SUBMISSION

on the

Broadcast Licensing Bill 2006
Fiji

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ARTICLE 19 · 6-8 Amwell Street · London EC1R 1UQ · United Kingdom
Tel +44 20 7278 9292 · Fax +44 20 7278 7660 · info@article19.org · http://www.article19.org

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1. INTRODUCTION

This Memorandum analyses the proposed Fijian Broadcast Licensing Bill 2006, No. 10 of 2006 (the Bill),[1] providing recommendations for reform throughout. This is an official draft, based in significant part on an earlier draft submitted by ARTICLE 19 to the Fijian government in June 2004. That draft was the outcome of broad consultations with a wide range of local stakeholders and it is firmly rooted in international standards on this issue.

ARTICLE 19 welcomes the fact that the Fijian government is moving forward with this long-overdue initiative to put in place comprehensive broadcast legislation and to put broadcast regulation in the hands of an independent body, instead of a ministry, and to set clear rules for licensing. This is a key element of democratic media oversight and it reflects the practice in other democracies. Until now, broadcast regulation and, in particular, licensing, in Fiji has been conducted in an *ad hoc* manner, in the absence of clear guiding rules, and by the government. This has resulted in a patchwork of often unclear licenses, which normally contain no or only very minimal public interest conditions.

The Bill itself contains a number of the progressive features that were contained in the original draft legislation prepared by ARTICLE 19. These include progressive rules relating to licensing, licence conditions and the various codes for broadcasters.

At the same time, ARTICLE 19 notes that some very important and unfortunate changes have been made to its draft, particularly relating to the means for appointing members of the Broadcast Licensing Authority and to promoting independent regulation of broadcasting. The original draft provided by ARTICLE 19 represented a careful balance between providing the broadcast regulatory body with considerable powers over broadcasting to achieve public interest purposes, on the one hand, and safeguarding the independence of this body against potential governmental or commercial interference, on the other.

Ensuring an appropriate balance between these two key social interests is essential since granting extensive powers over broadcasting to a body which is not independent poses a great risk to the plurality and independence of the broadcasting sector as a whole. One example serves to illustrate this. Broadcast regulators are sometimes given the power to set local content rules for individual broadcasters (and this is the case in the Bill). This is an important means of fostering local programme production and of ensuring a local voice in broadcasting, and it has, as a result, been internationally recognised.[2] At the same time, a politically biased regulator could easily abuse such power to harass independent or critical broadcasters.

This balance between independence and regulatory power has, unfortunately, been sacrificed in the present Bill. In particular, some of the provisions which were carefully designed to promote independence have been replaced by other ones which effectively give the minister extensive power over broadcasting. As a result, our overarching recommendation is that

[1] The Bill is available on the ARTICLE 19 website at: http://www.article19.org/pdfs/laws/fiji.bro.06.pdf.
[2] See, for example, the African Charter on Broadcasting 2001, adopted in Windhoek, Namibia, 3 May 2001. Countries like Canada also impose strict local content requirements. See Section 1 of the Radio Regulations 1986 of the Canadian Radio-Television and Telecommunications Commission, which are applicable also to television. Available at: http://www.crtc.gc.ca/eng/LEGAL/Radioreg.htm.

provisions protecting the independence of the broadcast regulator be reintroduced into the Bill.

The detail of our analysis is contained in Section IV of this Memorandum. Section III summarises the body of international law on freedom of expression and media regulation that the analysis draws on, while Section II contains a summary of our recommendations. These standards are encapsulated in the ARTICLE 19 publication, *Access to the Airwaves: Principles on Freedom of Expression and Broadcast Regulation* (*Access to the Airwaves*),[3] which draws on comparative constitutional law as well as UN and other international human rights jurisprudence.

[3] (London: ARTICLE 19, March 2002). Available at: http://www.article19.org/publications/law/standard-setting.html.

2. SUMMARY OF RECOMMENDATIONS

Independence

- The minister should not have the power to make appointments on his or her own; the process should provide for others to be involved and for the public to have an opportunity to comment on nominees.
- The members should appoint the secretary of the Authority.
- The tenure of appointees should be fixed in the primary legislation.
- It should be quite clear that all members receive the same level of remuneration for the same activities.
- The Bill should set out the manner in which the Authority will be funded, which should be designed in such a way as to protect it against interference.
- The powers of the minister in relation to licensing should be reviewed and it should be made clear that these are general powers, to be exercised in fulfilment of the government's policy mandate and not to interfere with specific licensees or licensing processes.
- The powers of the minister to regulate matters relating to licensing should be given to the Authority. At a minimum, the minister should be required to consult with the Authority and affected stakeholders before adopting regulations.
- Consideration should be given to allocating the responsibility to develop the Broadcasting Frequency Plan to the Authority, instead of the minister.
- Any funds to be allocated to individual broadcasters or producers for purposes of promoting public service or public interest broadcasting should be overseen by the Authority rather than the minister.
- Section 3, setting out the objects of the Bill, should be substantially revised so that it sets out overriding policy goals rather than just describes what the Bill does.

Other

- More detail as to what should be included in the annual report should be provided in the Bill.
- The sanctions regime should be amended to ensure that sanctions are applied in a graduated fashion, and are proportionate to the wrong done.
- The Bill should provide for a right of appeal from any sanction imposed.

3. INTERNATIONAL STANDARDS

3.1. The Importance of Freedom of Expression

Article 19 of the *Universal Declaration on Human Rights* (UDHR)[4] guarantees the right to freedom of expression in the following terms:

> Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

The UDHR, as a UN General Assembly resolution, is not directly binding on States. However, parts of it, including Article 19, are widely regarded as having acquired legal force as customary international law since its adoption in 1948.[5]

The *International Covenant on Civil and Political Rights* (ICCPR),[6] a treaty ratified by 156 States, imposes formal legal obligations on State Parties to respect its provisions and elaborates on many of the rights included in the UDHR. Article 19 of the ICCPR guarantees the right to freedom of expression in terms very similar to those found in Article 19 of the UDHR.

As a Commonwealth Member State, Fiji has also affirmed its commitment to the protection of human rights generally and the right to freedom of expression specifically through statements issued by the Commonwealth Heads of Government Meetings.[7] In the 2001 Coolum Declaration, the Commonwealth Heads of Government declared that they,

> … stand united in our commitment to democracy, the rule of law, good governance, freedom of expression and the protection of human rights.[8]

Freedom of expression is also protected in all three regional human rights instruments, at Article 9 of the *African Charter on Human and Peoples' Rights*,[9] Article 10 of the *European Convention on Human Rights*[10] and Article 13 of the *American Convention on Human Rights*.[11] The right to freedom of expression enjoys a prominent status in each of these regional conventions and, although these are not directly binding on Fiji, judgments, official recommendation and other authoritative statements issued under these regional mechanisms offer a persuasive interpretation of freedom of expression principles in various different contexts.

Freedom of expression is a key human right, in particular because of its fundamental role in underpinning democracy. At its very first session, in 1946, the UN General Assembly adopted

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[4] UN General Assembly Resolution 217A(III), adopted 10 December 1948.
[5] See, for example, *Filartiga v. Pena-Irala*, 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2nd Circuit).
[6] UN General Assembly Resolution 2200A(XXI), adopted 16 December 1966, in force 23 March 1976.
[7] See the Harare Commonwealth Declaration, Zimbabwe, 1991; Declaration of Commonwealth Principles, Singapore, 1971. On freedom of expression specifically, see the Abuja Communique, 8 December 2003 and the Coolum Declaration on the Commonwealth in the 21st Century: Continuity and Renewal, Australia, 2002.
[8] Note 7, first paragraph.
[9] Adopted 26 June 1981, in force 21 October 1986.
[10] Adopted 4 November 1950, in force 3 September 1953.
[11] Adopted 22 November 1969, in force 18 July 1978.

Resolution 59(I) which states: "Freedom of information is a fundamental human right and ... the touchstone of all the freedoms to which the United Nations is consecrated."[12] As the UN Human Rights Committee has said:

> The right to freedom of expression is of paramount importance in any democratic society.[13]

Freedom of expression has a double dimension; it refers not only to imparting information and ideas but also to receiving them. This is explicit in international guarantees of freedom of expression such as that found in the UDHR, quoted above, and has also been stressed by international courts. The Inter-American Court of Human Rights, for example, has stated:

> [T]hose to whom the Convention applies not only have the right and freedom to express their own thoughts but also the right and freedom to seek, receive and impart information and ideas of all kinds. Hence, when an individual's freedom of expression is unlawfully restricted, it is not only the right of that individual that is being violated, but also the right of all others to 'receive' information and ideas.[14]

The right to receive information and ideas is a key underpinning for regulatory measures which promote diversity.

3.2. Restrictions on Freedom of Expression

The right to freedom of expression is among the rights that, under certain limited conditions, may be restricted. However, any limitations must remain within strictly defined parameters. Article 19(3) of the ICCPR lays down the conditions which any restriction on freedom of expression must meet:

> The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
>
> (a) For respect of the rights or reputations of others;
>
> (b) For the protection of national security or of public order (ordre public), or of public health or morals.

This translates into a three-part test, according to which restrictions on freedom of expression are legitimate only if they (a) are provided by law; (b) pursue a legitimate aim; and (c) are "necessary in a democratic society."

It is a maxim of human rights jurisprudence that restrictions on rights must always be construed narrowly; this is especially true of the right to freedom of expression in light of its importance in a democratic society. Accordingly, any restriction on this right must meet a strict three-part test, approved by both the Human Rights Committee[15] and the European Court of Human Rights.[16] This test requires that any restriction must a) be provided by law; b) be for the purpose of safeguarding a legitimate public interest; and c) be necessary to secure that interest.

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[12] 14 December 1946.

[13] *Tae-Hoon Park v. Republic of Korea*, 20 October 1998, Communication No. 628/1995, para. 10.3.

[14] *Compulsory Membership in an Association Prescribed by Act for the Practice of Journalism*, Advisory Opinion OC-5/85 of November 13, (Series A) No. 5 (1985), para. 30.

[15] See, for example, *Mukong v. Cameroon*, 21 July 1994, Communication No. 458/1991, para. 9.7.

[16] See, for example, *Goodwin v. United Kingdom*, 27 March 1996, Application No. 17488/90, paras. 28-37.

The first requirement will be fulfilled only where the law is accessible and "formulated with sufficient precision to enable the citizen to regulate his conduct."[17] Second, the interference must pursue one of the aims listed in Article 19(3); the list of aims is an exhaustive one and thus an interference which does not pursue one of those aims violates Article 19. The third part of the test means that even measures which seek to protect a legitimate interest must meet the requisite standard established by the term "necessity". Although absolute necessity is not required, a "pressing social need" must be demonstrated, the restriction must be proportionate to the legitimate aim pursued, and the reasons given to justify the restriction must be relevant and sufficient.[18] In other words, the government, in protecting legitimate interests, must restrict freedom of expression as little as possible. Vague or broadly defined restrictions, even if they satisfy the "provided by law" criterion, will generally be unacceptable because they go beyond what is strictly required to protect the legitimate interest.

3.3. Broadcasting Freedom and Regulation

The guarantee of freedom of expression applies with particular force to the media, including the broadcast media. As the Inter-American Court of Human Rights has stated: "It is the mass media that make the exercise of freedom of expression a reality."[19] Because of their pivotal role in informing the public, the media as a whole merit special protection. As the European Court of Human Rights has held:

> [I]t is … incumbent on [the press] to impart information and ideas on matters of public interest. Not only does it have the task of imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of 'public watchdog'.[20]

This applies particularly to information which relates to matters of public interest:

> The press plays an essential role in a democratic society. Although it must not overstep certain bounds, in particular in respect of the reputation and rights of others and the need to prevent the disclosure of confidential information, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest [footnote omitted]. In addition, the court is mindful of the fact that journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation.[21]

This protection applies to the broadcast media as it does to all other forms of media. While it does not imply that the media should be entirely unregulated, two key principles apply to broadcast regulation. First, it is well established that any bodies with regulatory powers in this area must be independent of government and of vested commercial interests. Second, an important goal of regulation must be to promote diversity in the airwaves. These are a public resource and they must be used for the public benefit, an important part of which is the public's right to receive information and ideas from a variety of sources.

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[17] *Ibid.*, at para. 49.

[18] *Sunday Times v. United Kingdom*, 26 April 1979, Application No. 6538/74, para. 62 (European Court of Human Rights). These standards have been reiterated in a large number of cases.

[19] *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, *op cit.*, para. 34.

[20] *Thorgeirson v. Iceland*, 25 June 1992, Application No. 13778/88, para. 63.

[21] *Fressoz and Roire v. France*, 21 January 1999, Application No. 29183/95 (European Court of Human Rights).

3.3.1. Independence of the Regulator

The principle that bodies with regulatory powers in the area of broadcasting must be independent has been set out clearly by both national courts and international bodies. One of the clearest statements of the principle comes from a case decided by the Supreme Court of Sri Lanka, challenging the constitutionality of a draft Broadcasting Bill. The Court held that the Bill was incompatible with the constitutional guarantee of freedom of expression, mainly because it gave the Minister substantial power over appointments to the Board of Directors of the regulatory authority. The Court noted: "[T]he authority lacks the independence required of a body entrusted with the regulation of the electronic media which, it is acknowledged on all hands, is the most potent means of influencing thought."[22]

Clear statements on this principle have been made by official UN bodies as well as all three regional systems for the protection of human rights. The UN Human Rights Committee has expressed concern about the lack of independence of regulatory authorities on a number of occasions in recent years. A clear statement of this is its Concluding Observations on Lebanon's Second Periodic Report, where it expressed concern over a media law as follows:

> 355. The Committee therefore recommends that the State party review and amend the Media Law of November 1994, as well as its implementing decree, with a view to bringing it into conformity with article 19 of the Covenant. It recommends that the State party establish an **independent** broadcasting licensing authority, with the power to examine broadcasting applications and to grant licences in accordance with reasonable and objective criteria.[23] [emphasis added]

The UN Special Rapporteur on Freedom of Opinion and Expression has also stressed the need for independent regulation of broadcasting, stating:

> 16. There are several fundamental principles [relating to broadcasting] which, if promoted and respected, enhance the right to seek, receive and impart information. These principles are…laws governing the registration of media and the allocation of broadcasting frequencies must be clear and balanced; any regulatory mechanism, whether for electronic or print media, should be independent of all political parties and function at an arms-length relationship to Government….[24]

This finds support in similar statements made by authoritative bodies at all three regional systems for the protection of human rights. The African Commission on Human and Peoples' Rights of a *Declaration of Principles on Freedom of Expression in Africa* states:

> [A]n independent regulatory body shall be responsible for issuing broadcasting licences and for ensuring observance of licence conditions….[25]

Key to achieving independence is the manner of appointments to the regulatory body. A recommendation of the Committee of Ministers of the Council of Europe, specifically on broadcast regulatory bodies, includes the following statement:

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[22] *Athokorale and Ors. v. Attorney-General*, 5 May 1997, Supreme Court, S.D. No. 1/97-15/97.

[23] *Annual Report of the UN Human Rights Committee*, 21 September 1997, UN Doc. A/52/40.

[24] Annual Report of the Special Rapporteur to the UN Commission on Human Rights, 29 January 1999, UN Doc. E/CN.4/1999/64. See also Annual Report of the Special Rapporteur to the UN Commission on Human Rights, 28 January 1998, UN Doc. E/CN.4/1998/40, para. 20, where the Special Rapporteur noted the need for independent regulatory frameworks for private broadcasters.

[25] Adopted at its 32nd Session, 17-23 October 2002, Principle V(2).

> 3. The rules governing regulatory authorities for the broadcasting sector, especially their membership, are a key element of their independence. Therefore, they should be defined so as to protect them against any interference, in particular by political forces or economic interests.[26]

Similar statements have been made within the context of the Organization of American States.[27]

3.3.2. Promoting Pluralism

It is now well established that international and constitutional guarantees of freedom of expression recognise that it is only through a diverse and pluralistic media that the public's right to seek and receive information and ideas can be secured. Promoting media pluralism places a positive obligation on the State to take concrete steps to this end.[28] Thus, States should put in place systems to ensure the healthy development of the broadcasting sector, and that this development takes place in a manner that promotes diversity and pluralism.

These obligations are of particular importance in light of the trend towards globalisation, including in the broadcasting sector. It is only through the development of a strong, free and pluralistic local media that local voices can be preserved in broadcasting against the growing dominance of multi-national media companies. The threat of international domination in this area is a particular threat in developing countries.

International law strongly supports the principle of pluralism in the media. The European Court of Human Rights has held in a series of judgments that the promotion of pluralism is a key role for broadcast regulators:

> [Imparting] information and ideas of general interest, which the public is moreover entitled to receive…cannot be successfully accomplished unless it is grounded in the principle of pluralism, of which the State is the ultimate guarantor. This observation is especially valid in relation to audio-visual media, whose programmes are often broadcast very widely.[29]

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[26] *Recommendation on the Independence and Functions of Regulatory Authorities for the Broadcasting Sector*, (2000) 23, adopted 20 December 2000.

[27] See Principles 12 and 13 of the Inter-American *Declaration of Principles on Freedom of Expression*, adopted at the 108th regular session, October 2000. See also *Access to the Airwaves*, Principle 10.

[28] See *Access to the Airwaves*, Principle 3.

[29] See, for example, *Informationsverein Lentia v. Austria*, 24 November 1993, Application Nos. 13914/88, 15041/89, 15717/89, 15779/89, 17207/90, para. 38.

4. ANALYSIS OF THE BROADCAST LICENSING BILL

As noted above, the key problem with the Bill is that it lacks the guarantees for independent regulation of broadcasting that are required by international law and which were found in the original draft legislation prepared by ARTICLE 19.

4.1. Independent Regulation

4.1.1. Appointment of Members

Pursuant to section 5 of the Bill, the minister appoints members of the Broadcast Licensing Authority, a body with important regulatory powers relating to broadcasting, including in the area of licensing and developing and applying codes of conduct. Members are required to be impartial and have some relevant experience, certain individuals, such as office holders in political parties, are banned from being appointed, and the tenure of members is protected. There are, however, practically no other constraints on the minister's power of appointment. Furthermore, pursuant to section 16, the minister appoints a public officer as secretary to the Authority. There are no conditions whatsoever on this power.

This is in stark contrast to the original draft, which provided for two options, one involving an appointments committee consisting of civil society representatives and also an opportunity for the public to comment on a shortlist of candidates. The other option provided for nominations to be made by an *ad hoc* parliamentary committee, again with an opportunity for the public to comment. In that draft, the members, not the minister, appointed the chief executive officer, to whom the same rules prohibited certain individuals from holding office as the members applied.

The minister also appears to have considerable control over the nature of the appointment. Section 7 provides that the tenure shall not exceed five years, but appears to allow the minister to set such shorter term as he or she may decide. Section 8 provides for allowances to be set by the Minister. It is not clear whether these would be consistent for all members or could be tailored to each individual member.

Agreeing on an appropriate system for appointing members of the boards of independent public bodies such as the Broadcast Licensing Authority is a complex matter and different approaches may be valid or effective in different contexts. As noted above, international law requires that the process be designed so as to prevent opportunities for political interference. It is essential, to this end, that the power of appointment not vest exclusively in a single political person or party and that there be an opportunity for civil society to be involved in the process. This helps prevent those responsible for appointing from doing so in a politically biased manner ensuring, at the very least, that politically motivated appointments will be exposed to the public.

Furthermore, important matters which affect the independence of members – such as the tenure of the appointment and the remuneration associated with it – should be the same for all appointees. The former should be provided for clearly in the primary legislation, while the latter should be based on clear criteria which do not allow for distinctions between members.

Recommendations:

- The minister should not have the power to make appointments on his or her own; the process should provide for others to be involved and for the public to have an opportunity to comment on nominees.
- The members should appoint the secretary of the Authority.
- The tenure of appointees should be fixed in the primary legislation.
- It should be quite clear that all members receive the same level of remuneration for the same activities.

4.1.2. Funding

Pursuant to section 31(3) of the Bill, license fees collected from broadcasters shall be paid into the Consolidated Fund. The Bill does not otherwise mention funding for the Broadcast Licensing Authority.

Under international law, independent funding has been recognised as being fundamental to the overall independence of broadcast regulators. The Council of Europe Recommendation, noted above, states, in this regard:

> Arrangements for the funding of regulatory authorities - another key element in their independence – should be specified in law in accordance with a clearly defined plan, with reference to the estimated cost of the regulatory authorities' activities, so as to allow them to carry out their functions fully and independently.[30]

Clearly the Bill fails to meet this standard. As with appointments, there are various ways to achieve this goal. The original draft legislation provided for the regulator to keep the licence fees but also required it to have its budget approved by parliament. Any excess from the license fees would have to be remitted to the Consolidated Fund and any shortfall paid from it.

Recommendation:
- The Bill should set out the manner in which the Authority will be funded, which should be designed in such a way as to protect it against interference.

4.1.3. Powers

Section 12(2)(a) of the Bill provides that the Authority shall be responsible for licensing. However, section 12(5) provides that the minister shall formulate policies regarding licensing, including in relation to how many services a broadcaster may provide, and may give general or specific policy directions to the Authority regarding licensing.

Whether these powers are a cause for concern very much depends on how they are interpreted and applied. It is recognised that political authorities (the government) retain control of policy issues in relation to broadcasting, even though they should not get involved in the specifics of individual licenses or licensing procedures. Sometimes this is a difficult balance to achieve, particularly in a smaller broadcasting environment, such as that found in Fiji.

The power to the minister to set the number of services a broadcaster may provide, if this applies on a case-by-case basis to specific broadcasters, is clearly open to abuse and is not something that can be defined as falling within the scope of policy matters. Setting overall limits for the

[30] Note 26, clause 9.

sector on the number of services the sector can support, on the other hand, may be a legitimate ministerial exercise. Similarly, if providing 'specific' policy direction is understood as allowing the minister to become involved in a specific licensing process, then it falls outside of the policy remit of government and may be abused for political purposes.

The minister also has considerable powers to pass regulations, including in relation to a number of matters otherwise within the remit of the Broadcast Licensing Authority, such as the tendering process for licences, the process for assessing licence applications, forms and fees, additional licence conditions and changes to pre-existing licences. All of these powers should lie with the Authority, not the minister. If these powers are retained by the minister, he or she should at least be required to consult with the Authority and affected stakeholders before adopting any regulations.

Pursuant to section 37(2), the minister is responsible for developing the Broadcasting Frequency Plan. While there is nothing inherently objectionable about this, it is a power which, depending on the level of detail in the plan, could be abused to interfere with broadcast regulation. In the original draft legislation, this power was instead allocated to the broadcast regulator, taking into account its expertise in this area and the fact that it is responsible for putting the plan into operation.

In the past, Fiji has provided a fund to certain broadcasters to provide public service or public interest broadcasting in different local languages. In the original draft of the legislation, this was also put under the authority of the broadcast regulator, as opposed to the minister. It is fairly obvious that the principles of independence apply equally to a fund of this sort as to general regulation of broadcasting and to the establishment of an institutional public service broadcaster.[31] Leaving this under the control of the minister seriously undermines the protection of independent broadcasting as a whole.

Recommendations:

- The powers of the minister in relation to licensing should be reviewed and it should be made clear that these are general powers, to be exercised in fulfilment of the government's policy mandate and not to interfere with specific licensees or licensing processes.
- The powers of the minister to regulate matters relating to licensing should be given to the Authority. At a minimum, the minister should be required to consult with the Authority and affected stakeholders before adopting regulations.
- Consideration should be given to allocating the responsibility to develop the Broadcasting Frequency Plan to the Authority, instead of the minister.
- Any funds to be allocated to individual broadcasters or producers for purposes of promoting public service or public interest broadcasting should be overseen by the Authority rather than the minister.

4.1.4. Objectives

The objects of the Bill, set out in section 3, include establishing the Broadcast Licensing Authority, controlling the broadcasting spectrum, regulating the licensing of broadcasters and establishing various codes for broadcasters. This is effectively a description of what the Bill does

[31] See, for example, Recommendation No. R (96) 10 of the Committee of Ministers of the Council of Europe 'On the Guarantee of the independence of Public Service Broadcasting', 11 September 1996.

and may be contrasted with the original draft, which included a long list of social objectives to which broadcasting policy and regulation should contribute. These included, among other things, values such as protecting freedom of expression, encouraging creative national broadcasting, promoting a diverse range of quality broadcasting and enhancing the financial viability of Fijian broadcasting as a whole.

Setting out clear, overriding policy objectives in the text of the legislation, as is common in broadcasting acts around the world, serves a number of goals. It also serves as a clear statement of the overriding policy objectives for broadcasting. These should remain consistent over time and be the subject of broad social consensus. It provides clear standards against which the work of the regulator may be judged. It is noteworthy that the Bill refers back repeatedly to the objects; if these were true social values sought to be promoted, this would be far more relevant and act as an important accountability constraint on the regulator. It would, by the same token, act as a barrier to interference since the objectives would provide an objective benchmark against which the performance of the regulator could be judged, allowing for exposure of politically motivated actions. The power of the regulator to set local content requirements was noted above, as well as the potential for abuse of this power by a regulator that lacks independence. Clearly articulated objectives in the legislation make it more difficult for the regulator to abuse this power since they provide a clear basis for courts to intervene if necessary.

Recommendation:
- Section 3, setting out the objects of the Bill, should be substantially revised so that it sets out overriding policy goals rather than just describes what the Bill does.

4.2. Accountability

Independent regulation does not mean that the regulator is not accountable to the public. In fact, if the lines of accountability are unclear, a regulator is far more likely to be subject to political pressure and influence. One accountability structure, noted above, is a clear set of objectives that the regulator must take into account in all of its work. Another is the provision of an annual report to parliament. The Bill does provide for an annual report, in section 18, but does not provide any detail as to what should be included, or require the regulator to be independently audited on an annual basis. The original legislation, by way of contrast, provided a list of some 10 categories of information that should be included in the annual report, including a copy of the auditor's report (which was also required to be produced).

Recommendation:
- More detail as to what should be included in the annual report should be provided in the Bill.

4.3. Sanctions and Appeals

The Authority has the power to impose sanctions on broadcasters which operate in breach of any of the various codes or its licence conditions, which also include observance of the codes (see section 47). Sanctions include fines and licence revocation. Although certain process guarantees are in place, there is no requirement for sanctions to be proportionate to the wrong done or for lighter sanctions to be applied and to fail before heavier sanctions may be imposed. There is also no explicit right of appeal to the courts. While courts have the power to conduct certain forms of judicial review as a matter of general administrative law, it is

important to provide directly for appeals in the legislation, so as to ensure that these are as fulsome as possible.

Recommendations:

- The sanctions regime should be amended to ensure that sanctions are applied in a graduated fashion, and are proportionate to the wrong done.
- The Bill should provide for a right of appeal from any sanction imposed.