

Fiji Media Decree – Top Five Issues

1. Executive Control of the Regulating Authority: The decree vests control of the Authority which regulates the media in the hands of the executive government officials. Such officials have broad powers in establishing and controlling the activities of the Authority and the Tribunal (which adjudicates media disputes) and in the application of the Decree. For example, the President controls the appointment and removal of members of the Tribunal and the Minister controls appointment and removal of members of the Authority with or without cause. In addition, the Minister may, in his discretion, (a) exempt any person or entity from compliance with the Decree, (b) exercise expansive emergency powers over media content, (c) order amendments to media codes and promulgate regulations under the Decree (d) issue directives to the Tribunals (e) delegate performance of the functions of the Authority to other bodies and (f) generally direct the performance of the functions of the Authority.

2. Lack of Procedural Safeguards and Disproportionate Penalties: The Decree grants broad powers to the Authority and the Tribunal, both appointed by the executive officials, to make, investigate and prosecute complaints against the media, using low evidentiary standards, and apply civil and criminal penalties. The media have limited ability to challenge or appeal such complaints or decisions rendered against them. Punishments for violations of the Decree include fines (in some cases up to \$100,000), personal liability for employees of media organizations, awards of (uncapped) damages and prison sentences.

3. No Right to Access Information: There is no right or mechanism for the public, including the media, to request information controlled by public bodies. Further, there is no affirmative obligation on public bodies to make information available to the public (with or without a request).

4. Direct Regulation of Content, Including Pre-Publication Review: The government has broad powers to regulate media content directly. The Minister can require pre-publication review with the Authority and prohibit publication when the Minister believes that the publication may result in “disorder” or a “breach of peace,” cause “undue demands” on security agencies, “promote disaffection or public alarm,” or “undermine the Government and the State of Fiji.” Each of these terms may be expansively interpreted, and none are further defined in the Decree. The Authority has the power to direct media to publish a correction to any statement previously published in such media that the Authority considers, in its opinion, to be false or distorted. The Decree and schedules thereto contain, to varying degrees of specificity, enforceable guidelines, standards and limitations on permissible content in topical areas.

5. Seditious Libel and other Restrictions on Political Speech: While seditious libel (essentially defaming the government) and other restrictions on political speech are also forms of content regulation, these aspects of content regulation deserve special attention because they impacts a citizen’s ability to participate in debate on matters of public interest. As noted above in paragraph 4, the Authority can review and prohibit publication of anything it believes will undermine the Government and the State of Fiji. Additionally, the Decree regulates political speech by prohibiting content “against the national interest” and, particularly, advertising content that denigrates any political belief. Note that the Decree

does not address defamation claims brought by individual plaintiffs, and, therefore, it is difficult to evaluate the level of scrutiny that a public official (i.e., any individual in his capacity as an official carrying out public duties) is expected to tolerate under the media law regime generally.