

# Fiji's new Consumer Credit Law

**Mission Report**  
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# Agenda

1. Mission Objectives
2. Financial Consumer Protection
3. Key Findings
4. Key Recommendations
5. Implementation Issues
6. Next Steps

# AGENDA ITEM 1



MISSION OBJECTIVES

# Mission Objectives

- Commence review of existing Consumer Credit Act (CCA)
- Stakeholder consultations
- Prepare Report with Key Findings and Key Recommendations
- Conduct workshop with all stakeholders

# AGENDA ITEM 2



Introduction to Financial  
Consumer Protection

# What is Financial Consumer Protection (FCP)?

Treat Clients Fairly

Transparency

Product Suitability / Responsible Lending

Data Protection

Consumer Recourse

BUT – Who is a “Consumer”?

# Why is FCP Important?

Trust > Financial Inclusion

Digital Financial Services

Competition

Financial Stability

# What Makes an Effective FCP Supervisory Framework?

Designated supervisor with capacity and resources

Market conduct (v. prudential) supervisory tools and techniques

Keeping up with innovation

Consult and collaborate with other agencies, industry and civil society

Active enforcement





# AGENDA ITEM 3



KEY FINDINGS – Credit Market

# There are many types of consumer credit providers

- **Financial Institutions licensed by Reserve Bank of Fiji (LFIs):**
  - 6 Commercial banks
  - 4 Credit institutions (deposit takers)
- Fiji Development Bank
- Unlicensed finance companies
- In-house retail credit (hire – purchase) providers
- Financial cooperatives
- Credit unions
- Money lenders: registered by Registrar of Money Lenders
- Pawnshops
- Savings and loan clubs

# And varied credit products

- Personal loans (secured and unsecured)
- Home loans (secured)
- Hire – purchase agreements – very popular
- Credit cards (growing)
- Mobile phone credit (coming)
- Trade finance e.g.. factoring (rare); finance leases (common); invoice financing etc.

# And the credit market is growing

*Source: RBF Quarterly Review June 2016*

- **Commercial Banks for June 2016 quarter:**
  - 16% quarterly growth in credit to private individuals (largest increase for unsecured lending loans and credit cards)
  - Gross loans / advances: 12.8% increase p.a. overall (cf. 0.8% in quarter). Total of \$5.8 billion (as at 31 March 2016)
- **Credit Institutions for June 2016 quarter (cf. March 2016 quarter):**
  - 11.7% quarterly growth in credit to private individuals (mainly for “other” and personal transportation purposes)
  - Gross loans / advances: 37.6% increase p.a. (6.1% in quarter) Total of \$278.1 million.

# But so are NPLs and past due loans

*Source: RBF Quarterly Review June 2016*

- **Commercial Banks for June 2016 quarter: Asset quality satisfactory:**
  - NPLs to gross loans increased 25 basis points to 1.3%
  - Total past due loans increased by 52.7% over quarter (mainly 1-6 months and 1-2 year time bands)
- **Credit Institutions for June 2016 quarter): Asset quality poor:**
  - NPLS to gross loans down from 10.5% to 9.6% over quarter
  - Total past due levels up by \$11.1 million to \$48 million (all periods up apart from 6 months – 1 year)
- **Other types of credit providers:**
  - Data not available but anecdotally on the increase

# AGENDA ITEM 3



KEY FINDINGS – Consumer Protection  
Legal and Supervisory Framework

# An overlapping legal framework ...

- Especially between:
  - Consumer Credit Act 1999 (under review)
  - Commerce Commission Decree 2010 (under review)
  - Banking Act 1985 - RBF Policy Guidelines
- There is also:
  - Consumer Council of Fiji Act 1977
  - Moneylenders Act 1978
  - Second Hand Dealers Act 1975
  - Co-operatives Act 1996 (under review)
  - Credit Unions Act 1978 (under review)
  - Fair Reporting of Credit Act 2016
  - Employment Relations Promulgation 2007 ....

# CCA needs modernisation

- Based on Australian Consumer Credit Code
- Complex, lengthy legislation and regulations (over 200 pages)
- No licensing / registration for credit providers
- The current CCA does not cover:
  - Overall consumer protection principles
  - Responsible lending
  - Unfair terms
  - Advice for consumers
  - Innovations such as mobile phone credit
  - Consumer recourse
  - Key Facts Statements.... **AND MORE**



# A CCA supervisory vacuum

- CCA states it is to be administered by Consumer Credit Office – Director of Trade Measurements and Standards and Inspectors in MITT
- However no supervision takes place at all due to lack of capacity / expertise

# AGENDA ITEM 3



KEY FINDINGS – Consumer  
Protection Concerns

# Credit market concerns: examples (1)

- Widespread CCA compliance failures e.g. re disclosures
- Minimal credit worthiness assessments
- Hire – purchase agreements – failure to treat as credit sale by instalments
- Application of Rule of 78
- High default rates of interest

# Credit market concerns: examples (2)

- Charging a flat rate of interest rather than interest on daily balances
- Repossession practices
- Salary source deductions
- Money lenders taking access cards and PINs
- Debt collection practices

# AGENDA ITEM 3

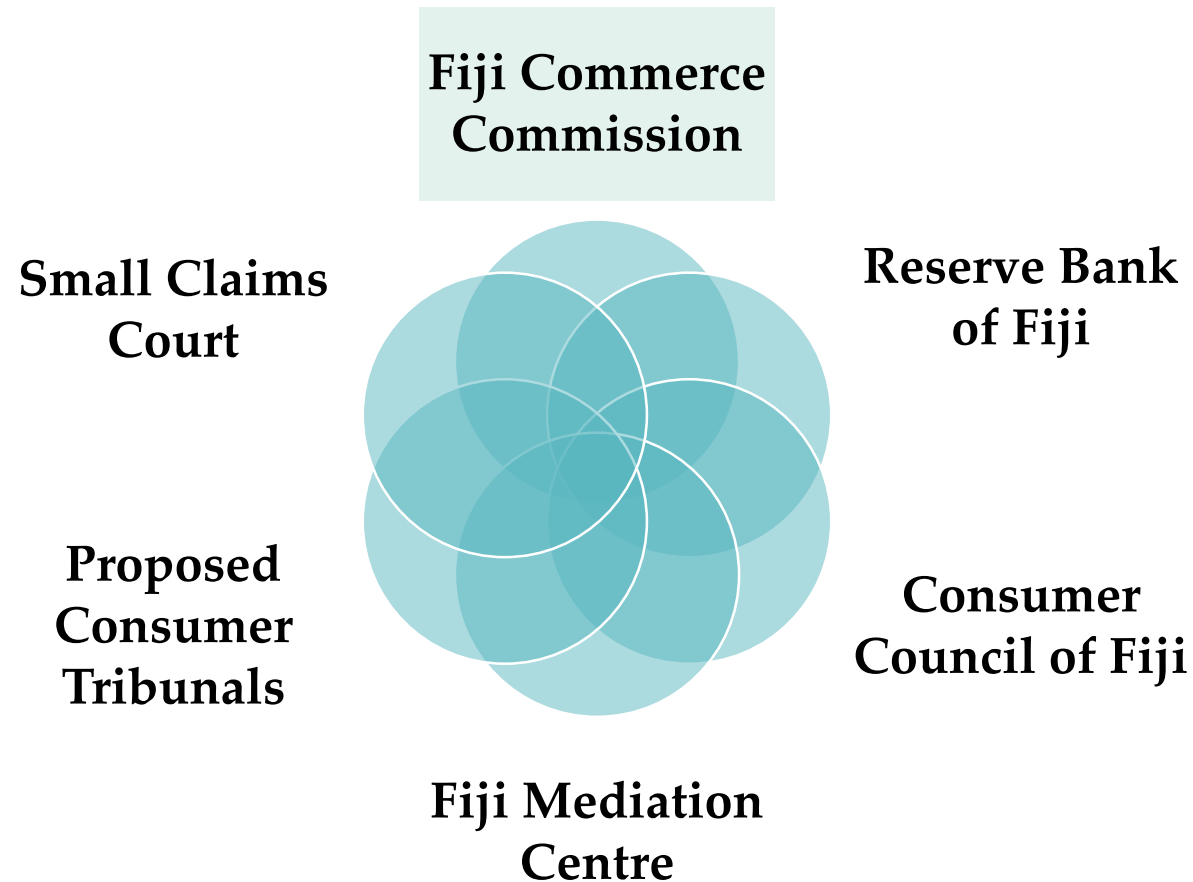


KEY FINDINGS – Consumer Recourse

# Gaps in complaint resolution requirements

- CCA does not require internal complaints processes
- RBF Policy Guideline on Complaints Management only applies to Licensed Financial Institutions
- RBF complaints statistics show increasing number of complaints to LFIs but relatively low number of lending related complaints

# Multiple Consumer / FI Dispute Schemes



# AGENDA ITEM 4



## KEY RECOMMENDATIONS





## AGENDA ITEM 4



SUPERVISION OF NEW CCA

# Who should administer the new CCA?

- **Option 1:** The FCC alone
- **Option 2:** The RBF alone
- **Option 3:** Split :
  - the RBF for commercial banks and credit providers who take deposits; and
  - The FCC for all other credit providers
- **Option 4:** The RBF with express power to delegate to FCC “as needed”

# Commerce Commission of Fiji

## OPTION 1 – Commerce Commission of Fiji (FCC)

- **Pros:**

- Clear mandate covering financial consumer protection

- **Cons:**

- No overall financial sector expertise
- Limited financial consumer protection expertise
- Limited capacity and resources
- Supervisory overlap with RBF re Licensed Financial Institutions
- General CP regulator supervises financial sector in only 4/ 114 countries

# Reserve Bank of Fiji?

## Option 2 - Considerations in favour of RBF

- Broad mandate for “credit” and “sound financial structure”
- Credit risk is an important financial stability issue
- Broad financial sector expertise
- Already responsible for non – credit parts of financial sector
- Need for market certainty as to supervisory approach
- Existing consumer protection supervisory experience
- Market credibility

***RECOMMENDATION: RBF supervises the new CCA, with additional capacity and resources***

# AGENDA ITEM 4



CONSUMER RECOURSE

# Internal complaints resolution processes

- There are gaps in complaint resolution requirements – none in CCA and RBF Policy Guidelines apply only to LFIs

***RECOMMENDATION: Include in the new CCA provisions mandating procedures for dealing with complaints about consumer credit products and requiring reporting of relevant statistics to the RBF.***

# Who should provide external dispute service under new CCA?

- **Option 1:** A new, independent statutory financial services ombudsman
- **Option 2:** Reserve Bank of Fiji
- **Option 3:** Commerce Commission
- **Option 4:** Consumer Council

# Who should provide external dispute service under new CCA?

## Considerations:

- Independence
- Funding
- Accessibility
- Transparency
- Ability to make decisions binding credit provider
- Potential to be used for financial services beyond credit
- Efficient use of existing resources

***RECOMMENDATION: RBF provides EDR scheme for new CCA***





## AGENDA ITEM 4



A “PRINCIPLES BASED” CCA

# A “principles based” law?

- Set out overarching provisions, minimal substantive provisions with details in the regulations
- Simply expressed, short and easy to understand and supervise
- Flexible so can deal with innovation, changing markets
- Better for consumers, industry and supervisors

***RECOMMENDATION: Draft new CCA as a “principles based” law with supporting regulations***

# AGENDA ITEM 4



SCOPE OF APPLICATION

# Scope of Application

## **RECOMMENDATIONS:**

- *Activity based (like current CCA) – very limited exceptions*
- *Licence / register all credit providers with risk based supervision*
- *No purpose test for application to individuals – consumer or business purpose credit covered*
- *Also apply new CCA to small businesses other than individuals*
- *Perhaps make provision for monetary cap to be applied via regulations?*

# AGENDA ITEM 4

## HIRE-PURCHASE AGREEMENTS

# How to treat hire – purchase agreements?

- CCA deems a goods lease with option to purchase as a **sale by instalments with a mortgage back** to credit provider
- However CCA also allows interest charges for a hire – purchase agreement to be determined using Rule of 78 (but not other credit contracts)
- Other CCA provisions treat HPAs differently from other credit contracts

## **RECOMMENDATIONS:**

- *Continue to treat a hire –purchase agreement as sale of goods by instalments*
- *Remove exception allowing Rule of 78 for hire –purchase*
- *Remove other hire-purchase specific provisions in CCA*



# AGENDA ITEM 4



RESPONSIBLE LENDING STANDARDS

# Responsible lending standards?

- CCA does not contain product suitability / responsible lending standards
- Credit availability, NPLs and loans in arrears are all rising
- Fiji does not have a credit bureau

## ***RECOMMENDATIONS:***

- Require affordability / suitability assessments
- Contract can be re-opened if breach
- Ban unsolicited credit offers / credit card limit increases
- Explain credit products to consumers



# AGENDA ITEM 4



UNFAIR TERMS

# Unfair Terms

- Issue is with unfair, non-negotiable, terms in standard form credit contracts
- For example:
  - Unilateral change provisions
  - Excessive default fees
  - Waiver of protections provided by law
  - Credit provider can terminate contract without breach
  - Provisions are not consistent with CCA

***RECOMMENDATION:*** Include in the CCA provisions which make unfair terms void (and unenforceable).

# AGENDA ITEM 4



CONTROLS OVER INTEREST  
RATES AND FEES AND CHARGES

# Controls over interest rates and fees

- Current CCA has limits on specific fees e.g. prepayment, termination and third party fees and enforcement expenses
- RBF requires reasonable cost basis for fees charged by LFIs
- RBF also limits certain penalty fees

## **RECOMMENDATIONS:**

- *Require fees to have a reasonable cost basis (if Government considered necessary given local context)*
- *Maintain current CCA provisions on fees*
- *In longer term review current policy*

# AGENDA ITEM 4



## DIGITAL CREDIT FACILITIES

# Digital credit facilities

- The CCA contains very limited provisions
- Mobile phone based loan products may create transparency and responsible lending challenges
- Also need to make provision for other innovations

## **RECOMMENDATIONS:**

*Provide flexibility for innovation through e.g.:*

- *Electronic disclosures and contracts (subject to new Electronic Transactions Act)*
- *Broad regulation making powers*
- *Power to grant exemptions for pilot purposes*

# AGENDA ITEM 4



## SOURCE DEDUCTIONS

# Source deductions (automatic repayment deductions from salary)

- Source deductions are widely used – especially for civil servants
- Borrower cannot stop source deductions once started
- Employment Relations Promulgation limits lack clarity
- 5-6% Government fee on deduction for finance companies

***RECOMMENDATION: Consider imposing further limits on / banning source deductions***





## AGENDA ITEM 4



# REPOSSESSION PRACTICES

# Repossession practices

- Various concerns expressed
- Some practices may be in breach of current CCA, others not covered

**RECOMMENDATION:** *Review relevant provisions in the current CCA to ensure that they appropriately provide for fair treatment of consumers in a repossession situation.*

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KEY FACTS STATEMENTS

# Key Facts Statements (KFSs)

- Many countries have requirements for short (1/2 pages) simple, easily comparable KFSs **in standardised format** for simple credit products
- RBF has issued Accountability and Disclosure Guidelines for LFIs – one aim is to encourage comparability
- Not required by CCA, despite extensive disclosure requirements

## **RECOMMENDATIONS:**

- *Require all lenders to provide a KFS for simple credit products on request and before contract entered into*
- *Consider need for consumer testing*

# AGENDA ITEM 4



COMPARISON RATES

# Mandatory comparison rates?

- Many countries have requirements for disclosure of comparison rate
- *A comparison rate discloses the true total cost of a loan product (including all interest charges and other fees and charges)*
- It is calculated in accordance with a statutory formula
- CCA makes comparison rate disclosures optional

## **RECOMMENDATION:**

- *Mandate disclosures of a comparison rate in KFSs, advertisements*  
*Consider need for consumer testing*

# AGENDA ITEM 4



DATA PROTECTION

# Data Protection

- Data protection standards widely acknowledged as a key consumer concern (especially in world of “Big Data”)
- Fiji does not have overarching privacy laws
- Credit information is especially sensitive

**RECOMMENDATION:** Include basic data protection provisions in the new CCA. (e.g. covering confidentiality, security and access)



# AGENDA ITEM 4



COOLING OFF PERIOD

# Cooling off period

- The CCA does not provide any cooling off period for credit contracts
- Country approaches to cooling off periods differ
- Issues concern high pressure sales, complex contracts and low literacy levels

***RECOMMENDATION:*** Include a provision for a short cooling – off period for consumer credit contracts (say 2 business days), subject to there having been no drawdown of the available credit and an obligation to repay all fees incurred as at the date the right is exercised.

# AGENDA ITEM 4



EXTENDED WARRANTY INSURANCE

# Extended warranty insurance

- Concerns expressed about opaque nature of extended warranty insurance e.g. who is the insurer? Policy terms and exclusions? Claims process?

**RECOMMENDATION:** *Require that consumers receive clear advice as to the nature of any extended warranty insurance, details of the insurer and of the scope of coverage and any exclusions. Consumers should also be advised that such insurance is not compulsory.*

# AGENDA ITEM 5

## IMPLEMENTATION ISSUES

# Implementation issues

- Capacity building for supervisor
- Transitional period for credit providers
- Public awareness campaign for consumers and industry
- Consumer testing of new forms of disclosure
- Preparation of consequential amendments to other legislation

# AGENDA ITEM 5



NEXT STEPS

# Next Steps

- Issues raised need careful consideration
- Your comments!
- Drafting of Bill
- Further consultation with all stakeholders





THANK YOU!