



Bill Summary

Fair Reporting of Credit Bill – No. 27 of 2016

This Bill provides for:

- a **new licensing regime for credit reporting agencies**, regulated by the Reserve Bank of Fiji (RBF);
- the **duties and obligations of credit reporting agencies**, and the **rights of people to receive information** relating to their own credit information;
- **new offences** for operating a credit reporting agency without a licence and obtaining, altering or stealing credit information; and
- **existing credit reporting agencies to discontinue operations** immediately after this legislation comes into force.

The Explanatory Note states:

- The business of **credit reporting is carried on in the Republic of Fiji without any legal framework or guidelines**. The operation of the business of credit reporting without any legislation or regulatory mechanism has led to many wrong doings and malpractices, and caused many difficulties to the general public.
- Moreover, **collecting data and dissemination of such data pertaining to individuals without any legal authority** appears to be a sheer **violation of fundamental rights** enshrined in the Constitution.
- Therefore, it is now essential to introduce new legislation to regulate the business of credit reporting agency [sic] for the welfare of Fijians.

During the introduction of the Bill on 25 April 2016, the Hon. Attorney-General stated that:

[...] There has been some debate in the public space about what we call 'credit reporting agencies', and in Fiji it is commonly known as the 'Data Bureau'. We have had a number of complaints about this matter for a couple of years and in fact it has now been highlighted and given a lot of significance in the wake of Cyclone Winston. [...]
*Currently, the Data Bureau operates in ambiguity. [...] In any modern setup when you have a body that collects individual information on all of you as to how much money you owe and to whom, they **need to be regulated**. At the moment, anyone can go to the Data Bureau and report anyone [...]*

What is Credit Reporting?

Credit reporting is the gathering and sharing of information about an individual's or a business's credit history. Credit providers (that includes banks and hire purchase providers e.g. Courts, Carpenters) often check your credit report or sometimes your credit rating before considering your loan application or hire purchase. The credit report is a significant part of the information the credit provider users to assess your suitability as a borrower. In fact, credit reporting has become an important part of the credit process.

Who does Credit Reporting in Fiji



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Credit reporting is done by banks, hire purchase companies and other credit providers. However, **credit reporting agencies** or **credit bureaus** have emerged as businesses specializing in credit reporting or maintaining and exchanging credit information on individuals. In Fiji, the only business that provides such as a services is **Data Bureau** (www.databureau.com.fj/fiji/) also known as Fiji Data Bureau.

Data Bureau Fiji¹

Data Bureau began its operations in Fiji in 2001 which has been an initiative of a group of financial institutions and insurance companies. Today it has 100% of the licensed financial institutions as members. Apart from financial and, or credit institutions, bureau membership also consists of utility companies, telecommunication service providers, municipal councils, tertiary institutions and moneylenders. In fact, any business can join data bureau if they want to minimize the risk of having to deal with defaulting debtors or customers who fail to pay for goods and services. For example, consumers wishing to subscribe to post-pay services in telecommunications can be denied this service if their names are listed with the Bureau. So it is not only about accessing credit, but also accessing other important services.

Data Bureau's principal business is the operation of a database where members can access the credit history and other details of their customers. The credit information exchange by the Bureau is not confined to businesses but also to but also to consumers. It collects this information from their members and public records. The bureau collects this information from their members and also from public records. The bureau provides their members with information that allows them to supposedly make informed credit and business decisions. Data Bureau is responsible for providing a comprehensive database at the fingertips of its members whereby they are mindful that the data they retain is confidential and personal. The bureau also assists members with debt collection when defaulting debtors are listed on their database. Members use the online system to informed decisions on existing or potential clients. A bureau member can deny a consumer's credit request unless his/her debt is fully cleared. The members often get authorization from the customers when preparing credit or service agreements. The Bureau members ask customers to authorize them (member) to have access to their (customers') credit information. Customers are also informed that they will be blacklisted by Data Bureau in case of default. Credit providers and other businesses are now including clauses for consumers to agree to the disclosure of their information to third parties such as Data Bureau.

What is the problem?

Consumer rights advocacy groups like the Consumer Council of Fiji (CCF) have raised concerns that credit reporting agencies like Data Bureau are operating without any regulatory control. CCF has said that the bureau "run its business by selling consumers' private information without any accountability to the consumers."² The Council has highlighted the right to privacy under the Constitution and how the actions of the bureau has been contrary to this. The Council has also been persistently lobbying the Government **"to set the ground rules to regulate the manner in which the Data Bureau operated its business by**

¹ Information from Consumer Council of Fiji 'Issues faced by Consumers In Relation To Personal Information Listed at Data Bureau (Fiji) Limited'

² 'Data Bureau under scrutiny' Fiji Times, 09/04/15 <http://www.fijitimes.com/story.aspx?id=301307> (Retrieved 26/04/16)

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selling consumers' private information without any accountability to the consumers.”³ These sentiments have been echoed by the Government and the Bill's explanatory note states that the absence of regulation “has led to many wrong doings and malpractices, and caused difficulties to the general public.”

Objectives, scope and intent of the Bill

This Bill provides for the regulation, administration and licensing of credit reporting agencies and for related matters.

In essence the Bill intends to:

- regulate and license credit report agencies and their operations;
- provide powers to the Reserve Bank of Fiji (RBF) to register, license and regulate credit reporting agencies, credit information providers and credit report recipients;
- establish rights, duties and obligations of a credit reporting agency;
- provide for right of consumers to access their credit information and also challenge the accuracy of the information;
- provide for offences relating to non-consensual disclosure of credit information and offences relating to people proving incorrect information;
- provide for compliance and reporting standards for credit reporting agencies;
- allow the Minister for Finance, in consultation with the RBF make necessary regulations designed to give effect to this Act and its intentions.

The Act covers credit reporting agencies and credit information providers and credit report recipients. This means that it extends to banks and credit providers when they provide credit information or become recipients of credit information or reports.

The RBF is the principal regulatory agency.

Summary of provisions

Part 1 - Preliminary

Clause 1 provides the short title and commencement of the Bill.

Clause 2 provides the definitions used in the Bill, which are outlined in annex A of this paper.

Part 2 – Regulatory role of the Reserve Bank of Fiji

Clause 3 gives the Reserve Bank of Fiji the overall supervisory and regulatory authority to:

- **register, license and regulate credit reporting agencies**, credit information providers and credit report recipients; and
- **maintain proper standards of conduct** and acceptable credit reporting practices.

It also states that the Bank must consult the Minister on matters relating to fair credit reporting.

³ 'Data Bureau under scrutiny' Fiji Times, 09/04/15 <http://www.fijitimes.com/story.aspx?id=301307> (Retrieved 26/04/16)

'Spotlight on Data Bureau', Fiji Times 08/12/15 <http://www.fijitimes.com/story.aspx?id=332965> (Retrieved 26/04/16)



Part 3 – Licensing of credit reporting agency operations

Clause 4 prohibits a person from establishing, operating or conducting business as a credit reporting agency unless that person has obtained a license for that purpose from the Bank.

The penalty for contravention of this offence is a fine up to \$50,000 or imprisonment of up to 5 years, or both.

Clause 5 provides that an application for a licence to carry on the business of a credit reporting agency must be made in writing to the Bank in the prescribed form. The application must be accompanied by a fee.

Clause 6 states that the Bank must not grant a licence to a person unless they:

- are incorporated as a company under the Companies Act 2015 solely to carry out credit reporting activities;
- has human, financial and operational resources sufficient for the agency to function efficiently and effectively in line with this Bill;
- presents a business plan that is satisfactory to the Bank.

6(2) gives the Minister the power to make regulations prescribing the qualifications and other specifications to be satisfied by the directors and shareholders.

Clause 7 provides that the Bank must acknowledge the receipt of an application, and after the fees have been paid and all other conditions have been satisfied, a licence may be granted.

Where an applicant does not pay the fees or satisfy any conditions for the licence, the Bank may refuse the application and notify the applicant in writing, including the reasons for refusal.

Clause 8 prohibits a person from transferring a licence to another person. The penalty for doing so is a fine of up to \$50,000 or imprisonment for up to 5 years, or both.

Clause 9 provides that the Bank may suspend or revoke a licence if the credit reporting agency:

- has failed to comply with the terms and conditions of the licence;
- has contravened the provisions of this Act;
- has contravened the Rules made under this Act;
- has ceased to satisfy the requirements for licensing and the renewal of a licence.

Clause 10 requires the Bank to maintain a register of licences.

Clause 11 provides that a credit reporting agency must display the credit reporting agency licence in a conspicuous place on its business premises for the information of the public.

Clause 12 provides a right of appeal to the Minister for any person aggrieved by any decision of the Bank under this Part of this Bill.



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Part 4 – Rights, duties and obligations

Clause 13 requires credit reporting agencies to comply with;

- regulations and rules made under this Bill;
- directions given by the Bank; and
- other duties imposed by a code of conduct issued by the Bank.

Clause 14 gives people the right to:

- receive a copy of the information concerning such person held by a credit reporting agency;
- require the credit information agency to correct the credit information; or
- challenge the accuracy of information.

Clause 15 give the Minister the power to make regulations to prescribe the minimum amount of credit information that can be reported:

- **to** a credit reporting agency by a credit information provider; and
- **by** a credit reporting agency to a credit report recipient:

15(2) makes it an offence for a credit reporting agency to store and provide credit information in contravention of clause 15(1) (above) commits an offence and is liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years, or to both.

Part 5 – Offences

Clause 16 makes it an offence for a person who:

- obtains data or credit information concerning a person without obtaining the written consent of such person;
- obtains confidential information pertaining to a person; or
- reveals or discloses any data or information which may come to such person's knowledge, other than for purposes required or permitted under this Bill or any other written law,

The penalty is a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years, or to both.

Clause 17 makes it an offence for a person who knowingly provides false, inaccurate or erroneous credit information or data pertaining to a borrower, in the course of performing duties and functions under this Bill. The penalty is a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.

"Person" includes a credit reporting agency, or a lending institution.

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Clause 18 makes it an offence for:

- a person to operate as a credit reporting agency when the licence has been revoked or suspended;
- a person to hinder, oppose, obstruct or unduly influence a person in the exercise of power or duty under this Bill;
- a person other than the sender or intended recipient of a transmitted message or data, steals, intercepts, interferes with, alters or modifies, diverts, unlawfully discloses, decodes or attempts to decode a transmitted message or data, or facilitates any act;
- A person to contravene or fails to comply with any other provision in this Bill.

The penalty for these offences is up to \$10,000, imprisonment of up to 2 years, or both.

Where an offence is committed by a body corporate, each director, executive officer, secretary or employee of the body corporate who was by act or omission, directly or indirectly concerned in or is a party to the commission of the offence shall also be guilty of the offence.

Part 6 – Transitional

Clause 19 provides that any person who operates a credit reporting agency, or an entity that performs the functions similar to the business of a credit reporting agency in Fiji on the date of commencement of this Bill, must discontinue such operations immediately after the legislation comes into force. However, such persons may apply for a licence under this Bill (subsection 19(7)).

19(2) provides that the Minister, in consultation with the Bank, may determine whether any entity performs the function of a credit reporting agency in the event of any doubt.

19(3), (4) and (5) provide that any person referred to in this clause must transmit all credit information or data, to the Bank immediately after this Bill comes into operation. The bank must confiscate the credit information or data transmitted. No person shall use the credit information referred to in this section for any purpose other than the purposes specified in subsections (3) and (4), after the commencement of this Bill.

19(6) provides that on and after the date of commencement of this Bill, no person shall use any credit information already provided to such person prior to the commencement by an unregistered credit reporting agency, to make a decision on loan or credit applications.

19(8) makes it an offence to contravene subsections (1), (3), (4), (5) or (6) and is liable upon conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 5 years, or to both.

Part 7 – Miscellaneous

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Clause 20 requires the Bank to submit an annual compliance report, in addition to its audited financial statements. This shall be certified by an independent auditor who is certified by the Fiji Institute of Accountants.

The compliance report shall include:

An annual compliance report shall address the following matters-

- accuracy of credit information received and reported by the credit reporting agency;
- incidence of complaints and complaint resolution; and
- adequacy of procedures employed by the credit reporting agency to ensure that-
 - data received and reported by it are accurate;
 - confidentiality of data is maintained; and
 - complaints are resolved promptly and satisfactorily.
- any other related matters prescribed by regulations.

Clause 21 requires credit reporting agencies to keep proper accounts and other records in respect of its operations. It also requires them to submit a copy of its audited financial statements to the Bank within 3 months after the end of the financial year.

Clause 22 provides that every person who wishes to function as a credit report recipient or credit information provider must register with the Bank.

The Minister may make regulations prescribe the qualifications and specifications that must be satisfied by a person to register as a credit report recipient or a credit information provider under this section.

21(3) provides that no person shall receive credit information without registering as a credit report recipient or provide credit information without registering as a credit information provider.

21(4) makes it an offence for any person to contravene this section. The penalty is a fine up to \$10,000 or to imprisonment for a term not exceeding 2 years, or to both.

Clause 23 gives the Minister the power to make regulations, in consultation with the Bank relating to matters in this Bill.

Clause 24 states that this Bill in addition to any other legislation related to confidentiality, privacy, right to information, data protection, electronic crime, economic crime, computer crime and other relevant matters and must not derogate from the provision of these laws.

International comparisons

Most countries have laws or regulations that control the way in which credit information about individuals (and businesses) are kept, reported and exchanged. In some countries like Australia and New Zealand



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credit reporting is covered under their respective privacy laws. In the United States there is a standalone legislation, the *Fair Credit Reporting Act* that governs credit reporting.

AUSTRALIA

Part IIIA of the *Privacy Act 1988* (Privacy Act) regulates consumer credit reporting in Australia. Part IIIA is supported by the *Privacy Regulation 2013* and the *Privacy (Credit Reporting) Code 2014* (CR code).

One of the objects of the Privacy Act is to facilitate an efficient credit reporting system while ensuring that the privacy of individuals is respected. In recognition of that objective, the laws about credit reporting are intended to balance individuals' interest in protecting their personal information with the need to ensure that credit providers have sufficient information available to assist them to decide whether to provide an individual with credit.

The Australian credit reporting system also helps ensure that credit providers are able to comply with their responsible lending obligations under the *National Consumer Credit Protection Act 2009* administered by the Australian Securities and Investment Commission (ASIC).

Part IIIA of the Privacy Act regulates the handling of personal information about individuals' activities in relation to consumer credit. In particular, Part IIIA outlines:

- the types of personal information that credit providers can disclose to a credit reporting body (CRB), for the purpose of that information being included in an individual's credit report
- what entities can handle that information, and
- the purposes for which that information may be handled.

For example, when an individual makes an application for credit to a credit provider, the provider can access a copy of the individual's credit report from a CRB to help them to make a decision about whether or not to grant the application.

CR Code – The Privacy (Credit Reporting) Code 2014 (CR Code) is a mandatory code that binds credit providers and CRBs. The CR code supplements the provisions contained in Part IIIA of the Privacy Act and the *Privacy Regulation 2013*. A breach of the CR code is a breach of the Privacy Act.

Additionally, the Australian Retail Credit Association (ARCA) has developed an information website (CreditSmart) to help consumers understand the effects of the Privacy Act reforms on how credit reporting will operate in Australia.

Source: <https://www.oaic.gov.au/privacy-law/privacy-act/credit-reporting> (Retrieved 26 Apr 2016)

NEW ZEALAND

Credit reporting in NZ is covered under *Credit Reporting Privacy Code 2004* (amended Oct 2015). The Code was established by the Privacy Commissioner in 2004 and is one of several codes of practice issued under Section 46 of New Zealand's *Privacy Act*. The Code regulates credit reporting, but is limited to credit reporters that trade in credit information. The Code is administered and enforced by the Privacy Commission.

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Amongst other things the Code:

- provides for individuals to have the right to a free copy of their credit record and all their credit information;
- covers complaints handling, maximum time frames to report, credit inquiries, etc. and;
- requires credit suppression where a person is a victim of identity fraud.

Some of the specific rules of the Code are:

- Purpose of Collection of Credit Information
- Source of Credit Information
- Collection of Credit Information from Individual
- Manner of Collection of Credit Information Storage and Security of Credit Information
- Access to Credit Information
- Correction of Credit Information
- Accuracy, etc., of Credit Information
- Retention of Credit Information
- Limits on Use of Credit Information
- Limits on Disclosure of Credit Information
- Unique Identifiers

Source: <https://www.privacy.org.nz/the-privacy-act-and-codes/codes-of-practice/credit-reporting-privacy-code/credit-reporting-the-law/> (Retrieved 26 Apr 2016)

UNITED STATES

Credit reporting is covered under the *Fair Credit Reporting Act* enacted in 1970. This law provides a strict set of guidelines to credit reporting companies and those that provide credit data to these companies.

Some of what the Act covers are:

- The Act requires credit reporting agencies to give consumers free access to the information they have collected about them and their financial habits once every 12 months.
- It also requires that consumers be given a free annual copy of any reports that are compiled about them.
- It also restricts access to consumers' credit reports. It prohibits people from seeing a consumer's credit report unless it is by a court order; authorised by the consumer him/herself as part of a credit application process; part of an insurance company underwriting the consumer's insurance, or a government agency considering to provide a license or other public benefits, such as social service. A person can prove a legitimate business need to view a consumer's report. For example, if a landlord is considering the consumer's rental application or a person is working on behalf of a retailer and has accepted a check as a form of payment, he or she can request a copy of the customer's report.
- Credit information can only be released if authorised by the customer to the credit reporting agency to release such information.
- The Act has provisions requiring agencies to provide accurate credit information; for a consumer to inform the credit bureau in case of errors and where the bureau has 30 days to look into the dispute.



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Beginning in September 2016, the credit bureau must also provide the consumer with an additional free report through AnnualCreditReport.com if it corrects an error on his/her report.

- The Act sets a time limit of 7 years for negative information on a credit report, except in the case of bankruptcy where the negative report can remain for up to 10 years.

Source: <https://www.usa.gov/credit-reports> (Retrieved 26 Apr 2016)

Gender analysis

Will women or men be disproportionately affected by the Bill

Further information

- Australian law - <https://www.oaic.gov.au/privacy-law/privacy-act/credit-reporting>
- NZ law - <https://www.privacy.org.nz/the-privacy-act-and-codes/codes-of-practice/credit-reporting-privacy-code/credit-reporting-the-law/>
- U.S law - <https://www.usa.gov/credit-reports>
- 'Data Bureau under scrutiny' *Fiji Times*, 09/04/15 <http://www.fijitimes.com/story.aspx?id=301307>
- 'Spotlight on Data Bureau', *Fiji Times* 08/12/15 <http://www.fijitimes.com/story.aspx?id=332965> (Retrieved 26/04/16)
- Consumer Council of Fiji 2012 report 'Review Report on Existing Consumer Protection Laws of Fiji: The Way Forward' <http://www.consumersfiji.org/upload/Reports/CCF%20Legislation%20Report.pdf>

DISCLAIMER

This briefing was prepared to assist consideration of the Bill by Members of Parliament. It has no official status. Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. Other sources should be consulted to determine the subsequent official status of the Bill.



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Annex A – Definitions used in this Bill

"**Bank**" means the Reserve Bank of Fiji;

"**borrower**" means a person whose credit information is submitted under this Bill to a credit reporting agency and in relation to whom a credit report is issued by a credit reporting agency;

"**company**" has the same meaning given in the Companies Act 2015;

"**credit information**" means information on borrowers in electronic or any other form submitted by a credit information provider and maintained, processed and reported on by a credit reporting agency;

"**credit information provider**" means any person registered with the Bank to provide credit information for the purposes of this Bill;

"**credit report**" means a report issued by a credit reporting agency which contains a full or partial disclosure of credit information contained in its database in respect of a borrower;

"**credit report recipient**" means a person who is eligible to receive a credit report under this Bill on request from a credit reporting agency;

"**credit reporting agency**" means an entity licensed under this Bill and collects credit information or data pertaining to a person from a credit information provider and compiles such credit information in order to provide such information, on request, to a credit report recipient in the form of a credit report;

"**credit reporting system**" means the collection of credit information by a credit reporting agency, the storage, management and processing of the credit information and the dissemination of credit information by a credit reporting agency under this Bill;

"**knowingly**" has the same meaning given in the Crimes Decree 2009;

"**lending institution**" includes-

- a licensed commercial bank;
- a finance company;
- a finance leasing establishment;
- any other institution, engaged in providing credit or goods and services on credit to the borrowers, declared by the Minister on the recommendation of the Reserve Bank having regard to the financial stability of that institution, by order published in the Gazette, to be a lending institution for the purposes of this Bill;

"**Minister**" means the Minister responsible for finance;

"**person**" means a natural person or a company, association or body of persons, corporate or unincorporate; and

"**prescribed**" means prescribed by regulations under this Bill.