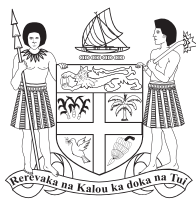


EXTRAORDINARY



# GOVERNMENT OF FIJI GAZETTE

PUBLISHED BY AUTHORITY OF THE FIJI GOVERNMENT

Vol. 15

THURSDAY, 29th MAY 2014

No. 48

[564]

GOVERNMENT OF FIJI

TELEVISION (CROSS-CARRIAGE OF DESIGNATED EVENTS) DECREE 2014  
(DECREE No. 19 OF 2014)

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IN exercise of the powers vested in me pursuant to section 4 of the Office of the Vice-President and Succession Decree 2009 and section 165(4) of the Constitution of the Republic of Fiji, I hereby make the following Decree—

A DECREE TO PROVIDE FOR THE BROADCAST OF DESIGNATED EVENTS  
ON FREE-TO-AIR TELEVISION AND FOR RELATED MATTERS

PART 1—PRELIMINARY

*Short title and commencement*

1. This Decree may be cited as the Television (Cross-Carriage of Designated Events) Decree 2014 and shall come into force on the date of its publication in the *Gazette*.

*Interpretation*

2. In this Decree, unless the context otherwise requires—

“broadcast” means the sending out by television broadcast media of any message or other matter to the public or any class of the public;

“Designated Event” or “Event” means an event designated by the Minister under section 5;

“feed” means the transmission of a Designated Event amongst licensees, where rights have been acquired or obtained for the broadcast of such Event;

“free-to-air television licensee” means a person who is licensed under the Television Decree 1992 and provides free-to-air television services;

“free-to-air television service” means any television service which is made available to the audience or viewers for whom it is intended without payment of a subscription fee, excluding any special interest television service;

“Lead Broadcaster” means a licensee appointed as the Lead broadcaster by the Minister under section 14(1);

“licensee” includes a free-to-air television licensee and a subscription television licensee;

“market share” means the relative portion or size of the local television sector held by individual broadcasters;

“Minister” means the Minister responsible for Communications;

“Ministry” means the Ministry of Communications;

“person” includes any company or association or body of persons, corporate or unincorporated, as the case may be;

“Principal Broadcaster” means a licensee who has acquired or obtained exclusive rights to broadcast a programme or an event prior to it being designated as an Event;

“special interest television service” means any television service which primarily focuses on a particular category of interests without payment of a subscription fee;

“subscription television licensee” means a person who is licensed under the Television Decree 1992 and provides subscription television services; and

“subscription television service” means a television service which is made available to the audience or viewers for whom it is intended upon the payment of a subscription fee.

*Application*

3. This Decree shall apply to all licensees in Fiji.

*Objectives*

4. The objectives of this Decree are to—

(a) ensure that Designated Events are broadcast on free-to-air television for the benefit of all Fijian viewers;

(b) enable and maintain fair market conduct and effective competition in Fiji’s broadcast media industry; and

- (c) ensure the availability of a comprehensive range of quality television services in Fiji.

## PART 2—DESIGNATION OF EVENTS

### *Designated Events*

5.—(1) The Minister may, following the approval of the Prime Minister, by notice in the *Gazette*, designate a programme or an event as a Designated Event.

(2) The Minister may amend the designation in this section in the same manner in which the designation is made.

### *Obligation to broadcast Designated Events*

6.—(1) Subject to section 15, all free-to-air television licensees must broadcast all Designated Events.

(2) Any free-to-air television licensee, including any Director or Chief Executive Officer, who contravenes this section commits an offence and shall be liable upon conviction to a fine not exceeding \$500,000 or imprisonment for a term not exceeding 10 years or both.

(3) For the avoidance of doubt, it shall not be mandatory for subscription television licensees to broadcast Designated Events.

### *Licensees to bid for rights*

7.—(1) Upon the designation of an Event under section 5, if no licensee has the rights to broadcast the Event, all free-to-air television licensees must make a combined bid to the owner or rights holder of the licence of the programme or event in order to acquire or obtain the rights to broadcast the Event.

(2) Unless directed otherwise by the Minister, all free-to-air television licensees must initiate discussions for the purposes of making a combined bid, at least 180 days prior to the date of the Event.

(3) A subscription television licensee who wishes to broadcast the Event must make a combined bid with the free-to-air television licensees in subsection (1).

(4) Any licensee, including any Director or Chief Executive Officer, who contravenes this section commits an offence and shall be liable upon conviction to a fine not exceeding \$500,000 or imprisonment for a term not exceeding 10 years or both.

### *Cost sharing for combined bid*

8.—(1) The amount to be paid by a free-to-air television licensee or a subscription television licensee, as the case may be, for the combined bid under section 7 shall be determined by the Ministry.

(2) The Ministry must, when determining the amount to be paid by a licensee under subsection (1), take into consideration the following—

- (a) costs incurred in obtaining the rights for the Designated Event;
- (b) costs incurred in sharing the feed amongst the licensees; and
- (c) licensee's market share based on an independent assessment organised by the Ministry.

## PART 3 — PRINCIPAL BROADCASTER

### *Principal Broadcaster to notify Ministry*

9.—(1) If the Minister has designated an Event under section 5, and there exists a licensee who has acquired or obtained exclusive rights to broadcast that Event, that licensee, to be known as the “Principal Broadcaster” must, within 2 days of the designation, notify the Ministry in writing of the exclusive licence held by the Principal Broadcaster.

(2) Any Principal Broadcaster, including any Director or Chief Executive Officer, who contravenes this section commits an offence and shall be liable upon conviction to a fine not exceeding \$500,000 or imprisonment for a term not exceeding 10 years or both.

### *Notification of Principal Broadcaster*

10. The Ministry shall notify all licensees in writing of the Principal Broadcaster for a Designated Event within 2 days from the receipt of any notice under section 9.

*Discussion with Principal Broadcaster*

11. Unless directed otherwise by the Minister, all free-to-air television licensees must initiate discussions and agree on the sharing of the feed of the Designated Event with the Principal Broadcaster, including any subscription television licensee who wishes to broadcast the Event within 7 days of receiving the notice from the Ministry under section 10.

*Obligation of Principal Broadcaster*

12.—(1) Notwithstanding section 11, the Principal Broadcaster must simultaneously share, without its advertisements, the live broadcast signal or feed, to all free-to-air television licensees and those subscription television licensees who wish to broadcast such Event.

(2) The Principal Broadcaster must ensure that the feed in subsection (1) for a Designated Event is made available, in its entirety, without any alteration and in an accurate and timely manner, for transmission to and reception by all free-to-air television licensees, including those subscription television licensees who wish to broadcast the Event.

(3) The feed under subsection (1) must be of the same technical quality as the feed that the Principal Broadcaster uses or is likely to use itself for the broadcast of the Designated Event.

(4) The Principal Broadcaster must not impose any restrictions on the ability of a free-to-air television licensee, or a subscription television licensee who wishes to broadcast a Designated Event to re-broadcast all or a portion of the feed under subsection (1).

(5) The Principal Broadcaster must provide reasonable technical or operational specification requested in writing by any free-to-air television licensee, including any subscription television licensee who wishes to broadcast the Event.

(6) Any Principal Broadcaster, including any Director or Chief Executive Officer, who contravenes this section commits an offence and shall be liable upon conviction to a fine not exceeding \$500,000 or imprisonment for a term not exceeding 10 years or both.

*Cost sharing with Principal Broadcaster*

13.—(1) Any licensee who receives the feed provided by the Principal Broadcaster under section 12 must compensate that Principal Broadcaster for the transmission of the feed, as determined by the Ministry.

(2) The Ministry must, when determining the amount to be compensated by a licensee to a Principal Broadcaster under subsection (1), take into consideration the following—

- (a) costs incurred by the Principal Broadcaster in obtaining the rights for the Designated Event;
- (b) costs incurred by the Principal Broadcaster in providing the feed to the licensee under section 12; and
- (c) licensee's market share based on an independent assessment organised by the Ministry.

(3) Any licensee, including any Director or Chief Executive Officer, who contravenes this section commits an offence and shall be liable upon conviction to a fine not exceeding \$500,000 or imprisonment for a term not exceeding 10 years or both.

(4) Notwithstanding subsection (1), a licensee shall bear—

- (a) its own cost for the broadcast of a Designated Event; and
- (b) all incremental costs directly incurred in providing its viewers with access to the Event.

**PART 4—LEAD BROADCASTER***Appointment of Lead Broadcaster*

14.—(1) If the Minister determines that it is not feasible to have more than one licensee at the site of the Designated Event, the Minister may appoint one licensee to be the Lead Broadcaster of that Event.

(2) If more than one licensee is broadcasting a Designated Event at the site of the Event, and another licensee wishes to broadcast the Event, the latter licensee may choose which former licensee is to simultaneously share, without its advertisements, the live broadcast signal or feed.

(3) The licensee who is chosen to share the live broadcast signal or feed under subsection (2) must ensure that the feed for the Event is made available, in its entirety, without any alteration and in an accurate and timely manner, for transmission to and reception by the licensee who wishes to broadcast the Event.

(4) Any licensee who receives the feed under subsection (3) must compensate the licensee who is chosen to share the live broadcast signal or feed under subsection (2), as determined by the Ministry.

(5) The Ministry must, when determining the amount to be compensated by a licensee under subsection (4), take into consideration the following—

- (a) costs incurred in obtaining the rights for the Designated Event;
- (b) costs incurred in providing the feed to the licensee under subsection (3); and
- (c) licensee's market share based on an independent assessment organised by the Ministry.

(6) Any licensee, including any Director or Chief Executive Officer, who contravenes this section commits an offence and shall be liable upon conviction to a fine not exceeding \$500,000 or imprisonment for a term not exceeding 10 years or both.

(7) Notwithstanding subsection (4), a licensee shall bear—

- (a) its own cost for the broadcast of a Designated Event; and
- (b) all incremental costs directly incurred in providing its viewers with access to a Designated Event.

*Obligation of Lead Broadcaster*

15.—(1) The Lead Broadcaster must simultaneously share, without its advertisements, the live broadcast signal or feed, to all free-to-air television licensees and those subscription television licensees who wish to broadcast such Event.

(2) The Lead Broadcaster must ensure that the feed in subsection (1) for a Designated Event is made available, in its entirety, without any alteration and in an accurate and timely manner, for transmission to and reception by all free-to-air television licensees, including those subscription television licensees who wish to broadcast the Event.

(3) The feed under subsection (1) must be of the same technical quality as the feed that the Principal Broadcaster uses or is likely to use itself for the broadcast of the Designated Event.

(4) The Lead Broadcaster must not impose any restrictions on the ability of a free-to-air television licensee, or a subscription television licensee who wishes to broadcast a Designated Event to re-broadcast all or a portion of the feed under subsection (1).

(5) The Lead Broadcaster must provide reasonable technical or operational specification requested in writing by any free-to-air television licensee, including any subscription television licensee who wishes to broadcast the Event.

(6) Any Lead Broadcaster, including any Director or Chief Executive Officer, who contravenes this section commits an offence and shall be liable upon conviction to a fine not exceeding \$500,000 or imprisonment for a term not exceeding 10 years or both.

*Cost sharing with Lead Broadcaster*

16.—(1) Any licensee who receives the feed provided by the Lead Broadcaster under section 15 must compensate that Lead Broadcaster for the transmission of the feed, as determined by the Ministry.

(2) The Ministry must, when determining the amount to be compensated by a licensee to a Lead Broadcaster under subsection (1), take into consideration the following—

- (a) costs incurred by the Lead Broadcaster in obtaining the rights for the Designated Event;
- (b) costs incurred by the Lead Broadcaster in providing the feed to the licensee under section 15; and
- (c) licensee's market share based on an independent assessment organised by the Ministry.

(3) Any licensee, including any Director or Chief Executive Officer, who contravenes this section commits an offence and shall be liable upon conviction to a fine not exceeding \$500,000 or imprisonment for a term not exceeding 10 years or both.

(4) Notwithstanding subsection (1), a licensee shall bear—

- (a) its own cost for the broadcast of a Designated Event; and
- (b) all incremental costs directly incurred in providing its viewers with access to the Event.

## PART 5—MISCELLANEOUS

### *Exemption*

17. The Minister may, upon receipt of an application in writing from a licensee, and following consultation with the Prime Minister, exempt the licensee—

- (a) from broadcasting a Designated Event; or
- (b) from broadcasting a portion of the Event,

if the Minister is satisfied that the broadcast of the Event is not commercially practicable for the licensee.

### *Directives*

18.—(1) The Minister may, from time to time, issue directives to a licensee to—

- (a) ensure that the licensee fulfils its obligations under this Decree;
- (b) improve the standards of service for the broadcast of Designated Events;
- (c) broadcast a Designated Event at specific times and in a specific manner;
- (d) provide the Ministry with any such documents or information in relation to any exclusive licence held by the licensee; and
- (e) safeguard the public interest in respect of the broadcast of Designated Events.

(2) A licensee must comply with a directive issued under subsection (1).

(3) Any licensee, including any Director or Chief Executive Officer, who contravenes this section commits an offence and shall be liable upon conviction to a fine not exceeding \$500,000 or imprisonment for a term not exceeding 10 years or both.

### *Regulations*

19. The Minister may make Regulations prescribing all matters necessary or convenient for carrying out or giving effect to the provisions of this Decree.

### *Certain decisions not to be challenged*

20.—(1) No Court, Tribunal, Commission or any other adjudicating body shall have the jurisdiction to accept, hear, determine or in any other way entertain any proceeding, claim, challenge or dispute by any person or body that seeks or purports to challenge or question—

- (a) the validity, legality or propriety of this Decree; and
- (b) any decision of any Minister or any State official or body, made under this Decree.

(2) Any proceeding, claim, challenge or dispute of any nature whatsoever in any Court, Tribunal, Commission or before any other person or body exercising an adjudicating function, in respect of any of the subject matters in subsection (1) that had been instituted before the commencement of this Decree but had not been determined at that date or is pending on appeal, shall wholly terminate immediately upon the commencement of this Decree, and any order whether preliminary or substantive made therein shall be wholly vacated, and a Certificate to that effect shall be issued by the Chief Registrar.

(3) Where any proceeding, claim, challenge, application or dispute of any form whatsoever, is brought before any Court, Tribunal, Commission or any other adjudicating body, in respect of any of the subject matters in subsection (1), the presiding judicial officer, without hearing or in any way determining the proceedings or the application, shall immediately transfer the proceeding or the application to the Chief Registrar, for termination of the proceeding or issuance of a Certificate under subsection (2).

(4) A Certificate under subsection (2) is, for the purposes of any proceeding in a Court, Tribunal, Commission or any other person exercising a judicial function, conclusive of the matters stated in the Certificate.

(5) A decision of the Chief Registrar to issue a Certificate under subsection (2) is not subject to challenge in any Court, Tribunal, Commission or any other adjudicating body.

*Consequential*

21. This Decree has effect notwithstanding any provision of any written law, and accordingly, to the extent that there is any inconsistency between this Decree and any other written law, this Decree shall prevail.

Given under my hand this 29th day of May 2014.

A. H. C. T. GATES  
Chief Justice