



CONSUMER COUNCIL OF FIJI

**A SUBMISSION ON
FOOD ESTABLISHMENT
(GRADING) REGULATIONS 2011**

SEPTEMBER 2011

COMMENTS/SUBMISSION ON FOOD ESTABLISHMENT (GRADING) REGULATIONS 2011

1.0 Introduction

Consumer Council of Fiji welcomes the drafting of the *Food Establishment Grading Regulations 2011* and is equally pleased to be part of the consultative process that is geared towards ensuring the new system is effective and successful. The Council had initiated the idea and persistently lobbied for a restaurant grading system in response to consumer complaints against unhygienic restaurants and the potential health and safety risks posed by poorly regulated eateries and food vendors. The Council has been lobbying for some four years for a restaurant grading system to protect consumers and uplift the standard of foods and restaurant services in Fiji, especially with the shift in consumer behavior towards the “eating out” culture as opposed to home meals. The Council commends the initiative of the Ministry of Health to establish the restaurant grading system via the regulations and its work on the supporting environment such as training of staff for the effective administration of this system.

2.0 Consumer Council’s role

The Council is obligated to discharge its functions as outlined in the Consumer Council of Fiji Act which amongst other things includes taking appropriate action to ensure that the interests and rights of consumers of goods and services are promoted and protected. Food Security and Food Safety are core focus areas of the Council’s work. All consumers have the right to safe and quality food. The Council has set itself courses of action to protect this right and these are amongst other things: promoting food security and improved food access; promoting information strategies that support informed choices; ensuring that food is safe and correctly represented in accordance to food safety laws; requiring clear and explicit labeling of irradiated food, genetically modified food and other food of concern to consumers.

2.1 Consumer Complaints

The Council is the first point of contact for complaints against restaurants. Consumer complaints regarding the unhygienic conditions of many restaurants in the towns and cities around the country continue to be of growing concern. Restaurants preparing and serving food in unhygienic conditions are compromising consumers’ health by giving leeway to food borne illnesses.

While the Ministry of Health’s Food Unit is the responsible agency for our food safety laws, in the eyes of the majority consumers the Consumer Council is where food complaints go to. And the Council has accepted this responsibility without question. Apart from consumer complaints against restaurants, the Council’s market surveillance regularly finds problems such as: food kept in wrong temperature; unsafe food handling practices such as serving food like root crops with bare hands; dirty tables and floors with visible insect and bird droppings; deplorable conditions of wash area and toilet facilities; sale of stale or leftover food; chipped crockery and poor personal hygiene of cooks and waitresses. The potential health risks, apparent lack of consumer protection and quality concerns were some of the primary

motivations behind the Council’s lobbying for a restaurant grading system. The Council also felt that while Fiji has made efforts to harmonize its food standards with international trends, there was a persistent gap in standards and enforcement in the restaurant sector.

3.0 Comments on the Regulations

The Consumer Council wishes to make the following points to be considered by the Ministry of Health to address what we see as potential gaps or areas that can be improved to strengthen the regulations. The areas covered here are only those areas that the Council thinks should be reviewed or clarified. Those sections or areas where the Council has not commented on are deemed to be taken as an assent on our part.

3.1 Purpose

We suggest the purpose of the Regulations should be clear. For example:

“The purpose of the Regulation is to safeguard public health by implementing the grading of food establishments in Fiji to ensure consumers food is safe, premises clean and presentable.”

3.2 Need to include **Food Establishments that is not covered** by the Regulation. For example:

- Private homes that prepares food parcel offered for sale to the Public.
- Social clubhouses at which attendance is limited to members of the club.
- Any establishment in which religious, charitable, and other non-profit organizations sell food occasionally to raise money, or unless the establishment is open on a regular basis to sell food to members of the general public.

3.3 Interpretation [Part I, S3] – Categorization

In the Regulations, the term or categorisation *critical* is defined as “any condition or malpractices observed in the restaurants which can lead to food becoming unsafe or unwholesome”. The Council is of the opinion that the meaning of the term *critical* in the regulation should be modified to reflect the notion that this is the ‘danger’ point in the grading system. It should simply denote a **failure** of a restaurant to comply with the food safety standards, rather than being “any condition or malpractices observed in the restaurants...” The next lower category – *serious* – does not appear to deviate as much from *critical*. The only difference in interpretation are that *critical* “can lead to food becoming unsafe or unwholesome” while *serious* “precludes general hygiene and lead to the spoilage of food”. The Council suggests that the highest level of non-compliance be deemed a **fail** category rather than simply being a condition “which can lead to” food becoming unsafe or unwholesome.

3.4 Scoring System [Part 2, S4]

3.4.1 Pre-awarding of points

The scoring system in the regulations appear to be a de-merit system where a pre-inspection award of 100 points is “awarded”. The Council suggests a review of Part 2, Section 4(1) as its current wording suggests that food establishments are already “awarded 100 points before an inspection...” A re-wording is suggested to lessen the risk of misinterpretation. Restaurant operators may have the impression that they have been awarded 100 points before inspection! The Council suggests that Section 4(1) be amended to clearly spell out that the authorized officer begins with 100 points before inspection rather than “food establishments are awarded 100 points before an inspection.

3.4.2 Deduction of points – “critical”

The Consumer Council is of the view that the deductible points for *critical* should be much high than 20. *Critical* should result in the deduction of least 50% or one third of the total points on offer. This is necessary to ensure that the deduction does reflect the fact that a restaurant’s point’s loss matches the level of non-compliance.

3.5 Penalties/fines

3.5.1 Higher penalties/fines

The Council believes that fines under the regulations should be increased from the proposed ceiling of \$2,000. While restaurant grading is a good incentive for food establishments to raise standards, it is crucial that there is strong and effective deterrence through appropriate fines and penalties. The Council believes that \$5,000 would be a better figure as restaurants are profitable entities and whose revenue levels are difficult to assess due to the subjective nature of their pricing system. Food establishments must be made responsible after all public health cannot be risked.

3.5.2 Schedule 1

The Council seeks clarification of the used of a *fixed penalty* of 20 *penalty units* as outlined in Schedule 1 (Fixed Penalty). The term *units* should be clarified – Does this denote *points* as under the *Scoring System* in S4 or are these something different. Furthermore, our understanding is that the scoring (or deduction) of points is done during inspection so that a restaurant is given a rating. The fixed penalty of \$2,000 is supposed to be the penalty for non-compliance whereby restaurant owners or managers have removed or defaced or marred the Letter Grade Card. These appear to be two different matters – one is for the grading per se, while the other is the penalty for non-compliance with the regulation. We request some clarification as to whether both the 20 penalty units and \$2,000 are concurrently imposed or whether they are two different matters. A potential problem would arise if say a restaurant is fined for non-compliance in regards to the display of the Letter Grade Card and also loses 20 units (or points). Does the loss of 20 units/points mean a pre-deduction, i.e. before the restaurant goes up for its next review? The Council seeks clarification on this.

3.6 Letter Grade Card

3.6.1 Posting requirements (Section 7 (4))

The Council suggests the inclusion of word “altered” as well to prevent fraud.

3.6.2 Section 7 (5): When an original Letter Grade Card is lost or removed then a new one should be issued at a cost. This will prevent food establishment to purposely remove.

3.6.3 The Council suggests that provisions be stipulated whereby restaurant owners must immediately remove their Letter Grade Card as soon as it expires or as soon as the Food Authority requires it to do so. If this is not done then a penalty must apply. A restaurant should not deceive consumers by continued use of Letter Grade Card.

3.6.4 Grading System

The Council suggests that apart from the Letter Grade Card, provisions be made so that information on the grading and scoring system be made available to the general public and also be posted in restaurants. This should allow consumers to understand what each grade is and how restaurants are assessed.

3.7 PART 3- GENERAL

Right to appeal – Section 9 (4) suggests the re-inspection must be done by another authorized officer other than the authorized officer who had conducted the original inspection. We suggest for transparency purposes another authorized officer should go with a Board member from Central Board of Health to prevent collusion between colleagues.

3.8 Fees

The Council recommends that a proper schedule of fees be established for re-inspection and contesting of inspection results. The fees should be based on current market value and practices in other industries.

4.0 Other Comments and Recommendations

4.1 Consumer Complaints

A crucial omission from the regulations is any provisions on consumer complaints. The Council recommends that the *Food Establishment (Grading) Regulations 2011* include provisions whereby consumer complaints are part of the restaurant grading mechanism. The regulations focus on the inspections as the principal point of assessment. However, the Consumer Council suggests that *consumer complaints* be factored in as an important assessment criterion for the scoring of points. Consumer complaints may arise for a restaurant with A-grading and it is important that complaints are recorded and used for the review of a grading or for future inspection and points scoring.

4.2 Checklist:

4.2.1 Checklist Variation

The Council suggests that there should be standard check-lists depending on the food business size. For example a check list used for hotels should not be used for smaller food establishment businesses.

4.2.2 Medical Fitness of restaurant or food establishment workers

The checklist should include questions whether or not a restaurant worker should be medically fit when handling food. It is highly important that food handlers are medically fit and do not pose any risks while handling or preparing food. For example it would be very risky to allow someone with a skin disease or respiratory (coughing) ailment to handle food.

4.3 Inspection Process

The Council recommends the following to strengthen the inspection process.

- Authorized officers conducting inspection should be held accountable for the inspection reports; and
- Food establishments should be allowed to appeal the grade given. For re-inspection, a board member from Central Board of Health can be involved.

4.4 Officers/Inspectors

4.4.1 Training & Accreditation

The Council recommends that inspectors should also be *accredited* and not simply authorized. The Food Authority or the person(s) delegating the authority must ensure that the officers have some required qualifications and accreditation. The current proposal is for authorized officers, however the inspections should be people with a good knowledge background on food handling and hygiene practices and also a good grasp of the legislations so they know what they are doing. And this should come with good accreditations/credentials to support this. Restaurant Grading inspectors to acquire a special training accreditation from a recognized institution.

4.4.2 Persons disallowed from restaurant grading inspection

Persons that have been disciplined or penalized for corruptions or engaging in unethical behavior especially in licensing should be disallowed from being a restaurant grading inspector.

4.5 Publication of audits

The Council suggests that audits of restaurants be made public. We strongly recommended audits are transparent as is the practice in other countries. For example the Tourism Grading Council of South Africa has a restaurant grading system that does hygiene audits. These audits are made public. In San Francisco, hygiene inspections are conducted where ever food preparation takes place – restaurants, schools, hospitals, bakeries etc. The results are then pasted on a website for the public to view.

4.6 Restaurant Awards

A restaurant or food establishment of the year award should be considered (Tourism Award) in the near future as an incentive for other food establishments to work harder in keeping up with the grading regulation. The awardees should show a consistent and persistent adherence to standards and also have a good record in terms of complaints handling, consumer compensation, etc.