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**Consumer Council of Fiji Insurance Forum**  
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It is a pleasure to be here.

I would like to acknowledge the Attorney General, Minister for the Economy and Acting Prime Minister The Hon Aiyaz Sayed-Khaiyum

It is an honour to share the stage with you today.

I would also like to acknowledge my colleague Premila Kumar, who sits on the Council of our global organisation, Cosnumers International, ensuring that the interests of Fijian consumers are represented on the world stage.

We are very pleased to work in partnership with the Consumer Council to address common issues across Fiji and Australia, particularly where there are companies doing business in both countries but treating consumers differently.

Like the Consumer Council, we think the best way to help consumers is for consumer organisations, government and businesses that are doing the right thing to work together. We have a shared interest in striking out bad business practices. That is in everybody's interest.

I want to say at the start that I am not here today to pretend to be an expert in the insurance market of Fiji, or the Fijian regulatory system.

All I hope to do is explain a few things about how we go about insurance regulation in Australia, some of the changes we have made, and what I think works well, in the hope that it helps you to identify some ways in which consumers in Fiji could be better protected.

I will discuss insurance regulation in general but use a few examples that are relevant to the particular issue being discussed here today, which is property insurance.

Our current system of regulation in the financial sector, including insurance, dates back to the late 1990s.

Until that time, consumer protection in banking and insurance was seen as similar to consumer protection in other industries.

In 1997, however, a major review of the financial system – the Wallis Inquiry – was handed down.

The Wallis Inquiry recommended a specialist corporate and financial services regulator, the Australian Securities and Investments Commission (ASIC) be established, separate to the bodies responsible for monetary policy and prudential regulation.

In explaining the reasons for this recommendation, the report of the Wallis Inquiry said:

*In the financial system, specialised regulation is required to ensure that market participants act with integrity and that consumers are protected. The financial system warrants specialised regulation due to the complexity of financial products, the adverse consequences of breaching financial promises and the need for low-cost means to resolve disputes.*

The Federal Government agreed with this recommendation and in 1998, it passed into law.

The system of regulation was again reviewed in the next major review of the Australian financial system. The Murray Inquiry—completed in November 2014—found this approach to be robust, and general serving consumers well.

I should also say that there was lots of support from industry for continuing this approach—while industry bodies had various suggestions about how ASIC could do things differently, the consensus view was that the overall approach to regulation was a good one. In general, industry sees benefit in having a specialist regulator that employs some staff who have worked in the financial sector and understand its products.

From our perspective as a consumer organisation, we also think this system works well. As well as employing staff from industry, ASIC employs staff with a background in consumer protection, so there is a balance of expertise. The current Deputy Chair of ASIC, Peter Kell, is a former CEO of my organisation, CHOICE.

It is clear to us who to complain to when we see problems emerging, and ASIC's work is closely scrutinised by our parliament. ASIC officials are often interrogated by parliamentary committees about whether they are doing enough to protect consumers.

One recent example shows how well this approach is working for everyone.

One of our colleagues in the consumer movement, a legal service called Consumer Action, identified that consumers were being sold life insurance through used car dealers.

Just think about it – do you think it's a good idea for somebody who sells you a used car to also be pushing a complex product like life insurance?

As you might expect in this situation, Consumer Action had many consumers coming to them who had been sold life insurance products they didn't understand.

They raised the issue with ASIC and ASIC did an investigation.

The report of this investigation *The sale of life insurance through car dealers: Taking consumers for a ride*, was released in February.

It found that life insurance sold through car dealers is often substantially more expensive than comparable life insurance products, provides very low claim payouts relative to premiums, and is sold by car dealers who are paid high commission by insurers on sales. Consumers often feel pressured to buy the insurance as an add-on, and don't understand what they are getting.

ASIC used the report process to start talking to the industry, so by the time it released the report publicly, ASIC was already able to report that some insurers had already committed to changing their pricing, and were reviewing the design of their products so that they delivered better value. Some life insurers had also notified ASIC that they intend to review the practice of selling life insurance products through car dealers.

This shows all of the examples of a good specialist regulatory system working well—consumer organisations are identifying issues, they are raising them with the regulator, and the regulator is working with industry to fix the major problems. All of this without any formal enforcement or court action—so the cost to the government is very small.

In another example more relevant to today's discussion, in 2014, ASIC released two reports into the home and contents property insurance market. This followed a number of natural disasters – cyclones and floods – that struck large parts of Australia in 2011.

One of these reports reviewed the sales practices of insurers and the other was based on research of how consumers experienced the process of buying insurance.

They made a number of recommendations but the core theme was that insurers needed to do more to help consumers—that consumers were struggling to understand the detailed product disclosure statements, had trouble working out how much insurance they needed and were making decisions on price rather than what they actually needed.

ASIC said that it was not enough to simply provide detailed information. ASIC also made it clear that it would be monitoring insurers practices after the release of the reports.

What these examples also demonstrate is the power of ASIC to focus on systemic issues. Individual complaints highlight where there is a broader problem, and ASIC takes action with the objective of not just fixing the individual problems, but preventing other consumers from having the same problem in the future.

This is something that I think it is hard to achieve without having a specialist regulator that has strong stakeholder relationships (with consumer groups and industry), and knows the products well enough to be able to identify systemic issues.

The government also depends heavily on ASIC as a specialist regulator. When we had problems with affordability of property insurance in northern Australia following a major cyclone, the government looked to ASIC to help provide information to consumers on which companies provided insurance and how their prices compared.

I recognise that it is a big thing for a country like Fiji to consider setting up a specialist regulator—and I am sure that one of the questions that would immediately be asked is 'who would pay'.

This is an issue that we have also had to grapple with in Australia. ASIC does not always have the resources it needs to do its job, and its funding has been cut in recent years as the government was attempting to balance the budget.

Currently, ASIC is funded through general revenue; the Federal Government allocates a budget to ASIC annually.

But this is all about to change.

The Federal Government is currently considering an industry funding model for ASIC. This was recommended by the Murray Inquiry that I mentioned earlier and has been the subject of an extensive consultation process involving industry and consumer groups.

In explaining why it supports this model, the government has said that an industry funding model for ASIC would:

ensure that the costs of the regulatory activities undertaken by ASIC are borne by those creating the need for regulation (rather than all taxpayers)

This is a really important point. To put it simply, the cost of regulation depends on how well businesses are complying with the law. If there is strong compliance, there is limited need for investigations or enforcement. If there is poor compliance, the costs will go up—but these costs should not be borne by the taxpayers. They should be borne by business. And the greatest costs should be borne by the businesses that are performing the worst.

Having a well designed industry funding model creates incentives for compliance to improve, meaning less lost money for consumers, and lower costs of regulation over time.

The cost to the taxpayer is zero. And the costs to industry are relatively small as well, when they are spread across the entire sector.

This is not a unique idea—financial regulators are industry-funded in a great many countries—including the UK, New Zealand and the United States.

And just as the model is broadly accepted in those countries, it has broad support in Australia, including from most major industry groups. While the Insurance Council does not support the industry funding model, it is the odd one out—the other major banks like the Australian Bankers Association and the Financial Services Council made supportive submissions..

Our organisation, CHOICE, supports it as well, as long as it is done in a way that protects ASIC's independence and ensures that it has adequate funding, with certainty into the future.

While the details are still being worked out, we expect to see this model introduced in the next year.

The role of ASIC as a specialist regulator is not, however, the only feature of our system that ensures consumers are protected effectively.

The other key body, which plays a complementary role to ASIC, is our Financial Ombudsman Service.

The Financial Ombudsman is an example of the Australian model of what we call External Dispute Resolution or EDR.

This is a model where we aim to help disputes to be resolved as quickly and as cheaply as possible, with industry backing.

FOS is an independent body, established under a code.

The code must be approved by ASIC, and ASIC has strict guidelines about the way the code is developed or reviewed. These include the requirement that stakeholders, including consumer advocates, are consulted.

Implementation of the code is the responsibility of the FOS Board. It consists of equal numbers of consumer representatives and industry representatives, with an independent chair.

This is a strong governance model, supported by consumers and industry.

The role of FOS is to resolve disputes quickly and efficiently, providing a cheaper alternative than going to court. The FOS service is free of charge for applicants (consumers). As well as insurers, FOS covers a number of other types of financial businesses, including banks and debt collection agencies.

Before FOS can consider a complaint, it has to have been considered as part of the insurer's internal dispute resolution service—so the consumer has to complain to the insurance company first.

But FOS makes this easy—if the consumer goes to FOS first, FOS simply refers it to the insurer and then tracks it to make sure the insurer takes action. The insurer has 45 days to resolve the dispute directly with the consumer.

When a complaint isn't resolved by the insurer, FOS can use a range of dispute resolution methods including negotiation or conciliation.

If the dispute can't be resolved by agreement, then FOS can make a decision. The applicant or consumer has 30 days to accept the decision—if the consumer accepts it, it is binding on both parties. If the consumer does not, it is not binding, and the applicant can take other action, including going to court.

The important features of this process are that it tries to encourage resolution by agreement, it is fast, and it is cheap.

But even if it is cheap, you must once again be wondering about who pays for all of this. And I think this is one of the most important and powerful features of the model.

FOS is funded by industry—through a combination of member fees (costs for a financial service provider to become a member of the scheme) and case fees for each complaint received, with price increasing depending on the nature and complexity of the complaint. The bulk of FOS's funding comes from these case fees.

This means that there are strong incentives on industry to handle complaints effectively—or to avoid them all together. The less complaints they receive, and the less that go on to FOS, the less the costs to the insurer.

There is no cost to government in this scheme (other than ASIC's role in overseeing it).

There are no costs to the consumer.

And it is a very low-cost model for industry, because it is much faster and cheaper than court or tribunal processes. That's why although banks or insurers may not sometimes like the individual decision of FOS, they support this model—because they know that it is cheap and rewards good behaviour.

## CONCLUSION

In summing up, I understand that regulation has to be different in every country—it has to recognise cultural differences, economic differences, differences in the size and distribution of the population.

So I do not believe that you could simply copy the Securities and Investments Commission or the Financial Ombudsman Service and drop them into the Fiji system.

But I hope that some of the key themes from our experience are useful: that there is great value in having specialist regulators who focus on consumer protection in the financial system—this is good for consumers, good for industry, good for government.

And that there can be a role for industry funding, so that the costs of regulation don't all fall to the government to cover, but instead fall upon those who create the need for regulation. This approach can also win the support of good players within the banking and insurance industries.

But in closing I would also say that it is particularly important to focus on good regulation in insurance.

People buy insurance so that they know they will be looked after when something big goes wrong, at a time that they may be vulnerable.

The very nature of insurance means that you pay money in advance, often for many years, perhaps without ever making a claim. But because of this, if you do need to make a claim, you expect that you will receive some return on all of the premiums that have been paid.

Insurance is also a highly technical product, with terms and conditions that are extremely difficult for the average person to understand, even if they are highly literate. This means that the power imbalance between consumers and insurance companies is very great.

All of these factors mean that it is important that the insurance sector works well for consumers. People need to have confidence that they will be treated fairly if something goes wrong, and that if they feel they have been treated unfairly, they will have access to a fast, affordable and effective complaints mechanism.

It is encouraging to see how many people were interested in coming together today to discuss how to make the insurance market work better for consumers. I hope that some of my thoughts today will help you to do so.