable.

(2) The Authority may generally or specifically delegate any of its functions under this Act to any of its officers or committees except this power of delegation and the powers to grant or renew licences or to impose or amend licence conditions.

(3) Persons who are disqualified by this Act from being members of the Authority shall also be disqualified from being appointed to a committee.

Secretary to the Authority

16.—(1) The Minister may appoint a public officer as Secretary to the Authority.

Exemption of liability

17.—(1) A person exercising any function, power or duty under this Act is not personally liable for any act done in good faith in respect of the function, power or duty.

Annual report

18. The Authority shall cause to be prepared and submit copies of its annual report to the Minister who shall table the report in each House of Parliament as soon as practicable after receiving the report.

PART 4—BROADCAST LICENSING

Broadcast licence requirement

19.—(1) No person shall provide a broadcasting service except under the authority of a broadcasting licence issued under this section.

(2) The Authority has the power to issue and renew licences, in accordance with the prescribed procedures.

(3) The Authority shall establish and maintain a register of licences, which shall be available for public inspection.

(4) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$500,000.

(5) Where a person is charged for an offence under this section, the onus is on the person to prove on the balance of probability that the person has authority to provide broadcasting service.

Existing broadcasting services

20.—(1) All existing agreements or licences to provide broadcasting services shall be deemed to have been issued under this Act and are valid broadcast licences for purposes of this Act, subject to any necessary amendment to comply with this Act.

(2) Where an agreement or licence referred to in subsection (1) under which an existing broadcaster is operating fails to specify the number of broadcasting services which may be provided, the number of such services shall be deemed to be the number being provided at the time this Act comes into force.

New licence tenders

21.—(1) The Authority shall determine whether it is in the public interest, based on the Broadcasting Frequency Plan, broadcasting policy, interest by potential broadcasters and market capacity, to issue a competitive tender with a view to issuing an additional licence to provide a broadcasting service.

(2) The Authority shall prescribe the process to be followed in submitting an application and a description of the information to be provided, as well as a schedule of the annual licence fees, established in accordance with section 31.

(3) A competitive tender under subsection (1) shall be published in the newspapers circulating widely in Fiji and must include all relevant information about the proposed licence, including the deadline for receipt of applications, any application fee, and the proposed annual licence fee.

(4) A tender notice in respect of the proposed broadcasting service must require applicants to provide, the following —

- (a) the ownership structure;
- (b) the sources of finance and the proposed financial plan over the period of the licence;
- (c) the organisation and management structure, including the personnel and expertise available to deliver the service;
- (d) the programme schedule or, in the case of a cable or satellite service, information about the channels proposed to be provided within the basic service, as well as any other channels which may be purchased;
- (e) the technical facilities for delivery of the service;
- (f) any other necessary information determined by the Authority.

Non-tender licence applications

22.—(1) The Authority may receive and consider applications, in the absence of a competitive tender under section 21, to provide a broadcasting service.

(2) Any application under subsection (1) shall include the same information as is required for tender licence applications pursuant to section 21(4).

Assessing licence applications

23.—(1) The process for assessing licences shall be fair, non-discriminatory and transparent.

(2) The Authority shall cause any applications for a broadcast licence to be published in the *Gazette* at least 60 days prior to the Authority considering the application, provided that such publication shall not involve sensitive commercial or other information provided by the applicant.

(3) The Authority may invite written comments in the prescribed manner on an application for a licence and consider any comments when the Authority considers the application.

(4) When determining an application for a broadcast licence, the Authority shall take into account the following —

- (a) the technical capacity of the applicant to deliver a quality service, taking into account the nature of the proposed service;

- (b) the nature and extent of the financial resources of the applicant and the financial viability of the proposal;
- (c) the effect of licensing the proposed service in terms of concentration of ownership, cross ownership and fair competition;
- (d) the promotion of the widest possible diversity of programming, taking into account the proposed programme schedule, the demand and the need for that service, and the broadcasting services already being provided in that area;
- (e) the need to promote locally produced programming, including programmes in the vernacular languages, which serve the needs and interests of the people of Fiji; and
- (f) the need to promote broadcasting produced in the different regions and languages, and by the different cultures of Fiji.

(5) The Authority shall, in writing, notify the applicant of its decision to issue the broadcast licence, and where an application is refused, the reasons for the refusal and right of appeal are to be included in the notice.

(6) No licence shall be issued to a political party or to a body which is substantially owned or controlled by a senior post holder in a political party.

(7) No licence shall be issued to an individual who is not a Fiji resident or citizen, or to an entity which is not incorporated in Fiji or an entity which is subject to majority control by a non-resident or non-citizen.

(8) The Authority shall give notice in the *Gazette* of the issue of a licence.

Allocation of frequency

24.—(1) Before determining an application for new broadcast licence, the Authority shall first consult with the Chief Executive Officer of the Ministry to ensure that appropriate frequencies for the proposed service are available.

(2) A licence shall specify the frequency or frequencies to be used for the broadcasting service.

Licence renewals

25.—(1) An application for the renewal of a licence shall be made in accordance with conditions set out in the licence, provided that in the absence of such conditions, the application shall be made before the beginning of the last 9 months before the date of expiry of the existing licence.

(2) The Authority shall publish an application for renewal of a licence in the prescribed manner.

(3) A licensee is entitled to have a broadcasting service licence renewed, provided that the Authority may refuse to renew a licence where the licensee has operated in significant breach of its licence conditions or where this is clearly in the public interest, based on the objects set out in section 3.

(4) At the time of renewal, either a licensee or the Authority may propose amendments to the licence conditions and the Authority may accept or reject these amendments, provided that any amendments imposed by the Authority must comply with the codes referred to in section 38.

(5) The Authority may, when considering an application for the renewal of a licence, require any new or additional information as it may deem necessary.

(6) If at the date of expiry of a licence the Authority has not yet reached a decision in respect of an application to renew it, the licence shall continue to be of effect until the application for its renewal is granted or refused by the Authority.

(7) The Authority shall provide a licensee with written reasons, in advance of a final decision, of any proposed decision not to renew a licence and shall give the licensee an opportunity to make oral or written representations.

(8) Where the Authority does not renew a licence, it shall provide written reasons for its decision.

PART 5—TERMS AND CONDITIONS OF LICENCES

Terms of licences

26.—(1) A licence for community radio or television broadcasting may be issued for up to 5 years.

(2) A licence for commercial radio broadcasting shall be 10 years.

(3) A licence for commercial television broadcasting shall be 12 years.

General licence conditions

27.—(1) Licences are not transferable without the prior written approval of the Authority.

(2) Compliance with all matters specified in the licence application, including the programme schedule, is deemed to be a licence condition.

(3) Terrestrial broadcasters are required to keep a master recording of all programmes and advertisements broadcast for at least 28 days after they have been broadcast provided that where specific broadcast material is the subject of a dispute, the relevant broadcaster shall, at the request of the Authority, keep a master recording of that broadcast material until the matter has been resolved fully.

(4) Satellite broadcasters are required to keep a register of the programme channels and advertisements distributed for at least 28 days after they have been distributed, provided that where specific broadcast material is the subject of a dispute, the relevant broadcaster shall, at the request of the Authority, keep a record of it until the matter has been resolved fully.

(5) If a service has not been initiated within 12 months after the date specified in the licence for the commencement of the service, that licence shall lapse.

(6) Licensees are required to report annually to the Authority on their activities, including the observance of licence conditions.

Copyright

28.—(1) Broadcasters may only broadcast programmes which they produced or for which they hold broadcasting rights and copyright must be clearly indicated as part of the credits displayed with each programme.

(2) The name of the producer of every programme shall be displayed or read out at the end of the programme.

Undue concentration of ownership

29.—(1) No person shall exercise direct or indirect control over more than one national free-to-air television service.

(2) No person shall exercise direct or indirect control over a national free-to-air broadcasting service and a national newspaper.

(3) No person shall exercise direct or indirect control over a national free-to-air television service and a national free-to-air radio service.

(4) For purposes of this section, 20% or more of the total number of voting shares or financial interests of 20% or more shall be deemed to constitute control.

Local content requirements

30. The Authority may determine minimum local content requirements for any broadcasting service after consulting widely.

Licence fees

31.—(1) The Authority shall, as it deems necessary, in consultation with interested parties and taking into account market considerations, prescribe annual licence fees, setting out the rates for various types of broadcasting services.

(2) For purposes of subsection (1), the Authority may classify licensed services by—

(a) tier (public, private or community);

- (b) type (radio or television, terrestrial, satellite or cable); and
- (c) scope (national or local, or number of subscribers).

(3) The annual licence fee for each broadcasting service operated by a licensee must be paid into the Consolidated Fund, provided that payment of the licence fee may be phased through the year.

Additional terms and conditions

32.—(1) The Authority may prescribe general licence terms and conditions either of general application for all licensees or for different types of licensees.

- (2) Such terms and conditions may, among other things specify—
 - (a) the period prior to the expiry of a licence during which any application for renewal must be submitted;
 - (b) specify the minimum amount of programming to be commissioned from local independent producers; or
 - (c) stipulate the categories of information that must be provided by licensees in their annual reports to the Authority, pursuant to section 27(6).

Application to licensees

33.—(1) Changes in licence conditions pursuant to sections 32 shall not apply retroactively to broadcasters licensed pursuant to this Act.

(2) On a one-time basis, and within one year of the coming into force of this Act, a licence condition change pursuant to sections 32 may be imposed retroactively on broadcasters whose licences are continued in force pursuant to section 20.

Specific licence conditions

34.—(1) The Authority may attach such reasonable conditions to a broadcasting service licence as it deems necessary to promote the objects of broadcasting regulation as set out in section 3.

- (2) Such conditions may, in particular—
 - (a) set the minimum number of hours to be broadcast on a daily, weekly or annual basis;
 - (b) set minimum local content requirements over and above the minimum specified in this Act;
 - (c) specify maximum amounts of repeat programming; or
 - (d) specify the language or languages in which the programmes are to be broadcast and in what minimum proportions.

Licence condition amendments

35.—(1) Broadcasters may propose amendments to their licences to the Authority, which may approve or refuse such amendments.

(2) The Authority may, in respect of any particular broadcasting service licence, and after giving the licence holder an opportunity to make written representations, amend of its own motion any of the prescribed conditions, including adding further conditions—

- (a) if the Authority is of the opinion that this is necessary to promote broadcasting policy as set out in section 3; or
- (b) in order to give effect to any international treaty governing broadcasting matters to which Fiji is a party.

General restriction on specific licence conditions

36. No licence conditions shall be imposed under sections 32, 34 or 35 unless they—

- (a) are relevant to broadcasting;
- (b) further the objects in section 3; and
- (c) are reasonable and realistic, given the licensee.

PART 6—FREQUENCY PLANNING

Broadcasting frequencies

37.—(1) The Ministry shall, after consultation with the interested stakeholders, ascertain which part of the electromagnetic wave spectrum is assigned to be used for broadcasting uses.

(2) The Ministry shall, after consultation with interested stakeholders and the Government, develop and from time to time revise a Broadcasting Frequency Plan, which shall include a locator map, in order to promote the optimal use of these frequencies and the widest possible broadcasting diversity.

(3) The Broadcasting Frequency Plan shall ensure that, in accordance with the objects set out in section 3, the broadcasting frequency spectrum is shared equitably and in the public interest among the three tiers of broadcasting (public, private and community), the two types of broadcasters (radio and television) and broadcasters of different geographic reach (national and local).

(4) The Broadcasting Frequency Plan, along with any revisions to it, shall be published in the *Gazette*.

(5) The Broadcasting Frequency Plan may reserve certain frequencies for future use for specific categories of broadcasters in order to ensure diversity and equitable access to frequencies over time.

PART 7—THE ADVERTISING, PROGRAMME AND TECHNICAL CODES

Advertising and Programme Codes

38.—(1) The Authority shall, in consultation with broadcasters, journalists and other interested stakeholders, draw up, and from time to time review and amend, an Advertising Code and a Programme Code for broadcasters.

(2) The Codes shall be published in the *Gazette* and every licensee shall be provided with a copy of each Code.

Advertising Code

39.—(1) The Advertising Code shall make provision relating to broadcast advertising, including the following—

- (a) all advertisements shall be clearly identified as such;
- (b) no broadcaster shall carry advertisements for medicines which are available only with a prescription;
- (c) except in accordance with the Tobacco Control Act 1998, no broadcaster shall carry any tobacco product advertisement;
- (d) no broadcaster shall carry advertisements for "liquor" (as defined in the Liquor Act);
- (e) the maximum daily and hourly advertising which may be carried by different licensed broadcasting services, which shall in no case exceed 20% of total daily programming;
- (f) except in accordance with this section or any regulations made under the *Electoral Act* 1998, no broadcaster shall carry any advertisement for or on behalf of any political party or candidate for election to political office; and
- (g) subject to any regulations made under the *Electoral Act* 1998, the Authority may make regulations regarding political advertisements during elections, provided that any such regulations shall be based on the principle that parties and candidates should be granted equitable, non-discriminatory access to licensees.

(2) The Advertising Code may also set rules regarding programme sponsorship.

(3) For purposes of this Act, sponsorship shall not be deemed to constitute advertising.

Programme Code

40.—(1) The Programme Code shall make provisions relating to programming including, among other things, the following—

- (a) balance and impartiality in news and current affairs programming and the duty to strive for accuracy in these programmes;
- (b) protection of children;
- (c) classification of programmes, including films, according to the recommended age of viewers;
- (d) the terms, conduct and editing of interviews;
- (e) the use of covert recording or other devices and subterfuge;
- (f) keeping within accepted boundaries of taste and decency, including in relation to the portrayal of sexual conduct and violence, and the use of strong or abusive language;

- (g) the coverage of crime and anti-social behaviour;
- (h) distinguishing between factual material and comment;
- (i) the treatment of religion, gender, minorities, minors and disadvantaged groups;
- (j) respect for privacy; and
- (k) the use of subliminal images or sounds.

(2) In developing and implementing the Programme Code, the Authority shall have due regard to the rightful place in a pluralist democratic society of robust and challenging debate, of the strong expression of personal views, of the need for original, innovative and stimulating programme-making and of the potential for achieving proper balance over a series of programmes, or over time, rather than in every individual programme.

Technical Code

41.—(1) The Ministry shall, in consultation with broadcasters, journalists and other interested stakeholders, draw up, and from time to time review and amend, a Technical Code for broadcasters.

(2) The Technical Code shall make provisions relating to general technical broadcast standards and formats.

(3) The Technical Code shall be published and every licensee shall be provided with a copy.

(4) The Ministry shall monitor compliance by broadcasters with the Technical Code and, for purposes of implementation, shall inform the Authority of any breaches it observes.

(5) The Authority shall treat information it receives under subsection (4) as a complaint under section 45.

Compliance

42. The Advertising, Programme and Technical Codes are deemed to be conditions of every licence.

PART 8—BREACH OF LICENCE CONDITIONS AND OFFENCES

Monitoring of licences

43. It shall be the duty of the Authority to ensure that all licensees comply with their licence conditions and, for that purpose, the Authority may monitor licensees and, where the Authority believes there may have been a breach of a licence condition, refer the matter as a complaint to the Complaints Committee.

Directions by the Authority

44. The Authority has the power to issue directions in writing to a licensee requiring it to take such action with regard to the standards of programmes or advertisements, including the time of their broadcasting and the content or balance of any programme, or with regard to the technical standards of broadcasts as the Authority considers necessary for the licensee to comply with the Act, any of the Codes or any term or condition of its licence and the licensee shall give effect to the direction.

Complaints Committee

45.—(1) The Authority has the power to appoint a Complaints Committee consisting of 3 members of the Authority.

(2) The Committee has the power to appoint such other persons to be members of the Committee as it deems fit.

(3) A member of the Committee appointed under subsection (2)—

- (a) may be appointed to advise generally or on any particular matter; and
- (b) does not have a right to vote on matters before the Committee.

(4) The Committee has the power to appoint one of its members appointed under subsection (1) to be its chairperson.

(5) A member of the Committee—

- (a) subject to paragraph (b) and to subsection (6), holds office for such a period as the Authority or, in the case of a member appointed under subsection (2), the Committee, may determine; and
- (b) may resign from the Committee at any time by notice in writing addressed to the Authority or, in the case of a member appointed under subsection (2), to the chairperson of the Committee.

(6) A member of the Committee appointed under subsection (2) shall cease to hold office if he ceases to be a member of the Authority.

(7) Subject to this section and section 46, the Committee shall determine its own procedures.

Consideration of complaints by Committee

46.—(1) Subject to subsections (2) and (3), where a person makes a complaint to the Authority that a licensee or any other person has contravened the Act, a Code or any other terms or conditions of a licence, the Authority shall refer the complaint to the Complaints Committee.

(2) The Authority may refuse to refer to the Committee a complaint that—

- (a) is, in the opinion of the Authority, trivial or frivolous; or
- (b) is not made in writing.

- (3) The Committee, upon receipt of a complaint duly referred to it, shall—
- (a) give the licensee or other person the subject of the complaint a reasonable opportunity to make representations, both orally and in writing;
 - (b) consider any representations made, whether orally or in writing, by or on behalf of the complainant and the licensee or other person the subject of the complaint;
 - (c) consider any evidence received by it, whether tendered on behalf of the complainant or otherwise, which it considers relevant to the complaint; and
 - (d) make recommendations concerning the complaint to the Authority.

(4) If a complaint referred to the Committee concerns a technical requirement, the Committee shall prior to making any recommendation thereon, consult the Ministry.

(5) The Committee may receive such evidence as it thinks fit and neither the provisions of the Evidence Act nor any other rule of law relating to the admissibility of evidence shall apply in proceedings before the Committee.

(6) For the purposes of this section and section 47 the Committee shall have and may exercise the power to conduct investigations vested in the Authority under section 14.

Sanctions

47.—(1) Where the Authority determines that a licensee is in breach of the Advertising Code, the Programme Code, the Technical Code or any other licence condition or provision of this Act, it may apply one or more of the following sanctions—

- (a) issue directions to the licensee;
- (b) issue a public written warning to the licensee;
- (c) order the licensee to broadcast a statement, correction or retraction at a specified time and in a specified form; or
- (d) order the licensee to take such action or desist from taking such action as it deems necessary to rectify or prevent repetition of the breach.

(2) In cases of a breach of a licence condition, the Authority may, by notice in writing, require the licensee to pay the financial penalty specified in the notice where that penalty may be imposed by virtue of this section.

- (3) In cases of a breach of a licence condition, the Authority may—
- (a) order a licensee to pay a financial penalty not exceeding \$500,000;
 - (b) order the suspension of part or all of the Programme Schedule of a licensee;
 - (c) revoke the licence.

(4) The Complaints Committee shall not recommend the revocation of a licence to the Authority unless—

- (a) it has given the licensee concerned notice in writing stating that the Complaints Committee is considering the making of such a recommendation and the grounds upon which such a recommendation is being considered; and
- (b) it has given the licensee concerned the opportunity of making representations or objections concerning the recommendation under consideration; and

the Complaints Committee shall consider any representation or objection made to it by the licensee concerning the recommendation under consideration and such further information or matter as it may consider necessary having regard to such representations or objections.

(5) The notice referred to in subsection (4) shall, in addition to stating the matters required by that subsection, state that representations and objections concerning the recommendation may be made to the Complaints Committee (either orally or in writing or both) during such period (being not a period not less than 28 days beginning on the date of issue by the Committee of the notice) as shall be specified in the notice.

(6) The Committee shall thereafter make recommendations to the Authority.

(7) For breach of a rule relating to broadcast content, the Authority shall not impose the sanctions provided for in subsections (2), (3) or (4) except as decided by a majority of the members and where other sanctions have failed to prevent further breach.

(8) A financial penalty required to be paid under subsections (2) and (3) may be recovered by the Authority as a civil debt.

Offences

48.—(1) A person who, without lawful authority or reasonable excuse (the offender to prove lawful authority or reasonable excuse) contravenes section 19(1) commits an offence and is liable upon conviction to a fine not exceeding \$500,000.

(2) The court, when convicting a person of an offence under this Act and having regard to the nature of the offence and the circumstances surrounding its commission, may in addition to any fine imposed make an order—

- (a) prohibiting the person from doing any act or engaging in any activity or undertaking that may result in the continuation or repetition of the offence; or
- (b) directing the seizure and forfeiture of any equipment used in the commission of the offence.

(3) An order under paragraph (a) of subsection (2) is enforceable as if it were an injunction.

PART 8—MISCELLANEOUS

Regulations

49. The Minister may make regulations to give effect to the provisions of this Act and in particular relating to the following—

- (a) the appointment of committees;
- (b) the tendering process for licences;
- (c) the process for assessing licence applications;
- (d) forms and fees;
- (e) additional licence terms and conditions;
- (f) changes to pre-existing licences;
- (g) the conduct of investigations; and
- (h) the imposition of sanctions.

(2) Any regulations made under this section may impose fines not exceeding \$500,000 or to term of imprisonment not exceeding 2 years.

Repeals, savings and transitional

50.—(1) The following Acts are repealed—

- (a) Broadcasting Commission Act (Cap. 105); and
- (b) Television Decree 1992.

(2) At the commencement of this Act, any valid licence issued under the Broadcasting Commission Act or the Television Decree 1992 continues until expiration or earlier cancelled as if it were issued under this Act.

(3) Within 6 months after the date of commencement of this Act, a person holding a valid licence under the Broadcasting Commission Act or the Television Decree immediately prior to the date this Act comes into force shall make any necessary adjustments to comply with the provisions of this Act, except as specifically provided for in this Act or pursuant to a decision of the Authority.

(4) The Minister may, within 12 months of the coming into force of this Act, make regulations to further regulate any transitional and savings matters for the purposes of this Act.

Attorney General's Chambers
Level 5-7 Suvavou House
Suva
August 2006

BROADCAST LICENSING BILL 2006

EXPLANATORY NOTE

(This note is not part of the Bill and is intended only to indicate its general effect)

1.0 BACKGROUND

- 1.1 The objective of the Bill is to establish a fair, transparent system for licensing of broadcasters, along with a system for ensuring that licensees operate in the public interest.
- 1.2 A key objective of the Bill is to transfer regulatory responsibility for the development of broadcasting to the Broadcast Licensing Authority.
- 1.3 The Bill provides a framework for the establishment of a binding set of rules in the form of programme and advertising codes, along with a set of rules for the implementation of these standards including, where necessary, through the application of sanctions. The Authority is responsible for oversight of both the development of these codes and their implementation. It will also be mandatory for all broadcasters to conform to a third code, relating to technical matters. The Bill also provides that the Authority is responsible for monitoring compliance with existing contracts for public service broadcasting
- 1.4 The Bill provides directly for certain licence conditions, gives the power to the Authority to impose further conditions, and also elevates the matters stipulated in the licence application, including programming proposals, to the status of licence conditions.
- 1.5 The Bill establishes a system for orderly planning in relation to the use of broadcasting frequencies, through the development of a Broadcasting Frequency Plan by the Ministry, to avoid problems of overcrowding and interference, and licences are issued in accordance with longer-term public objectives for broadcasting in Fiji rather than simply on an *ad hoc* basis.

- 1.6 Finally, another key objective of the Bill is to provide a more effective, mandatory system for promoting professional standards in editorial matters and matters of programme content.

2.0 CLAUSES

- Clause 1 – provides for the short title and commencement.
- Clause 2 – sets out definitions of expressions used in the Act.
- Clause 3 – articulates the objects of broadcasting regulation.
- Clause 4 – establishes the Broadcast Licensing Authority.
- Clause 5 – authorises the appointment of members to the Authority.
- Clause 6 – specifies the various grounds of disqualification from membership of the Authority.
- Clause 7 – comprises tenure, resignation and grounds for removal of Authority members.
- Clause 8 – dictates that members' allowances is by Ministerial determination.
- Clause 9 – deals with Authority rules of procedure.
- Clause 10 – allows non-member attendance by invitation at Authority meetings.
- Clause 11 – regulates disclosures of interest by members of the Authority or subcommittees.
- Clause 12 – details the functions of the Authority.
- Clause 13 – states the extent of the Authority's powers under the Act.
- Clause 14 – empowers the Authority to conduct necessary investigations and hearings.
- Clause 15 – enables committees to assist the Authority to be appointed.
- Clause 16 – relates to the appointment of a secretary to the Authority.
- Clause 17 – consists of the liability limits of the Authority, its members, officers or employees.
- Clause 18 – provides for the annual report requirements of the Authority.
- Clause 19 – prohibits the provision of a broadcasting service without a licence.

- Clause 20 – validates existing broadcasting services, deeming them amended to comply with the Act
- Clause 21 – gives details for new broadcasting service licence tendering.
- Clause 22 – extends the provision for licence applications to cover applications not called by tender.
- Clause 23 – describes how licensing applications are to be assessed.
- Clause 24 – requires the Authority to predetermine the appropriate frequency for a licence.
- Clause 25 – lays down the process for the Authority for renewing licences.
- Clause 26 – sets out the terms of licences
- Clause 27 – determines the general licence conditions including the term of years for different licences.
- Clause 28 – applies specific broadcasting rights and copyright necessary for broadcast programmes
- Clause 29 – is designed to prevent the undue concentration of ownership within the media.
- Clause 30 – permits the Authority to determine minimum local content requirements to be included by a licensed broadcaster.
- Clause 31 – shows how the Authority is to determine licence fees.
- Clause 32 – elucidates the variety of additional licence terms and conditions which may be prescribed.
- Clause 33 – spells out how changes to licence conditions are to be applied.
- Clause 34 – lists some specific licence conditions for promoting broadcasting regulation objects.
- Clause 35 – controls the process for licence condition amendment
- Clause 36 – limits special licence conditions to furthering the objects of broadcasting regulation.
- Clause 37 – contains the requirements for a Broadcasting Frequency Plan.
- Clause 38 – instigates Authority development of an Advertising Code and a Programming Code.

- Clause 39 – amplifies the necessary content for the Advertising Code.
- Clause 40 – addresses the content of the Programme Code.
- Clause 41 – explains the Technical Code to be drawn up by the Ministry.
- Clause 42 – reinforces that compliance with the 3 Codes is a licence condition.
- Clause 43 – expresses the Authority's monitoring responsibility in relation to licences.
- Clause 44 – gives the Authority power to issue written directions to a licensee.
- Clause 45 – Sets up the Complaints Committee
- Clause 46 – describes how complaints are to be considered by the Committee..
- Clause 47 – formulates sanctions which may be imposed b the Complaints Committee
- Clause 48 – creates an offence under the Act.
- Clause 49 – has the purpose of allowing the Authority to make regulations for the Act.
- Clause 50 – repeals the Broadcasting Commission Act (Cap. 105) and the Television Decree 1992 and other savings and transitional provisions.

3.0 MINISTERIAL RESPONSIBILITY

3.1 The Bill comes under the responsibility of the Minister for Information and Communications.

Q. B. BALE
Attorney-General
and Minister for Justice