



CONSUMER COUNCIL OF FIJI

**A Submission to the Public Health Act Review**

December 2011

## **1.0 Introduction**

The Consumer Council of Fiji as the statutory representative of consumers in Fiji is required by the Consumer Council Act to *do all such acts and things that it may consider necessary or expedient to ensure that the interests of consumers of goods and services are promoted and protected* (Section 6 (1)). The Council is obliged to make representations to the Government or to any other organisations/persons on any issues affecting the interest of consumers. Health is an important issue area for the Council and this is reflected in its Strategic Plan 2011-2014 whereby health, food safety and security are two core focus areas. The Council's brief submission on the review of the Public Health Act (Cap111) is mainly from the point of view of consumer rights to safety, healthy environment, service, information and redress.

The Council had made known its views via verbal communications (2008/09) with Ms Josephine Cooper, the consultant who was initially engaged to undertake the review of the Public Health Act (PHA).

## **2.0 Penalties under PHA**

Part of the Council's views is reflected in the consultant's report to the Central Board of Health (p.6): *The Consumer Council of Fiji agrees that the current provisions of penalties for any breach of regulations under the Public Health Act (fines not exceeding \$200 for each offence, with continuing fines not to exceed \$4 per day) is quite low and will in fact encourage offences rather than deter it. However, the Council believes that it cannot provide an exact amount of minimum and maximum fines to be levied as no benchmark has been provided for similar sort of fines.*

The Council wishes to reiterate its opinion on penalties

### **2.1 Penalties**

Penalties are provided in the Public Health Act (Cap111), however the fines are too small to have a deterrent effect nor do they commensurate with the current level of penalties that has been introduced in revised legislation (e.g. Crimes Decree 2009, Commerce Commission Decree 2011, etc). Section 128 of the PHA prescribes the necessary penalties for breaches of by-laws and regulations.

*Penalties for breaches of by-laws and regulations*

*128. Except in cases otherwise specially provided for by this Act, by-laws or regulations made under this Act may provide for the imposition on offenders against the same of fines not exceeding two hundred dollars for each offence and in the case of a continuing offence a further fine not exceeding four dollars for each day during which the offence continues after a conviction thereunder.*

A fine not exceeding \$200 is too low thus not serving a deterrent effect and results in widespread non-compliance. Furthermore such a fine amount is uneconomical in terms of output for enforcement agencies. Enforcement agencies may incur ten times this amount in order to prosecute offenders. An urgent review of the fine is necessary and we strongly recommend provisions that would allow the option of imprisonment for guilty offenders.

Below are some of the very lenient penalties under the old PHA Cap111.

- S23 – Inhabiting building for which a closing order has been issued: Penalty – Fine not exceeding \$2 per during disobedience;
- S51 – Penalty for certain nuisances about premises: Penalty – Fine not exceeding \$10;
- S69(5)(b) – Non-compliance and interference with order to remove persons suffering infectious disease to a hospital: Penalty – Fine not exceeding \$40

## 2.2 Benchmarking of fines

The Council suggests that the reviewers of the PHA look to the *Food Safety Act* and *Food Safety Regulations 2009* for the penalties of level of fines applicable for non-compliance. For example in the *Food Safety Regulations 2009*, Part XI, Section 51, non-compliance attracts a “maximum fine of \$2,000 or to imprisonment for 12 months or both”. **The inclusion of a prison sentence is recommended for offences against the PHA. The maximum fine can be increased to a higher amount considering the seriousness of offences against public health.**

## 2.3 Publication of names of offenders

The PHA (Cap111) does not provide this provision which is found in S52 of the *Food Safety Regulations 2009*, whereby the responsible enforcement agency “may publish a notification under this section in a newspaper circulating in this country and/or on the website of the Competent Authority in respect of any person who is convicted of an offence under the Act or these regulations. **The Consumer Council firmly believes that a “name and shame” approach to enforcement can provide a powerful deterrent effect and discourage non-compliance or unscrupulous practices by individuals or business.**

## 3.0 Administration & Enforcement

The Consumer Council believes that laws can never be effective or achieve their goals without effective administration and enforcement. In the Council’s ongoing project on the review of consumer protection laws in Fiji, a salient feature is the lack of enforcement by the responsible agencies. Often there are competing enforcement agencies; and functions and responsibilities overlap to the extent that enforcing the law virtually becomes no one’s responsibility. Having effective enforcement agencies with clearly demarcated roles and functions under a revised PHA is very important. The Consumer Council fully understands

that the Ministry of Health, being a large institution with multiple roles in health and medical services, can often be overwhelmed with the enforcement and application of relevant laws such as PHA. For instance, prior to the commencement and operation of the Food Safety Regulations, there was some confusion as to who is directly responsible for enforcement. Now that there is a delegated section within Ministry of Health, i.e. Food Unit, enforcement has become more effective than in the early period of the enactment of the *Food Safety Act* [2003]. **The Council submits that the revised Public Health Act should expressly and clearly state which is the enforcement agency responsible. It should clearly outline the functions of such agency and its powers. Furthermore, the Council suggests that such agency be allowed to delegate authority to other competent agencies such as the municipal councils etc in a manner whereby such authority can be exercised effectively.**

#### **4.0 Effective Enforcement of laws/regulations relating to residential buildings**

Complaints against residential landlords are the number one complaint received by the Consumer Council. Whilst the nature of most of these complaints often relate to rental payment and unlawful evictions, there is quite a number of complaints that the Council receives which have to do with health and safety issues. Consumers are often helpless because municipal councils are ineffective and indifferent. Also there is no clear point for referral in the Ministry of Health, although the PHA (Cap111) has provisions relating to health and safety issues for buildings (Part III). **The Consumer Council submits that this aspect of the PHA be reviewed thoroughly with the view of creating a clear, precise and effective point of enforcement. The competent authorities responsible for enforcing these provisions should be clearly identified and they should provide an avenue for consumer redress. That is, a well defined and established point where consumers can lodge their complaints and expect effective redress.**

#### **5.0 Recommendations from Consultation Workshop – December 2011**

The Consumer Council supports the recommendations made at the consultation workshops.

##### **5.1 Enforcement and Risk – Option of Cancelling License**

The Council supports the provision where licenses should be cancelled for repeat offending and persistent non-compliance. The Council however, suggests that inspections be made on a regular basis. The idea of providing and renewing licenses for longer periods should be discouraged. Restaurants and other food vendors should not be allowed to develop a sense of complacency and security. Rather, they should be consistently reminded that licenses can be withdrawn or penalties applied if they fall below standards or persistently violate the law.

## **5.2 Restaurants to HACCP Certified**

The Council fully supports this proposal. HACCP certification is important as it raises the standards of restaurants and creates consumer confidence in the local eateries sector. It also benefits the all important tourism industry whereby tourists have come to expect standards equivalent to that in their own countries.

## **5.3 Part IX Offensive Trades**

The Council supports the minimum fine of \$10,000 for nuisance, public health risk and offensive trade. However we suggest that a prison sentence be included and a “name and shame” provision (as discussed in 2.3 above). **The Council suggest that the Ministry of Health should consult with other agencies such as the Registrar of Companies so that repeat offenders are de-registered (or other appropriate penalties applied). The Council has observed over the years how businesses are registered in a laissez faire manner without due consideration of existing laws and regulations that the business may have violated. For instance the Council has dealt with the issue of pharmacy businesses being registered by non-pharmacists, with the office of the Registrar of Companies being oblivious to the fact that the registration violated other legislation.**

## **5.4 Part XII**

The Council strongly supports the application of the revised PHA to ships. Unsanitary conditions on local inter-island vessels are an area of concern to the Council where consumers have been unfairly treated and do not have avenues for effective redress. **The Council fully supports the ordering of local vessels to quarantine due to unsanitary conditions. The Council further suggests that health inspectors regularly inspect ships or conduct unscheduled visits to ascertain the ships’ conditions.**

## **5.5 Part XIII Water Supply**

The Council supports the proposed changes in relation to definition of “wholesome” and “domestic use”. We have supported the application of WHO standards and also the inclusion of fluoridation and mineral constitutes in the public water system under the Water Authority of Fiji. The Council suggests that continuous monitoring of water standards be made mandatory.

## **5.6 Part XVI Legal Proceedings**

As noted earlier, the Council fully supports the review of penalties and increasing of fines. The Council is strongly pushing for the inclusion of prison sentences in cases where the offence are so severe that members of the public or individuals suffer major health problems or where fatalities occur.

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