



REPUBLIC OF FIJI ISLANDS GOVERNMENT GAZETTE
PUBLISHED BY AUTHORITY OF THE FIJI GOVERNMENT

Vol. 11

FRIDAY, 25th JUNE 2010

No. 69

[1105]

GOVERNMENT OF FIJI

MEDIA INDUSTRY DEVELOPMENT DECREE 2010
(DECREE NO. 29 OF 2010)

ARRANGEMENT OF SECTIONS

SECTION

PART 1—PRELIMINARY

1. Short title and commencement
2. Interpretation

PART 2—MEDIA INDUSTRY DEVELOPMENT AUTHORITY OF FIJI

3. Establishment of the Media Industry Development Authority
4. Composition of the Authority
5. Meetings and proceedings of the Authority
6. Appointment of officers, servants and agents
7. Term of office
8. Functions of the Authority
9. Powers of the Authority
10. Directions by Minister
11. Delegations by Minister
12. Procedure of the Authority
13. Authority may establish Committees
14. Financial reporting and audit of accounts
15. Annual Report
16. Disclosure of interest
17. Protection from Liability

PART 3—MEDIA CODES

18. Media Codes
19. Additional advertising rules
20. Political advertising
21. Saving for other laws relating to the media

PART 4—CONTENT REGULATION

22. Content regulation
23. Bylines
24. Offences relating to content regulation

PART 5—ENFORCEMENT OF MEDIA STANDARDS

- 25. Power to investigate
- 26. Power to require documents or information
- 27. Power to enter premises and search, seizure under warrant
- 28. Protection of source
- 29. Offences relating to enforcement
- 30. Destroying or falsifying documents
- 31. False or misleading information
- 32. Obstruction of officers, etc.

PART 6—REGISTRATION OF MEDIA ORGANISATIONS

- 33. Media Organisation to be registered
- 34. Affidavits as evidence
- 35. Publication of details
- 36. Correction of false or distorted statements

PART 7—SPECIAL FEATURES OF MEDIA ORGANISATIONS

- 37. Definitions
- 38. Special features of Media Organisation
- 39. Cross Media Ownership
- 40. Exception
- 41. Notification
- 42. Disclosure of cross media relationship
- 43. Offences

PART 8—THE MEDIA TRIBUNAL

- 44. Establishment of the Media Tribunal
- 45. Membership of the Tribunal
- 46. Term of office of Chairperson
- 47. Vacation of office
- 48. Remuneration and travelling allowances
- 49. Secretary and other staff of the Tribunal
- 50. Jurisdiction of the Tribunal
- 51. Parties to proceedings
- 52. Sittings of Tribunal

PART 9—COMPLAINTS TO THE AUTHORITY

- 53. Complaints to the Authority
- 54. Authority may investigate without a complaint
- 55. Further information and verification
- 56. Media Organisation to be informed
- 57. Authority may require explanation
- 58. Authority may require production of documents etc.
- 59. Failure to provide explanation or production of documents etc.
- 60. Role of the Authority
- 61. Summary dismissal of complaints

PART 10—PROCEEDINGS BEFORE THE TRIBUNAL

62. Referral of complaints to the Tribunal
63. Hearing of a complaint before the Tribunal
64. Hearing of a media dispute before the Tribunal
65. Powers of the Tribunal on hearing of a complaint
66. Powers of the Tribunal on hearing of a media dispute
67. Order for publication on conviction
68. Tribunal not bound by formal rules of evidence
69. Witness summons
70. Service of summons
71. Witnesses' allowances
72. Privileges and immunities
73. Non-attendance or refusal to co-operate
74. Contempt of Tribunal
75. Procedure of Tribunal
76. Costs
77. Proceedings to be public
78. Decision of the Tribunal
79. Appeal from decisions of the Tribunal

PART 11—MISCELLANEOUS PROVISIONS

80. Power to make orders in emergency
81. Jurisdiction of court
82. Evidence
83. Limitation of proceedings
84. General penalty
85. Power to make regulations
86. Minister may exempt
87. Repeals
88. Decree and decisions made under the Decree not to be challenged

Schedule 1 – Media Code of Ethics and Practice

Schedule 2 – General Code of Practice for Advertisements

Schedule 3 – Code for Advertising to Children

Schedule 4 – Television Programme Classification Code

GOVERNMENT OF FIJI

MEDIA INDUSTRY DEVELOPMENT DECREE 2010 (DECREE NO. 29 OF 2010)

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 of Fiji 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, and includes a body corporate;

“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 36 of this Decree;

“media organisation” includes —

- (a) 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; or

- (b) a person or other entity however organised that publishes an electronic version of a newspaper or magazine or that creates an internet website capable of being accessed by the public;

Provided however, it shall not include:

- (a) any person or body corporate engaged solely in the business of:
- (i) an internet service provider;
 - (ii) a telecommunications service provider, including any mobile telephone company; or
 - (iii) a production house engaged in the production of advertisements, documentaries, or other audio-visual works or materials, or
- (b) any person or body corporate that is granted an exemption by the Minister under section 86 of this Decree;

“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, but does not include any document published in the course of duty by the Government Printer;

“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; or
- (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, but does not include any document published in the course of duty by the Government Printer;

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

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

“Tribunal” means the Media Tribunal established by section 44.

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 chairperson and 5 other members, appointed by the Minister.

(2) In appointing the 5 other members of the Authority, the Minister shall ensure that they comprise of the following—

- (a) the Solicitor-General or his or her nominee;
- (b) one person representing the interests of consumers in Fiji, particularly in relation to food and nutrition;
- (c) one person representing the interests of children in Fiji;
- (d) one person representing the interests of women in Fiji; and
- (e) one person with expertise or experience in journalism and/or the media industry.

(3) The chairperson and the members of the Authority shall hold office for 3 years, and are eligible for reappointment.

(4) The powers, functions and duties of the Authority as prescribed in this Decree shall be performed by the Authority, or such other person as directed by the Authority.

(5) The members of the Authority may be remunerated in a manner and at rates subject to terms and conditions determined by the Minister.

(6) The chairperson and the members of the Authority may be removed by the Minister for inability to perform the functions of the Authority (whether arising from infirmity of body or mind, absence, misbehaviour or any other cause) or may be otherwise be removed by giving one month's notice or one month's remuneration in lieu of notice.

Meetings and proceedings of the Authority

5.—(1) At all meetings of the Authority, 4 members shall form a quorum.

(2) The chairperson shall preside at all meetings of the Authority, and in the absence of the chairperson, the members present shall elect one of the members to preside.

(3) All meetings of the Authority shall be held at such times and places as the chairperson may determine.

(4) All questions arising at any meeting shall be decided by a majority of votes of the members.

(5) At a meeting of the Authority, the chairperson and all members present shall have the right to vote, and in the case of an equality of votes, the chairperson or in his or her absence the member presiding shall have a casting vote.

(6) The validity of any proceedings of the Authority shall not be affected by any vacancy amongst its members or by any defect in the appointment of any member.

- (7) Subject to the provisions of this Decree, the Authority may regulate its own proceedings.

Appointment of officers, servants and agents

- 6.—(1) The Authority may appoint a Director to carry out the functions of the Authority.

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

(3) The Director, officers, servants and agents appointed under this section shall 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

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

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

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

Functions of the Authority

8. The functions of the Authority shall be—

- (a) to encourage, promote and facilitate the development of media organisations and media 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;
- (f) to promote local content in print and broadcast media; and
- (g) 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

9. 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 research 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;
- (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; and
- (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.

Directions by Minister

10.—(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

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

Procedure of the Authority

12. 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

13.—(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 Chairperson 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 Chairperson 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

14.—(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 practicable, 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

15. 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

16.—(1) Any member of the Authority, Director or any officer or staff of the Authority 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) Any member of the Authority, Director or any officer or staff of the Authority 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 meetings of the Authority or committee, as the case may be, and, after the disclosure, the member of the Authority, Director or any officer or staff of the Authority 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) Any member of the Authority, Director or any officer or staff of the Authority 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 \$5,000 or imprisonment for a term not exceeding 2 years or to both.

Protection from Liability

17.—(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

18.—(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 to 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

19.—(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.

Political advertising

20.—(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.

Saving for other laws relating to the media

21.—(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 in accordance 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]; and
- (e) the Television Decree 1992.

PART 4—CONTENT REGULATION

Content regulation

22. The content of any media service must not include material which—

- (a) is against the public interest or order;

- (b) is against national interest; or
- (c) creates communal discord.

Bylines

23. The content of any print media which is in excess of 50 words must include a byline and wherever practical, the content of any other media service must include a byline.

Offences relating to content regulation

24. A breach of any of the provisions in or under sections 22 and 23 by a media organisation shall constitute an offence and the media organisation shall be liable on summary conviction to a fine not exceeding \$100,000 or in the case of a publisher or editor to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding 2 years or to both.

PART 5—ENFORCEMENT OF MEDIA STANDARDS

Power to investigate

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

Power to require documents or information

26.—(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

27.—(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 26; or
- (b) there are reasonable grounds for suspecting that—
 - (i) there are on any premises documents which the Authority has power under section 26 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 or like device 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 or she shall, when executing the warrant, leave a copy of it in a prominent place on the premises.

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

Protection of source

28.—(1) Subject to this section, nothing in sections 26 and 27 shall require any media organisation to disclose or provide to the Authority the particulars and identity of the source of any information published or broadcast by the media organisation.

(2) If the Authority deems it necessary to require from any media organisation the particulars and identity of the source of any information published or broadcast by the media organisation, then the Authority shall apply to the Tribunal for an order requiring the media organisation to disclose the particulars and identity of the source, and the Authority must show good cause as to why the disclosure of the particulars and identity of the source is necessary.

(3) Upon receipt of an application from the Authority under subsection (2), the Tribunal may make such orders as it deems appropriate, including requiring the disclosure of the particulars and identity of the source of any information published or broadcast by the media organisation.

(4) Notwithstanding anything contained in sections 26 and 27, a media organisation shall not be required to disclose or provide to the Authority the particulars and identity of the source of any information published or broadcast by the media organisation, where the information which is published or broadcast is in relation to corruption or abuse of office by a public officer, and subsections (2) and (3) of this section shall not apply to any such information.

Offences relating to enforcement

29.—(1) Any person who fails to comply with a requirement imposed under sections 26 or 27 shall be guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

(2) If a person is charged with an offence under section 26 (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 or her possession or under his or her 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 26 (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 or she had a reasonable excuse for failing to comply with the requirement.

(4) Failure to comply with a requirement imposed under section 26 is not an offence if the person imposing the requirement has failed to act in accordance with that section.

Destroying or falsifying documents

30. Any person who, having been required to produce a document under section 26 or 27—

- (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 \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

False or misleading information

31. 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 \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

Obstruction of officers, etc.

32.—(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 \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

PART 6—REGISTRATION OF MEDIA ORGANISATIONS

Media Organisation to be registered

33.—(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.

(3) Subject to subsection (4), 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) Any media organisation which is listed on the South Pacific Stock Exchange must, within 3 days upon receipt of particulars of ownership or shareholding or change of ownership or shareholding from the South Pacific Stock Exchange, provide a copy of these particulars to the Authority in such a manner as the Authority may direct, and any such media organisation shall not be required to deposit an affidavit under subsection (3).

(5) 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);
- (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.

(6) 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.

(7) 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 in the case of a natural person by a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both and in the case of a company to a fine not exceeding \$100,000.

(8) Any media organisation that is not registered in accordance with this section commits an offence and is liable on summary conviction in the case of a natural person to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both and in the case of a company to a fine not exceeding \$100,000.

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

Affidavits as evidence

34.—(1) In all civil or criminal proceedings relating to any media organisation, an affidavit deposited under section 33 is conclusive evidence against every person signing it of the truth of its contents.

(2) A person who has sworn an affidavit under section 33 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

35.—(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, in the case of a natural person to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both and in the case of a company to a fine not exceeding \$100,000.

Correction of false or distorted statements

36.—(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; and
- (c) 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 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 media organisation, direct to be broadcast without charge, at such times as directed and in as prominent a position and manner as that in which the original material was broadcast, 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; and
- (c) be in the same language as the original broadcast.

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

(6) The referral of any media dispute by any media organisation under subsection (5) shall be made to the Tribunal within 3 days of the receipt of the notice from the Authority under this section, and any such referral shall operate as a stay of the notice issued by the Authority under this section, until the determination of the media dispute by the Tribunal in accordance with the provisions of this Decree.

(7) The referral of a media dispute to the Tribunal by any media organisation under this section shall constitute a bar to any other proceeding in any court of law in relation to the subject matter of the media dispute.

PART 7—SPECIAL FEATURES OF MEDIA ORGANISATIONS

Definitions

37. 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 3 out of the last 7 years prior to registration under Part 6 and thereafter residing in Fiji for at least 6 out of 12 months of a year.

Special features of Media Organisation

38.—(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 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 or her 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 section or relating to the requirements of this Decree, that media organisation or person commits an offence punishable, in the case of a natural person, to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both, and in the case of a company, to a fine not exceeding \$100,000.

Cross Media Ownership

39.—(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:

 - (a) a promoter of the body;
 - (b) a relative, or de facto spouse, of such a promoter;
 - (c) a relative of a spouse, or of a de facto spouse, of such a promoter;
 - (d) a director or member of the body or of a related body corporate;

- (e) a relative, or de facto spouse, of such a director or member;
- (f) a relative of a spouse, or of a de facto spouse, of such a director or member;
- (g) a body corporate that is related to the first-mentioned body;
- (h) a beneficiary under a trust of which the first-mentioned body is or has at any time been a trustee;
- (i) a relative, or de facto spouse, of such a beneficiary;
- (j) a relative of a spouse, or of a de facto spouse, of such a beneficiary;
- (k) a body corporate one of whose directors is also a director of the first-mentioned body; or
- (l) 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” means, 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 in only one other media organisation, provided that:

- (a) if the business or trade of that other media organisation is in the same medium (whether it be print media or radio or television or any other media) as the media organisation in which the person or his or her associate owns a beneficial interest, then 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 25% non-voting interest.
- (b) if the business or trade of that other media organisation is in a different medium (whether it be print media or radio or television or any other media) as the media organisation in which the person or his or her associate owns a beneficial interest, then 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.

(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

40.—(1) The provisions in sections 38 and 39 do not in any way apply to the State or any State owned entity or any media organisation in which the State owns majority shares.

(2) Notwithstanding anything contained in section 39, a media organisation may operate an internet based news website, provided however that the content of the website contains the same information (with the exception of advertisements) which is disseminated by that media organisation through print or broadcast media, as the case may be.

Notification

41. Any change in the existing structure of any media organisation must be notified in the manner prescribed in sections 33(3) or 33(4) as the case may be.

Disclosure of cross media relationship

42.—(1) Any person who has any interest in more than one media organisation must disclose the same in the manner prescribed in section 33.

(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, in the case of a natural person by a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both and in the case of a company by a fine not exceeding \$100,000.

Offences

43.—(1) Any media organisation or any person in breach of any provisions of this Part shall be liable on summary conviction in the case of a natural person to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both and in the case of a company to a fine not exceeding \$100,000.

(2) Any media organisation in breach of the provisions of sections 38(2) or 38(3)(a) or 39(4) may have their registration under section 33(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*

44.—(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

45.—(1) The Tribunal shall consist of a Chairperson, who shall exercise the powers, functions and duties of the Tribunal, as prescribed in this Decree or any other written law.

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

(3) The Chairperson 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 Chairperson 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 Chairperson during any period when the Chairperson 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 Chairperson

46. The term of appointment of the Chairperson of the Tribunal will be determined by the President, on the recommendation of the Attorney-General.

Vacation of office

47.—(1) The Chairperson may at any time resign from office by giving at least one month's notice in writing to the President.

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

(3) The Chairperson 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, misbehaviour or any other cause), or may otherwise be removed by giving one month's notice or one month's remuneration in lieu of notice.

Remuneration and travelling allowances

48. The Chairperson 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

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

Jurisdiction of the Tribunal

50.—(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 codes; and
- (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

51.—(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

52.—(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 (2) commits an offence and is liable on conviction to a fine not exceeding \$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

53.—(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

54. 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

55.—(1) Upon receipt of a complaint under section 53, 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; and
 - (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

56. Upon receipt of a complaint under section 53, or commencement of an investigation under section 54, 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; and
- (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

57. Upon receipt of a complaint under section 53 or commencement of an investigation under section 54, 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.

58.—(1) 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 53 or the investigation under section 54.

(2) Nothing in subsection (1) shall require any media organisation to disclose or provide to the Authority the particulars and identity of the source of any information published or broadcast by the media organisation.

(3) If the Authority deems it necessary to require from any media organisation the particulars and identity of the source of any information published or broadcast by the media organisation, then the Authority shall apply to the Tribunal for an order requiring the media organisation to disclose the particulars and identity of the source.

(4) Upon receipt of an application from the Authority under subsection (3), the Tribunal may make such orders as it deems appropriate, including requiring the disclosure of the particulars and identity of the source of any information published or broadcast by the media organisation.

Failure to provide explanation or production of documents etc.

59. Where any media organisation or any employee, officer, agent or servant of the media organisation fails to comply with any notice issued under sections 57 and 58, 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 \$10,000 or to imprisonment of a term not exceeding 2 years, or both.

Role of the Authority

60. Upon receipt of such complaint under section 53, or upon conducting investigation under section 54, 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 61 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

61.—(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; or
- (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

62.—(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 61, may on its own accord, refer the complaint to the Tribunal, for the Tribunal's determination under this Decree.

(3) No complaint may be referred to the Tribunal, unless the referral of the complaint is made within 6 months from the date when the complaint arose; provided however, that the Tribunal may on application, extend the time to refer a complaint to the Tribunal.

(4) The referral of a complaint to the Tribunal under subsections (1) and (2), shall constitute a bar to any other proceeding in any court of law in relation to the subject matter of the complaint.

(5) Subsection (4) does not prevent any appeal from the decision of the Tribunal to the Court of Appeal, as permitted under section 79 of this Decree.

Hearing of a complaint before the Tribunal

63.—(1) Upon receipt of a complaint under section 62, 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 63, 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 62 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

64.—(1) Upon receipt of a media dispute under section 36, 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

65.—(1) Upon hearing a complaint referred to it under section 62, 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 of a sum not exceeding \$100,000;
- (b) order a publisher or editor of any media organisation to pay a financial penalty of a sum not exceeding \$25,000;
- (c) order a journalist or any employee, officer, staff or agent of any media organisation to pay a financial penalty of a sum not exceeding \$1,000;
- (d) 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;
- (e) order that the media organisation pay monetary compensation of a sum not exceeding \$100,000 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;
- (f) order that the publisher or editor of a media organisation pay monetary compensation of a sum not exceeding \$25,000 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;

- (g) order a journalist or any employee, officer, staff or agent of any media organisation to pay monetary compensation of a sum not exceeding \$1,000 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; or
- (h) 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 36 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 or any employee, officer, servant or agent of that 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

66.—(1) Upon hearing a media dispute referred to it under section 36, the Tribunal may, by order:

- (a) uphold the media dispute; or
- (b) dismiss the media dispute and order that the correcting statement issued by the Authority under section 36 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 a journalist, to a fine of \$1,000 and in a case of an editor or publisher, to a fine not exceeding \$25,000 or imprisonment for a term not exceeding 2 years or to both and in the case of a corporate body, to a fine not exceeding \$100,000.

Order for publication on conviction

67.—(1) A court on convicting a person under section 66(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 \$10,000 or imprisonment for a term not exceeding 2 years or to both and in the case of a corporate body, to a fine not exceeding \$100,000.

Tribunal not bound by formal rules of evidence

68. 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

69.—(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 in accordance with the direction or with the authority of the Tribunal.

Service of summons

70.—(1) A witness summons under section 69 may be served—

- (a) by delivering it personally to the person summoned; or
- (b) by posting it by registered mail 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 mail, 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

71. 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

72. 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

73.—(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 not exceeding \$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 71.

Contempt of Tribunal

74.—(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 \$10,000 or imprisonment for a term not exceeding 2 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

75.—(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

76.—(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

77.—(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

78. The Tribunal shall deliver its decision within 28 days from the end of the hearing of a complaint or a media dispute referred to the Tribunal under this Decree.

Appeal from decisions of the Tribunal

79.—(1) Any complainant or the Authority aggrieved by a decision of the Tribunal in relation to any complaint referred to the Tribunal under subsection (1) and (2) of section 62 may appeal the decision of the Tribunal to the Court of Appeal.

(2) Any media organisation aggrieved by a decision of the Tribunal in relation to any complaint referred to the Tribunal under subsections (1) and (2) of section 62 may appeal the decision of the Tribunal to the Court of Appeal, provided however that no appeal shall lie against any decision of the Tribunal under this subsection unless the decision of the Tribunal involves the payment by that media organisation of a financial penalty or monetary compensation of a sum in excess of \$50,000.

(3) Any appeal under subsections (1) and (2) shall only be available against final decisions of the Tribunal.

PART 11 — MISCELLANEOUS PROVISIONS

Power to make orders in emergency

80.—(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 security agencies 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 Minister to cease all activities and operations.

Jurisdiction of court

81. Notwithstanding any provision to the contrary in the Crimes Decree 2009, the Magistrates Court and the 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

82. For the purposes of this Decree, the documents obtained under sections 26 and 27 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

83.—(1) Proceedings for offences under this Decree may be commenced at any time within 6 months 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

84. 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 \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

Power to make regulations

85. 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.

Minister may exempt

86. The Minister may, upon receipt of an application in writing and acting upon the advice of the Attorney-General, exempt any person, body or authority from the provisions of this Decree, if the Minister is satisfied that the person, body or authority is engaged in any non-profit or charitable purpose, or for any other purpose as may be deemed relevant by the Minister.

Repeals

87. The following enactments and any subsidiary legislation made under them are repealed—

- (a) Registration of Newspapers Act [Cap. 106]; and
- (b) Press Corrections Act [Cap. 107].

Decree and decisions made under the Decree not to be challenged

88. 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 Tribunal, except for such appeals from the decision of the Tribunal as permitted under section 79; or
- (c) any decision of the Minister or of any State official, made under this Decree.

SCHEDULE 1
(Section [18(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 shall aim to disclose all known relevant facts and shall 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 or broadcast, it must be corrected promptly with due prominence and, where appropriate, an apology must be published or broadcast.
- (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 comments 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 or 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 an 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 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 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; and
 - 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 or broadcast 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 and must identify themselves when doing so. Use of subterfuge, false identity or covert recording can be justified only in rare circumstances where the material sought ought to be published in the public interest and could not be obtained in any other way. (See paragraph 3 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 or age 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 or broadcast 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 guardian or other adult responsible for the child.
- (b) Children shall not be approached by the media organisations, and shall not be interviewed or photographed at any school without the permission of school authorities and prior consent of the parents or guardian.
- (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 or broadcast 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, provided 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 or broadcasting 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 must 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 the 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 where the information sought ought to be published or broadcast in the public interest and could not be obtained in any other way. (see paragraph 3 above)

12. **Innocent relatives**

Media organisations shall avoid identifying relatives of persons convicted or accused of a 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 necessary.

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 materials must be clearly distinguishable from general editorial and programme matters, 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 in 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 socially 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 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 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 or broadcast, 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, broadcast 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; and
 - 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 publicised 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 [18(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 laws of Fiji and must be rejected by media if they do not.
3. **Spirit of the Code**
Media are responsible for ensuring that advertisements comply with the spirit as well as the letter of this Code and any written laws of Fiji and must be rejected if they do not do so.
4. **Recognition**
Advertisements must be clearly distinguishable from news, editorials and other materials. 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 in advertisements in an attempt 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 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 or 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 people**

Advertisements shall not refer to or depict any 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; or
- 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 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.

SCHEDULE 3
(Section [18(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 unduly 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 a 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.

SCHEDULE 4
(Section [18(4)])

TELEVISION PROGRAMME CLASSIFICATION 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 on 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 guardian 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, media 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 8.30 pm.
- (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) Media 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

- 5. (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 25th day of June 2010.

EPELI NAILATIKAU
President of the Republic of Fiji