

A SUBMISSION
TO THE HON. SIMIONE KAITANI
MINISTER FOR INFORMATION
ON THE
DRAFT MEDIA BILL
FROM THE BOARD OF DIRECTORS OF



1. **Introduction**

Freedom of expression is a universal value.

It is enshrined in several international and regional documents such as the Universal Declaration of Human Rights at Article 19, and the Constitution of the Fiji Islands (the **Constitution**).

It is our submission that the draft Media Bill of the Fiji Government restricts freedom of speech and tends to favour a government controlled media. In a small country like Fiji, the government has an obligation to its people, not only to ensure that a balance of information about all aspects of national life is communicated through the media, but that a balanced presentation of political opinion is also achieved. However, this will not be achieved by the draft Media Bill.

A free media really means a media that is free from political interference or any kind of censorship. The proposal, especially sections 4(a) and (c) of the draft Media Bill, contravenes the right to freedom of expression as set out in the Constitution. Moreover, the creation of a new media council would duplicate the existing Media Council of Fiji, the Media Council (Fiji) Limited.

While commending the Government's wish for consultation, as reflected in your participation [together with the Hon Attorney-General] in a recent forum, and the public hearings held for that purpose, we base this submission on the factors discussed below.

2. **The Constitution**

2.1 The preamble of the Constitution states, among other things, that the people of the Fiji Islands:

- (a) Commit themselves to, "...promoting social justice and the economic advancement of all communities, respecting their rights and interests"; and
- (b) Recognise, "...the human rights and fundamental freedoms of all individuals and groups, safeguarded by the rule of law, and our respect for human dignity...".

These clauses lay the foundations for a country that is firmly committed to such rights as the freedom of expression.

2.2 Section 2 of Chapter 1 – The State, of the Constitution, states:

"(1) This Constitution is the Supreme law of the State.

(2) Any law that is inconsistent with this Constitution is invalid to the extent of the inconsistency."

As the Constitution entrenches the freedom of expression (see section 3 below) any law which is inconsistent with or derogates from this will be invalid.

2.3 Section 3 of Chapter 1, sets out how the Constitution is to be interpreted. It states:

"In the Interpretation of a provision of this Constitution:

- (a) A construction that would promote the purpose or object underlying the provision, taking into account the spirit of this Constitution as a whole, is to be preferred to a construction that would not promote that purpose or object; and
- (b) Regard must be had to the context in which this Constitution was drafted and to the intention that constitutional interpretation take into account social and cultural developments, especially...developments in the promotion of particular human rights".

By virtue of section 3 not only is any attempt to limit the right to freedom of expression invalid, but all of the provisions of the Constitution will be interpreted in accordance with the "spirit" of promoting any express freedoms.

2.4 At the Editors' Forum on Media Freedom held on 7 May 2003, the Minister for Information, Mr Kaitani himself stated:

"Our Constitution not only protects freedom of expression and media freedom, it goes a step further and advocates freedom of information." ⁱ

A media subject to a ministerially selected chairperson and public members fundamentally contravenes a constitution which advocates the freedom of information.

3. Section 30 of Chapter 4 -Bill of Rights, of the Constitution, states:

"(1) Every person has the right to freedom of speech and expression, including:

- (a) freedom to seek, receive and impart information and ideas; and
- (b) freedom of the press and other media."

Subsection 30(2) goes on to state that the only way in which this freedom will be limited is in the interest of such things as national security, public order and morality, and the protection or maintenance of the rights and freedoms of other persons, but only to the extent that the limitation is justifiable in a free and democratic society.

To control the media in any way is to contradict the express intention of the Constitution to uphold the freedom of expression as set out in section 30. The draft Media Bill does precisely this in that it allows the government to appoint the chairperson and the public members of the council. The provisions could not survive a legal challenge and for that reason alone should be abandoned.

Further the possibility of and perception that an opportunity exists for political interference with the council will undermine its credibility and go against the express freedom of expression which is firmly established by the Constitution and Article 19 of the Universal Declaration of Human Rights (see below).

4. **The Declaration of Human Rights**

Article 19 of the Declaration of Human Rights states:

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

This is an international enshrinement of the right to freedom of expression, which, contrary to Fiji's international obligations, is not promoted by the proposed legislation.

5. **The Thomson Report**

- 5.1 In 1996 the Fiji Government commissioned the Thomson Report (the **report**) to review the media in Fiji. The consultants who conducted the consultations were well aware of making their recommendations consistent with the fundamental freedoms that were incorporated in the Constitution.

While the report did state at section 4.9 Implementing the New System:

"To give effect to the new structure, we recommend that a new Media Act be passed, establishing the above principles and entrusting their detailed implementation to the council and its code"

It is important to look at this recommendation in the context of the entire report.

- 5.2 The report at section 4.5.3 stated:

"...the most appropriate system for Fiji is for regulation to be applied by an independent non-government body – and for the same to be responsible for both print and broadcast media."

The Report advocated the establishment of an independent body built on the foundations of the existing news Council, to whom regulation of relevant matters should be entrusted.

- 5.3 A self-regulatory mechanism, genuinely working in the public interest as envisaged by the report would uphold the freedoms and rights as set out in the Constitution and Declaration of Human Rights.

It is clear that the report, in stark contrast to the draft Media Bill, envisaged a council composed of a chairperson and other lay representatives who were elected by an independent Complaints Committee.ⁱⁱ The report specifically notes that while:

"responsible governments and politicians should share a common aim – the best interest of their society – their roles are different. In a healthy democratic society, the relationship between politicians and a free press is, quite properly, likely to be wary, questioning and sceptical, rather than close, cosy or adulatory"ⁱⁱⁱ

- 5.4 The draft Media Bill specifically departs from the report in the following areas:

- (a) Statutory regulation of the media: Section 4.5.3
- (b) Non-statutory regulation of the media: Sections 4.6.3, 4.6.5, 4.6.6
- (c) Implementation: Section 4.9.1, 4.9.2, 4.9.3

In order to maintain the credibility and integrity of the Fiji media both domestically and on the international level the independence of all forms of media must be upheld.

6. **Duplication of existing mechanisms**

- 6.1 Other Fiji legislation already ensures the right of freedom of expression with responsibility, for example, the Penal Code, Defamation Act, the Public Health Act, the Public Order Act, the Public Safety Act as well as the Constitution.

- 6.2 The draft Media Bill duplicates the existing Media Council (Fiji) Limited. The draft Media Bill duplicates the Constitution of the Media Council of Fiji Limited almost entirely and the Media Council Code of Ethics and Practice completely. The council proposed by the draft Media Bill will have the same *modus operandi* as the existing council except with regard to Appeals and Offences.

The addition of an Appeals Committee will only serve to impede the efficiency of the existing Complaints Committee.

As for the proposed offences provision, this will contradict the constitution which expressly upholds the freedom of expression. It may be used either implicitly or explicitly to attempt to control reportage, which is inconsistent with the Government's powers and the interests of the community in the free flow of information and political ideas.

7. **Alternative Proposals**

- 7.1 News media in South Pacific countries, as in many other nations, have often faced criticism of professional and ethical standards^{iv}. The criticism focuses on the lack of professional training of journalists, poor education standards, lack of knowledge of political and social institutions, cultural insensitivities and a questionable grasp of ethical issues. We encourage the Fiji Government to work WITH the existing Media Council (Fiji) Limited to resolve these problems and perceptions.

Control and regulation are inappropriate. The way forward is to improve the training and standard of journalism in Fiji, to which we are committed. Improvements in journalism in the region will only come from a government commitment to freedom of speech aimed at encouraging freethinking, inquiring minds and a quest for truth. This can be achieved through journalists with the courage, determination and freedom to promote and provoke open discussion of issues like the unity theme, nation building and reconciliation.

The report recommended that the media itself take greater responsibility for in-house professional development through local and international media collaboration. This would protect the Constitutional rights and freedoms of the people of Fiji and advance the integrity of the Fiji media. Regulation as proposed in this Bill will inhibit that process.

- 7.2 In a statement made by the Minister for Information and Media Relations, Mr Kaitani, on the occasion of Media Freedom Day, 7 May 2003, stated that events such as the political coup of 2000 emphasised the challenge to the media to report fairly and objectively:

"we did not need the kind of journalism that stirred emotive reactions among our ethnic populations. And, certainly, we could not condone the highly evocative practice among some journalists, who at that time succumbed to their own political bias"^v

What is required is a determination to create an environment that encourages fair and objective reporting rather than prescribing what is and what isn't an acceptable communication.

8. **Conclusion**

We commend the Government, especially you, Mr Minister, for the open and transparent way the Consultation process has taken place regarding the draft Media Bill. You were prepared to stand by and defend what you believe is right for the country. This has been a clear demonstration of a healthy democratic process.

There is a fine line between facilitating the freedom of expression and exercising this right in a responsible way so as not to infringe the interests of others. However, the imposition of a Government selected Media Council on the people of Fiji would all but deprive them of their right to the freedom of expression.

If Government is prepared to drop this draft entirely, it does not mean the media of Fiji is the only winner. Everyone wins. It would show clearly our Constitution works for all. It would demonstrate a democratic approach can achieve great results for Fiji's citizens. It would be the media's honoured role to tell the world that **Fiji's Media Is Free!**

Yours faithfully,

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i "Statement by the Minister for Information and Media Relations, Hon. Simione Kaitani, on the Occasion of Media Freedom Day", Fiji Times Training Room, Suva, 7 May 2003, http://www.fiji.gov.fj/speeches_features/S2003_05/S2003_05_07-01.shtml (accessed on 20/05/2003).

ii Ministry of Information, "The Thomson Foundation - Future Media Legislation and Regulation for the Republic of the Fiji Islands: Summary of Findings and Recommendations", www.fiji.gov.fj/MEDIA_BILL/summary_findings.shtml , (accessed 20/05/2003).

iii Excerpt from the Thomson Report as quoted in David Robie, (2003), "Pacific media councils and cultural values: Safety valve or entrenched hegemony?", presented at "Between Empires: Communications, Globalisation and Identity Conference", School of Communication Studies, Auckland University of Technology, New Zealand, February 13-15 2003, at pg 5

iii Ministry of Information, "The Thomson Foundation - Future Media Legislation and Regulation for the Republic of the Fiji Islands: Summary of Findings and Recommendations", www.fiji.gov.fj/MEDIA_BILL/summary_findings.shtml , (accessed 20/05/2003).

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iv David Robie, (2003), "Pacific media councils and cultural values: Safety valve or entrenched hegemony?", presented at "Between Empires: Communications, Globalisation and Identity Conference", School of Communication Studies, Auckland University of Technology, New Zealand, February 13-15 2003, pg.2

v As at i.