

9TH ATTORNEY-GENERAL'S CONFERENCE 2007

**Address by Ms Premila Kumar, Chief Executive Officer of the Consumer Council of Fiji
on Consumer Empowerment and Consumer Protection: Where Do We Stand?**

30 November 2007 at the Shangri-La Resort, Sigatoka.

The Attorney General, Mr. Aiyaz Khaiyum
The Solicitor General, Mr. Pryde
Distinguished Judges
Members of the Legal Fraternity
Ladies and Gentleman

It is my pleasure to be here today to share with you my thoughts on **Consumer Protection** and **Consumer Empowerment**. My thoughts are based on my first hand experience in handling consumer complaints within the ambit of several consumer protection agencies and consumer protection laws that are currently in existence.

An average consumer in Fiji has been noted for his or her patience and tolerance. We all have experiences to share as consumers of products and services. Can you recall the incident when you bought a TV set or a household appliance which failed to function or your bank statement was sent to a wrong address or your roof was still leaking after paying off the carpenters or buying food items which were already expired?

Because Fiji consumers are passive, they consider the receipt of defective goods and poor services as an act of fate or unfavorable planetary position in their horoscope or wondering whose face you saw first thing in the morning that caused such problems. We tend to blame ourselves although in reality we are being given a run around by dodgy traders and service providers.

In this session, I wish to highlight that Fiji with the current policy framework is contributing very little towards consumer protection and consumer empowerment. It is rather paradoxical that the consumer is described as the "king" but in Fiji he/she neither wears a crown nor has a scepter to protect him or herself from the unscrupulous traders and the service providers. The traders and service providers all over the world, including Fiji are generally well organized and have formed strong organizations and associations to protect and safeguard their interests.

The consumers on the other hand, continue to be exploited by the rogue traders. This is because:

- Consumers are disorganized and are unaware of their rights; or
- the consumer protection agencies that should assist them fail to provide the assistance as expected; or

- the redress mechanism is limited or unavailable in some instances such as under Fair Trading Decree and other alternatives are expensive; or
- there is an absence of competent and swift machinery for enforcement of existing laws.

In this day and age there is no importance given to consumers in Fiji who are an important player along with the traders in any market place. Traders and consumers have symbiotic relationship. That is, one cannot do without the other. Unfortunately, the word “consumer” is not even mentioned in the name of the government ministries unlike the words ‘trade’ and ‘commerce’. So from the start consumers are not on the equal footing with the traders although consumers are theoretically perceived as powerful players in the market and considered being right all the time.

I will argue that consumer protection and empowerment can address many of the obstacles faced by consumers provided there is a “*one stop shop*” for the consumers to take their grievances for redress or remedy. As a matter of choice, there should be a simple, inexpensive redress mechanism outside the domain of the enforcement agencies.

My presentation is in four parts.

Firstly, I shall briefly highlight the systems and processes that are in place for consumer protection and empowerment. Secondly I shall highlight the nature of complaints received by the Council with some statistical information. Thirdly, I shall mention certain difficulties faced by consumers in seeking redress and finally, I will suggest the way forward for Fiji to create a fair marketplace for the consumers.

Current system and processes for consumer protection and consumer empowerment

- **Consumer Protection Agencies**

There are about 7 state agencies involved in consumer protection. These are:

1. Consumer Council of Fiji;
2. Prices and Incomes Board;
3. Weights and Measures Department;
4. Department of Fair Trading and Consumer Affairs;
5. Commerce Commission;
6. Fiji Trade Standard and Quality Control Office; and
7. Small Claims Tribunal (SCT).

Out of these, all are enforcement agencies with the exception of the Consumer Council of Fiji. In particular, SCT provides inexpensive consumer redress whereas the Consumer Council acts as a watchdog and it exerts pressure to create a fair and just delivery of goods and services.

There are also a number of Non-State Agencies involved in consumer protection and empowerment. These are:

1. Fiji Consumer Association;
 2. Fiji Media Council; and
 3. Other Industry Bodies that ‘self-regulate’ (e.g. Medical, Legal)
- **Consumer Protection Laws**

There are more than 15 different (specific and general) pieces of legislations, which purport to directly or indirectly protect the rights of the consumers. These are:

Organization	Number of Legislation	No of Staff	Budget (2007)
Specific laws			
Commerce Commission	Commerce Act plus section 54 of the Fair Trading Decree	7	\$466,000
Prices and Incomes Board	Counter Inflation Act	47	\$1,240,000
Consumer Council of Fiji	Consumer Council Act	20	\$ 569,000
Department of Fair Trading and Consumer Affairs • Weights and Measures Department • Fiji Trade Standard and Quality Control Office	<ul style="list-style-type: none"> • Sale of Goods Act • Trade Standard & Quality Control Decree • Fair Trading Decree • Second Hand Dealers Act • Consumer Credit Act • Real Estate Act-2007 • National & Trade Measurement Decree 	23	\$1,148,000
		97	\$3,423,300
General laws			
Rural Local Authorities (Ministry of Health) and Municipal Councils	Pure Food Act		
Municipal Councils AG’s Office	<ul style="list-style-type: none"> • Fair Rents Act • Money Lending Act • Distress of Rent Act 		
Small Claims Tribunal	Small Claims Tribunal Decree		

From the various legislations, it can be drawn that allocation of resources do not justify the nature and latitude of work assigned to each consumer protection agency. For example, PIB has 47 staff with a budget allocation of \$1.2million to monitor the price of 23 food items and 14 non-food items stipulated in the Act, which are under price control. PIB also conducts price determination of few products as well as regulates rent increases. On the other hand, Ministry of Commerce, Industry, Investment and Communication enforce 7 pieces of legislation with 23 staff and with a budget allocation of \$1.15million.

The Consumer Council in contrast, runs three offices located in Suva, Lautoka, and Labasa and pays 20 staff in a limited budget of just over half a million dollars. Given

that this is a modest budget, merely covering administration costs (including staff emoluments), the Council has to be resourceful and approach donor-agencies for supplementary funding to effectively deliver its services, particularly where education of consumers is concerned.

In addition, there are other legislations such as Fair Rents Act and Money Lending Act which also have consumer protection provisions. However, these laws are vague where enforcement is concerned. Although these legislations state that the Attorney-General's Office is the body responsible to regulate these laws, it cannot be properly ascertained who should administer or enforce these legislations for consumer protection,

Consumer Empowerment

Consumer information and education is the key to consumer empowerment. The Council has made good progress by engaging consumers on topical issues in order to strengthen and mobilize a sound consumerism in Fiji.

Consumer Education & Awareness

There are a number of activities undertaken by the Council under its advocacy program to educate our consumers such as:

- Consumer education in schools for 2007 - A total of 35 school visits were made based on requests from schools. Involving some 9,672 students and 209 teachers.
- Dissemination of resource materials to school libraries – 120 school kits containing brochures, posters, cola or coconut book and newsletters were prepared and distributed specifically to rural schools in the Macuata, Cakaudrove, Naitasiri areas including schools in Rabi and Rotuma;
- Production of 4000 copies of Consumer and the Law Book in-conjunction with the Curriculum Development Unit of MOE for schools funded by AusAID.
- Community-based workshops were conducted around Fiji to generate interest on consumer issues. Five workshops were conducted this year.
 - Labasa – 100 participants
 - Savusavu- 31 participants
 - Ba – 122 participants
 - Nausori – 72 participants
 - Sigatoka – 100 participants
- 34 Community visits were made based on requests for consumer education and information.

- The Council has set up a mobile unit in 5 areas (Sigatoka town, Tavua, Rakiraki, Nadi and Keiyasi) to reach out to rural communities and to gauge, first hand, the problems faced by consumers.
- Most recently, the Council conducted a 3-day workshop on the review of Consumer protection legislations funded by AusAID.

Consumer Information Programmes

Some examples of consumer information activities are:

- **3 advertisements on radio** – on the topics:
 - ‘Consumers should lodge their complaints’;
 - ‘Consumers should collect receipts for purchases’; and
 - ‘Advice on hire purchase’.
- **742 paid and unpaid** radio programmes were aired. During the year, 248 different consumer issues were highlighted through radio programmes.
- **Print Media-** A total of **256** articles were produced in the year: thirty five **(35) Fijian**; twenty eight **(28) Hindi**; and one hundred and ninety one **(191) English**. This is approximately **25 articles per month**. 228 different consumer issues were covered by the print media.

Consumer Advocacy Project

Under this project, the Consumer Protection Laws were analysed into non-technical (layman’s) language so that consumers can better understand their rights and responsibilities. The Council intends to mount a vigorous awareness-raising campaign on financial literacy and trade practices.

Research and Submission

We conduct research to generate information that is used for consumer awareness and for policy-building and change. A total of nine major research were conducted by the Council including, some 50 complaints-driven researches were conducted to gauge consumer response and issues. The Council also made ten submissions on behalf of the consumers relating to price increase or impacting policy or legislative change.

Nature of complaints received by the Council

Responding to consumer grievances has been a major engagement of the Consumer Council of Fiji since it opened its doors to the public some 30 years ago. The function of complaints handling was removed from the Consumer Council Act in 1992 by Decree No. 23 to create institutions like the Department of Fair Trading and Consumer Affairs. The amendment deleted these functions:

- Conducting research and investigations
- Undertaking the examination and testing of goods and Services
- Receipt of complaints from consumers

Despite the removal of these functions, the Council receives complaints from consumers either by phone, in person, e-mail or by letters. From 2008, the consumers can also lodge complaints through an on-line system.

From January to September 2007, the Council registered 1118 complaints out of which 564 cases were solved through mediation; 158 cases were referred to the Small Claims Tribunal; 93 cases were referred to other organization; and 86 cases lacked evidence such as written contract, receipts.

The Council received maximum complaints on landlord tenancy issue; followed by fancy goods such as jewellery and watches; tools, equipment and spare-parts; utilities and clothing and footwear.

Analysis of Complaints Based on Issues

	ISSUES	NUMBER OF CASES
1	Clothing / footwear	64
2	Motor vehicle & other transport	35
3	Tenancy	209
4	Building & construction	33
5	Financial services	23
6	Food / beverage / tobacco	48
7	Contracts / consultancy	15
8	Advertising	25
9	Real Estate	60
10	Tools / equipments / spare parts	76
11	Restaurants / tourism	21
12	Commercial schools	6
13	Hire purchase	48
14	Packaging / labeling	32
15	White goods (electrical appliances)	40
16	Stationary	18
17	Fuel / petrol / gas	19
18	Fancy goods (watches / jewelry)	108
19	Utilities (water/electricity / telecommunication)	77
20	Other issues	142

The Council, on average receives **124 complaints per month**, out of which, **50%** of the cases have been successfully resolved through mediation. **217 cases** could not be referred to SCT because the sum involved was more than \$2,000, however, this has been addressed by the new increase by the AG's office to \$5000.00 claim limit.

Despite having the current systems and processes in place, the Council continues to register a significant number of complaints.

Difficulties faced by Consumers When Seeking Redress

Many a times, consumer's complaint may involve a negligible sum but its impact on the society, as a whole, may be very substantial.

There are a number of problems faced by the consumers when seeking redress.

- The Department of Fair Trading & Consumer Affairs argues that they have inadequate enforcing powers to take matters to court, which is probably the reason why we do not hear of any major consumer protection litigation being instituted despite we have so many issues needing urgent attention, e.g. the recent pyramid scheme case of the SDM.
- The traders and service providers know the monetary restriction placed on SCT which was \$2,000. The consumers had no option but to engage legal services or abandon the case because the cost of legal fees was much higher than the sum to be recovered.
- The consumers in Vanualevu are denied the services of the SCT, which is yet to open its doors to the public. The cost of travel for the consumers from Labasa to file their case in Suva and attend hearing outweigh the amount in dispute. The consumers in the outer islands are similarly affected.
- Consumers are unable to exercise their rights due to ineffective consumer redress systems currently in place. Consumers who are dissatisfied with the decision of SCT normally get their cases referred to the Magistrates Court. e.g. a consumer bought 25 meters of velvet material to recover the settee. No apparent defect was noted at the time of purchase. The material was cut by the upholsterer from the bail and he noticed distinct colour damage throughout the bail. Based on the nature of damage the buyer sought refund from the seller, who denied. The case ended up at the SCT. Refund was denied by the SCT on the basis that the velvet material had been cut up for sewing. The case was then referred to the Magistrates Court because the consumer was dissatisfied. Unfortunately, the presiding Magistrate made a decision **that it cannot go against the decision of the referee at the SCT**. Now, this raises serious concerns on the operation of the judiciary as the SCT Decree is explicit in stating that an appeal can be made to Magistrate's Court.
- It is unfortunate that while the consumers in the neighboring countries such as Australia and New Zealand are availing facilities to seek redress of their grievances in the tribunals functioning under the Consumer Protection laws, we are still awaiting the birth of institutions competent to provide relief to the consumers. Consumers question our institutions when they hear enforcement agencies take cases to court for ripping off our consumers. A good example is Air New Zealand was ordered to pay \$600,000 in fines and nearly \$65,000 in costs after the Commerce Commission prosecuted the airline for misleading customers about the

real price of its airfares. The advertisements were held to be misleading in that they did not fully or clearly disclose the true cost of the airfares. Unlike NZ, the consumers in Fiji are still waiting for a single success story.

- The culture of consumer protection in Fiji is through reversed psychology – for example, consumers in Fiji purchase goods along with the warning sign that states **"items once sold will not be returned"**, which is unethical, illegal and unilateral declaration. Whereas in other developed countries the trader declares, **"In case you are not fully satisfied with our product, you can bring the same to us within a month for either replacement or refund"**.

The current Fiji regulatory landscape for consumer protection is very complex. Duplication of provisions in different consumer protection laws managed by different consumer protection agencies must go, as laws are mutually contradictory and very confusing. There is no organised and systematic framework actually safeguarding the interests of the consumers. For example:

Sales of Goods Act	<ul style="list-style-type: none"> • Auction • Unsolicited Goods and Service • Contract for sale
Fair Trading Decree	<ul style="list-style-type: none"> • Unsolicited Goods and Service • Mock Auctions • Refuse to sell • Hoarding • Promotes Competition
Commerce Act	<ul style="list-style-type: none"> • Promotes Competition • Price Control
Consumer Credit Act	<ul style="list-style-type: none"> • Contract for sale
Counter Inflation Act	<ul style="list-style-type: none"> • Price Control • Refuse to sell • Hoarding

Where cost is concerned, there are various agencies administering similar functions thus duplicating duties and responsibilities, which is avoidable through proper planning and strategizing enforcement mechanisms. Given Fiji’s scenario, this means that the organizational functions and objectives are so fragmented, particularly in the administration and enforcement areas that CPAs lose the real focus and essence of consumer protection through a confused state of affairs. In the end, no-one agency is able to uphold consumer protection in its entirety. The end result is a vicious cycle of consumer abuse, neglect, discrimination and unethical trader practices flourishing in our so-called *free market-place* at the expense of our consumers.

The Way Forward for Fiji to create a fair marketplace for the Consumers

Obviously, the outdated regulatory, administrative, enforcement and redress mechanisms as seen currently in Fiji necessitate the critical need to reform and strengthen consumer protection regime.

In 1997 at an International Conference on Consumer Protection held in Malaysia, the Indian Consumer Protection Act was described as one: "*which has set in motion a revolution in the fields of consumer rights, the parallel of which has not been seen anywhere else in the world.*"

This was acknowledged by the non government consumer protection agencies.

Why?

India has a comprehensive legal framework, consolidating all consumer-related issues, laws and enforcement under one umbrella of Consumer Protection Agency (CPA). This is a one-stop agency which controls all aspects of consumer rights and protection including assistance to consumers through alternative dispute resolution process for grievance management. In conjunction to this, India has a separate system (a Consumer Court structure) that deals with redress and compensation issue.

Most developing countries are facing the problem of poor or lack of enforcement of the legislations, which are in the hands of the civil servants i.e the state institutions. However, India managed to deal with the issue of poor enforcement by setting up three-tier quasi-judicial machinery popularly known as "consumer courts" at national, state and district levels. A consumer is not at the mercy of the enforcement agencies but is able to seek redress through the consumer court system.

For your reference, **India - Consumer Protection Act 1986** has:

- Four chapters and a total of 35 sections.
- There is a national and state level Consumer Protection Councils, consumer disputes redress forums at the National, State and District level.
- The Consumer Protection Councils undertake studies of consumer policy and law and advice the government.
- The provisions for consumer redress i.e. the redress forums, class actions and for recognized consumer associations to act on behalf of consumers.
- It awards compensation wherever appropriate.
- The Act was amended in 2003 which introduced sale of the property of a person not complying with an order. Proceeds from such sale may go to pay the damages of the aggrieved consumer.

CONCLUSION

I have identified problems with our Consumer Protection and Empowerment provisions, which are:-

- Consumer protection legislation are not being enforced;
- Enforcement agencies overlap and cause confusion;
- Consumers cannot exercise their rights because there is no effective consumer redress system; and
- Information and resources on consumer protection laws are not easily available in a language that consumers understand.

However, it has also been widely recognised that fate of the consumers cannot be left to sheer market forces. Consumer empowerment and protection in Fiji has a long way to go. The government must form a **single consumer body** with a comprehensive consumer protection law to ensure a solitary, coherent, voice for the consumers.

Finally, Ladies and Gentleman I am grateful for the opportunity to address these issues at such an important forum. The law-makers, judges, lawyers and similar professionals are all gathered here today to listen to a non-legal person (as myself) to make a plea in her ordinary language to understand the plight of the poor and disadvantaged consumers and **listening** is a good start as far as reform is concerned.

Vinaka, Dhanyabad and Thank you