

BILL NO. 33 OF 2020

A BILL

FOR AN ACT TO AMEND THE TELEVISION ACT 1992

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

- 1.—(1) This Act may be cited as the Television (Amendment) Act 2020.
- (2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette.
- (3) In this Act, the Television Act 1992 is referred to as the “Principal Act”.

Long title amended

2. The Principal Act is amended in the long title after “TELEVISION” by inserting “AND CERTAIN ONLINE”.

Section 1 amended

3. Section 1 of the Principal Act is amended after “Television” by inserting “and Online Streaming”.

Section 2 amended

4. Section 2 of the Principal Act is amended by inserting the following new definitions—
- ““commercial gain”, in relation to broadcasting a live sporting event, means the receipt of payment from any person so that the person may view the live sporting event;”;
- ““live sporting event” means any live sporting event in Fiji;”;
- ““online streaming” means the transmission of data over the Internet for aural or visual reception;”;
- ““online streaming service” means a service that at any time broadcasts through online streaming a live sporting event for commercial gain;”.

Section 4 amended

5. Section 4 of the Principal Act is amended by deleting subsection (2A).

Part 2A inserted

6. The Principal Act is amended after section 9 by inserting the following new Part—

**“PART 2A—LICENCE TO BROADCAST THROUGH ONLINE
STREAMING**

Licence to broadcast through online streaming

9A.—(1) No person may broadcast through online streaming a live sporting event for commercial gain except under or in accordance with a licence granted under this Part.

(2) Every such licence is to be in such form and may contain such terms and conditions as the Minister may determine.

(3) In granting a licence under this Part, the Minister may require the licensee to pay a premium for the issue of the licence or such annual fee, rent or royalty as the Minister may determine.

(4) Any person who contravenes subsection (1) is guilty of an offence under this Part and, on conviction, is liable to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 3 years or to both.

Compliance with the Media Code of Ethics and Practice

9B. If a licensee is found to have breached the Media Code of Ethics and Practice under the Media Industry Development Act 2010, the Minister may, by notice revoke the licensee’s licence or vary the licence, provided however, that before making any decision under this section, the Minister must provide the licensee with such opportunity as determined by the Minister, to provide a written explanation as to why the licence should not be revoked or varied as the case may be.

Validity of licence

9C. A licence granted under this Part may be subject to conditions and may, unless sooner revoked or suspended, be valid for a period not exceeding 12 years

from the date of the granting or issue of such licence, or at any rate for such shorter period as may be specified in the licence.

Power of the Minister to vary, revoke or impose further conditions

9D.—(1) Subject to subsection (2), the Minister may, during the currency of a licence, by notice in writing to the licensee, vary or revoke any of the conditions upon which the licence is granted under this Part or impose further conditions.

(2) The Minister must give not less than 14 days' notice in writing of his or her intention to vary or to impose a further condition and must specify in the notice the variation proposed or the conditions to be revoked or imposed.

Revocation or suspension of licence

9E.—(1) Subject to subsection (2), the Minister may, by notice in writing to the licensee, suspend or revoke a licence granted under this Part where he or she is satisfied that one of the following grounds exists—

- (a) the licensee has failed to pay an amount as stipulated in the licence;
- (b) the licensee has failed to comply with the provisions of this Act;
- (c) the licensee is no longer a fit and proper person to hold the licence;
- (d) the licensee no longer has the financial, technical and management capabilities necessary to operate the online streaming service;
- (e) the licensee has failed to comply with any direction given by the Minister;
- (f) the licensee has failed to comply with the conditions specified in the licence; or
- (g) it is advisable in the public interest, for a special reason, to do so.

(2) The Minister must before suspending or revoking any licence under the provisions of subsection (1), give the licensee notice in writing of his or her intention to do so and calling upon the person concerned to show cause to him or her why such licence should not be suspended or revoked, as the case may be.”

Section 10 amended

7. Section 10 of the Principal Act is amended by—

- (a) in subsection (1) after “matter”, inserting “or live sporting event”; and
- (b) in subsection (2)—
 - (i) deleting “by telegram or”;
 - (ii) after “television station”, inserting “or online streaming service”;
 - (iii) after “any matter”, inserting “including a live sporting event”;
 - (iv) after “a station”, inserting “or service”; and
 - (v) after “the station”, inserting “or service”.

Section 11 amended

8. Section 11 of the Principal Act is amended after “station” by inserting “or a Fiji office of an online streaming service”.

Section 28A inserted

9. The Principal Act is amended before section 29 by inserting the following new section—

“Offence to engage unlicensed broadcasting station or online streaming service

28A.—(1) No person may engage the services of an unlicensed broadcasting station to broadcast any broadcast matter by television, or unlicensed online streaming service to broadcast a live sporting event through online streaming, as required under this Act.

(2) Any person who contravenes subsection (1) is guilty of an offence under this Part and, on conviction, is liable to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 3 years or to both.”.

Consequential amendments

10.—(1) The Media Industry Development Act 2010 is amended in section 21(2)(e) after “Television” by inserting “and Online Streaming”.

(2) The Television (Cross-Carriage of Designated Events) Act 2014 is amended in section 2 by deleting “Television Act 1992” wherever it appears and substituting “Television and Online Streaming Act 1992”.

August 2020

TELEVISION (AMENDMENT) BILL 2020

EXPLANATORY NOTE

(This note is not part of the Bill and is intended only to indicate its general effect)

1.0 BACKGROUND

- 1.1 The Television Act 1992 (**'Act'**) was promulgated in 1992 to provide for the control of television services and for related matters.
- 1.2 The Television (Amendment) Bill 2020 (**'Bill'**) seeks to amend the Act to provide for the mandatory licensing of online streaming services where such services broadcast live sporting events on a pay-per-view basis.
- 1.3 The licensing regime proposed under the Bill is intended to provide a necessary safeguard for the organisers of sporting events, by ensuring that persons who record such events in order to provide viewership to the public for commercial gain are required to formalise their activities.
- 1.4 Currently, if such persons are broadcasting events by television they must first hold a licence under the Act and purchase the rights to broadcast the event from the organisers of the event. However, the Act was promulgated in 1992 and did not envision the technological developments which are prevalent now, particularly the use of the Internet. Now it is possible for unscrupulous persons to record live events for commercial gain without a clear regulatory legal framework.
- 1.5 The Bill thus seeks to correct this mischief by formalising a new regulatory framework for online streaming of live sporting events, in alignment with the current framework for television broadcasts under the Act.
- 1.6 The Bill also seeks to amend the Act to remove the current requirement that television broadcast stations hold a spectrum licence issued under the Regulation of National Spectrum Act 2009 (**'Spectrum Act'**).

2.0 CLAUSES

- 2.1 Clause 1 of the Bill provides for the short title and commencement. If passed by Parliament, the amending legislation will come into force on a date or dates appointed by the Minister by notice in the Gazette.

- 2.2 Clause 2 of the Bill amends the long title of the Act to extend the application of the Act to certain online services.
- 2.3 Clause 3 of the Bill amends section 1 of the Act to change the short title of the Act to the ‘Television and Online Streaming Act 1992’.
- 2.4 Clause 4 of the Bill amends section 2 of the Act to provide the definitions of terms used in the Act.
- 2.5 Clause 5 of the Bill amends section 4 of the Act by deleting subsection (2A) which requires television broadcast stations to hold a spectrum licence issued under the Spectrum Act. The Spectrum Act requires television broadcasting stations using analogue signals to hold a spectrum licence which allows them to broadcast within their allocated range of the national spectrum. However, the Fijian Government has made it mandatory, as part of the digitalFIJI initiative, for television stations to begin transitioning to a digital platform which is more cost effective and allows for greater picture quality. On a digital platform such stations would not need to hold their own spectrum licences and as such, clause 4 of the Bill seeks to amend the Act to allow for this transition.
- 2.6 Clause 6 of the Bill amends the Act to insert a new Part 2A dealing with licences to broadcast by online streaming. The new Part consists of sections 9A to 9E which set out the requirement that a person intending to broadcast a live sporting event for commercial gain must first hold a licence under the Act. Part 2A also requires the licensee to comply with the Media Code of Ethics and Practice under the Media Industry Development Act 2010, sets out the licence term as up to 12 years and empowers the Minister to vary, revoke or suspend a licence.
- 2.7 Clause 7 of the Bill amends section 10 of the Act to extend the regulatory power of the Minister over matters broadcast via television to the online streaming of live sporting events.
- 2.8 Clause 8 of the Bill amends section 11 of the Act to provide that an online streaming service which must be licensed under the Act must be open to inspections to ensure compliance with the Act. This requirement currently applies to television broadcasting stations and is being amended to include online streaming services.
- 2.9 Clause 9 of the Bill amends the Act to insert a new section 28A which sets out an offence for any person to engage an unlicensed television station or online streaming service to broadcast any broadcast matter or live sporting event.
- 2.10 Clause 10 of the Bill consequentially amends the Media Industry Development Act 2010 and the Television (Cross-Carriage of Designated Events) Act 2014 to reflect the change to the title of the Act.

3.0 MINISTERIAL RESPONSIBILITY

3.1 The Act comes under the responsibility of the Minister responsible for television.

A. SAYED-KHAIYUM
Attorney-General