



---

**STANDING COMMITTEE ON JUSTICE, LAW AND HUMAN  
RIGHTS**

**REPORT ON ELECTRONIC TRANSACTIONS (AMENDMENT)  
BILL, 2016**

**(BILL NO. 53 OF 2016)**



**PARLIAMENT OF THE REPUBLIC OF FIJI  
Parliamentary Paper No. 23 of 2017**

---

*February 2017*

*Published and Printed by the Department of Legislature, Parliament House, SUVA*

# TABLE OF CONTENTS

List of Acronyms .....	- 3 -
Chair's Foreword.....	- 4 -
<b>1.0 INTRODUCTION .....</b>	<b>- 4 -</b>
1.1 Background.....	- 5 -
1.2 Objectives of the Bill.....	- 5 -
1.3 Procedure and Program .....	- 5 -
1.4 Committee Members.....	- 6 -
<b>2.0 ELECTRONIC TRANSACTIONS (AMENDMENT) BILL 2016.....</b>	<b>- 6 -</b>
2.1 Introduction .....	- 6 -
2.2 Written and oral submission received.....	<b>Error! Bookmark not defined.</b> - 7 -
2.3 Summary of submissions .....	- 7 -
<b>3.0 COMMITTEES' OBSERVATION DURING DELIBERATION .....</b>	<b>- 7 -</b>
3.1 Main issues highlighted in the Bill.....	- 7 -
3.2 Harmonising effect of the Bill .....	- 7 -
3.3 Issues not provided for in the Bill.....	- 7 -
3.4 Gender analysis.....	- 8 -
<b>4.0 CONCLUSION .....</b>	<b>- 8 -</b>
<b>APPENDIX A.....</b>	<b>- 10 -</b>

## **LIST OF ACRONYMS**

<b>JLHR</b>	-	<b>Standing Committee on Justice, Law and Human Rights</b>
<b>ICT</b>	-	<b>Information, Communications and Technology</b>
<b>ITC</b>	-	<b>Information Technology and Computing Services</b>
<b>UNCITRAL</b>	-	<b>United Nations Commission on International Trade Law</b>

## **CHAIR'S FOREWORD**

Commerce and business has evolved into something that relies heavily on electronic transactions done via the internet; and Fiji like many other countries, is vulnerable to the pace at which electronic transactions via the internet is moving. Many businesses in Fiji have become more reliant on electronic transactions done via the internet and given its fast evolving characteristic, laws in Fiji, though sound in its effectiveness, still lack certain aspects that enables the laws to cater for current electronic transaction dealings.

With this move into dependence on electronic transactions, proper consideration of its impact on the people, is vital. In order to achieve this, proper legal framework is needed, thus the introduction of the Bill.

The Electronic Transactions (Amendment) Bill was initiated with the aim of refining an already existing Electronic Transaction Promulgation 2008. The 2008 promulgation was drafted to create greater legal certainty for electronic transactions and enhancing trade and commerce through the internet, however it was never brought into force. The Bill will bring into effect what the Promulgation intended to achieve and also provide for current accepted standards for electronic transactions.

The Bill will also provide for key issues relating to electronic transactions that are highlighted by current International Conventions, in this instance, the United Nations Commission on International Trade Law (UNCITRAL) Convention on the use of Electronic Communications in International Contracts (2005).

The details of the Committees deliberations are contained in this report. The amendments which were necessary have been made and marked in red in the copies of the Bill provided with this report.

At this juncture I would like to thank the Honourable Members of the Justice, Law and Human Rights Committee for their deliberations and input, the alternate members who made themselves available when the substantive members could not attend, the staff and officers of the secretariat, the entity who accepted the invitation of the Committee and made themselves available to make submissions and the members of the public for taking an interest in the proceedings of the Committee and Parliament.

I on behalf of the Committee recommend the Electronic Transactions (Amendment) Bill to the Parliament and seek support of all the members of this August house for the Bill since it is designed for the greater good of all Fijians.

---

**Hon. Ashneel Sudhakar**  
**CHAIRPERSON, STANDING COMMITTEE ON**  
**JUSTICE, LAW AND HUMAN RIGHTS**

# **1.0 INTRODUCTION**

## **1.1 Background**

The Electronic Transactions (Amendment) Bill, 2016 was moved in Parliament under Standing Order 51 and was referred to the Standing Committee on Justice, Law and Human Rights, for review.

The Standing Committee on Justice, Law and Human Rights, hereinafter referred to as the Committee, mandated by Standing Orders 109 (2) and 110 of the Standing Orders of Parliament, was referred the Electronic Transactions (Amendment) Bill, 2016, hereinafter referred to as the Bill, for review in 2016 and was tasked to table a report on the Bill in the February 2017 Parliament sitting.

## **1.2 Objectives of the Bill**

Main objectives of the Bill mirrors the objectives provided for in the Electronic Transactions Promulgation 2008; which are:

- (a) to recognise the validity of and promote the development of electronic communications in commercial and non-commercial dealings and in dealings with governmental entities; and
- (b) to remove uncertainty about using electronic methods to satisfy various legal requirements about documents and record-keeping.

The Bill also added a few objectives that would make up the overall objective of the piece of law. These new objectives states that the Bill would:

- (a) facilitate and give effect to the domestic implementation of the United Nations Convention on the Use of Electronic Communications in International Contracts (2005);
- (b) provide for the efficient delivery of ICT services by Government entities; and
- (c) provide for rules governing evidence with regard to electronic communication.

## **1.3 Procedure and Program**

In order for the Committee to carry out its task, it called for submissions from the public and other interested stakeholders by placing advertisements through the Parliament website ([www.parliament.gov.fj](http://www.parliament.gov.fj)) and in the local newspapers (Fiji Times and Fiji Sun) on 26 October, 2016.

The Committee was mindful of the provisions in Standing Order 111(1)(a) and ensured that its meetings were open to the public and the media, except during

deliberations and discussions to develop and finalise the Committee's recommendations and report.

## **1.4 Committee Members**

The substantive members of the Standing Committee on Justice, Law and Human Rights are:

- Hon. Ashneel Sudhakar (MP) (Chairman)
- Hon. Semesa Karavaki (MP) (Deputy Chairman)
- Hon. Lorna Eden (MP) (Member)
- Hon. Mataiasi Niumataiwalu (MP) (Member)
- Hon. Niko Nawaikula (MP) (Member)

During the duration of the term of the Committee in 2016 while deliberating on the Bill, the following alternate membership arose pursuant to Standing Order 115(2) and (5):

### ***Alternates***

- Hon. Balmindar Singh (MP) (Alternate Member for Hon. Lorna Eden)
- Hon. Mikaele Leawere (MP) (Alternate Member for Hon. Niko Nawaikula)

## **2.0 ELECTRONIC TRANSACTIONS (AMENDMENT) BILL, 2016**

### **2.1 Introduction**

In 2008 the Electronic Transactions Promulgation 2008, hereinafter referred to as the Promulgation, was drafted with the objective of creating an environment of greater legal certainty for electronic transactions and enhancing trade and commerce through the internet. Although the Promulgation has not come into force, what it set out to achieve for electronic transactions remains relevant, and must be further refined so as to adhere to accepted international standards.

The Promulgation is based on the United Nations Commission on International Trade Law ('**UNCITRAL**') Model Law on Electronic Commerce (1996). UNCITRAL then further developed the Convention on the use of Electronic Communications in International Contracts (2005), hereinafter referred to as the Convention, which aims to facilitate the use of electronic communications in international trade. The Convention was adopted by the United Nations General Assembly on 23 November 2005.

The Bill seeks to harmonise provisions of the Promulgation with the Convention and pave the way for the State to accede and become a state party to the Convention<sup>1</sup>.

---

<sup>1</sup> Explanatory Note on the Electronic Transactions (Amendment) Bill, 2016.

## **2.2 Written and oral submissions received**

The Committee as part of its deliberation received written submission on the Bill from the Consumer Council of Fiji.

The Committee received one written submission on the Bill, despite being advertised to the public. This might show the lack understanding the majority of the public have on what the Bill provides for. However this did not deter the Committee, since the Bill is a piece of law that covers a concept that is already captured in a piece of law that has gone through the necessary reviewing process, which in this instance is the Promulgation. The Committee would like to extend its gratitude to all those who participated and provided an essential contribution to the Committee's work of deliberating on the Bill.

## **2.3 Summary of submissions**

Copy of the written submission received by the Committee is attached as 'APPENDIX A'.

## **3.0 COMMITTEES' OBSERVATIONS DURING DELIBERATION**

### **3.1 Main issue highlighted in the Bill**

The Committee acknowledged the main issue for the Bill, which is to bring into effect the provisions of the Promulgation and also to create a legal framework that ensures that current electronic transactions dealings are provided for.

### **3.2 Harmonising effect of the Bill**

The Committee acknowledges that current commercial and business transactions have shifted from using paper-based communications to electronic communications in a short period of time. This is due to the fact that it is more commercially viable for businesses to do so. However, this shift has not been regularised due to gaps in the legislative framework. The introduction of the Bill, which incorporates the aims of the Convention, ensures that current commercial dealings done via electronic means are done with the proper legislative regulations.

### **3.3 Issues not provided for in the Bill**

The Committee acknowledges the issues raised by the submittee that provided a written submission to the Committee. The submission made highlighted certain issues that the Bill had not provided for and these can be summarised as follows:

- a) when it comes to electronic communications, the Bill has not taken into consideration that not all consumers have access to the internet or if they do, these consumers are not computer literate;
- b) the Bill does not provide for the costs that will be incurred by consumers when relying on the internet for communications – this issue was raised in light of the fact that current situations show that most businesses are using electronic communications to do transactions;
- c) there is no specified guideline provided in the Bill, for assessing the integrity of an electronic communication; and
- d) there is concern over no provision for accountability, that is to say, the Bill does not provide for who will be held accountable when instances of incorrect, delayed or false information is provided for in electronic communications.

The Committee took note of the issues raised and consulted the drafters of the Bill; the Office of the Solicitor General. Necessary amendments to the Bill were made.

### **3.4 Gender analysis**

The Committee took into account the provisions of Standing Order 110(2), where a committee conducts an activity listed in clause (1), the committee shall ensure that full consideration will be given to the principle of gender equality so as to ensure all matters are considered with regard to the impact and benefit on both men and women equally.

The Committee was unable to conduct a gender-based analysis due to the unavailability of sex dis-aggregated statistics on the subject under consideration. Also, the Committee did not receive any submissions on gender-based analysis of the Bill. It would appear that this Bill is based on gender-neutral policies and everyone is affected by policies, programs and legislation in the same way regardless of gender.

The Committee noted and is satisfied that the use of electronic transaction and trade and commerce via the internet is not restricted to a particular gender. The matters considered in this report, impacts on men and women equally and as such, the enactment of this legislation will ensure the harmonising of the need for e-commerce and e-business with the providing of a more effective service delivery.

## **4.0 CONCLUSION**

The Committee received only one submission on the Bill, thus deliberation was limited as highlighted in the Report. Amendments which the Committee felt were necessary were made in consultation with the drafters so as not to upset the



objectives of the Bill. Those amendments are reflected in the amended copy of the Bill presented with this report.

The Committee through this report commends the Bill to the Parliament.

## **APPENDIX A**

**COPY OF WRITTEN SUBMISSION RECEIVED BY THE  
STANDING COMMITTEE ON JUSTICE, LAW AND HUMAN  
RIGHTS**

# Consumer Council of Fiji

www.consumersfiji.org



## HEAD OFFICE

4 Camavon Street  
Private Mail Bag  
GPO, Suva  
Phone - General Office: 3300792, 3310183  
Chief Executive Officer: 3305864  
Fax: 3300115 | Email: [complaints@consumersfiji.org](mailto:complaints@consumersfiji.org)

## LAUTOKA/West

Suite 4 Popular Building  
Vidilo Street  
PO Box 5396, Lautoka  
Phone: 6664987 | Fax: 6652846  
Email: [consumeritk@connect.com.fj](mailto:consumeritk@connect.com.fj)

## LABASA/North

Level 1, Lot 41 Raza Properties Ltd  
Nasekula Road  
PO Box 64, Labasa  
Phone: 8812559 | Fax: 8812559  
Email: [colbs@connect.com.fj](mailto:colbs@connect.com.fj)

11 January 2017

### The Chairperson

Standing Committee on Justice, Law and Human Rights

P O Box 2352

Government Buildings

SUVA

Dear Sir

### **RE: ELECTRONIC TRANSACTIONS (AMENDMENT) ACT 2016**

*Warm Greetings from the Consumer Council of Fiji!*

Please find attached the Council's submission on the Electronic Transactions (Amendment) Act 2016.

We sincerely hope the issues raised and the recommendations in the submission will be given a favourable response.

We would be happy to provide further clarifications should these be required.

Yours sincerely,



.....  
Ms Bindula Devi  
Officer-in-Charge

**FOR: Chief Executive Officer, Consumer Council of Fiji**

*A Submission to the  
Standing Committee on Justice, Law and Human  
Rights  
of the Parliament of the Republic of Fiji*

*on*

*Electronic Transactions (Amendment) Act 2016*

11 January 2017

## **1.0 Role of Consumer Council of Fiji**

The Council has statutory obligations under *the Consumer Council of Fiji Act (Cap. 235)* to ***“to do all such acts and things which it may consider necessary or expedient to ensure that the interests of consumers of goods and services are promoted and protected.”*** The Council is also obliged to advise and make recommendations to the Minister responsible for consumer affairs in Fiji or any other Minister on issues affecting the interests of consumers. The Council is a key stakeholder in the formulation of policies, legislations and standards in the country. The Council being the frontline or first point of contact for consumer grievances has a strong mandate from consumers to express their viewpoints on issues affecting them.

The Council wishes to make a submission to the Parliament Standing Committee on Justice, Law and Human Rights on the *Electronic Transactions (Amendment) Act 2016* (hereinafter referred to as ‘the Act’). The Council sincerely hopes that the issues it raises here are given due consideration which are in the interest of consumer justice and fairness.

This submission is in two parts. Part 1 gives reasons as to why the Council supports the Bill and Part 2 focuses on the concerns the Council has on the provisions on the amendment of the Electronic Transactions Promulgation 2008.

### **PART 1**

#### **2.0 Governments Vision on Electronic Transactions**

Reference is made to the government’s objective to creating an environment of greater legal certainty for electronic transactions and enhancing trade and commerce through the internet. The Council agrees that the implication of this attempt to harmonise Fiji’s legislative framework for electronic transactions to the modern and relevant needs of e-commerce and e-business in the Pacific region. This will also achieve a more effective service delivery by the Government and other organisations alike to the people of Fiji.

#### **3.0 Consumer Concerns over a Complete Shift to Electronic Based System**

Given its cost effectiveness, most businesses have been using electronic means of communication for quite some time. Thus, it can be believed that the scale of business operations may not serve as a bearing to determine whether a business has adopted the use of electronic channels as a mode of communication.

As the Council supports the objective of this Act, there are grave concerns over a complete shift by businesses to use electronic channels as the mode of communications, advice and billing. This severity can easily be demonstrated by the saga of Sky Pacific which switched to e-billing system where about 20,000 consumers were affected. As this shift meant that consumers would no longer receive bills on their postal addresses, the Council had identified the following problems:

- Not all consumers had access to the internet or did not have an email address. This was mostly with the elderly/ retired account-holders. In some cases, the bill-payers (*such as the children*) for such individuals resided in remote areas with no internet network or access, while other elderly/ retired account-holders were not computer literate.
- As consumers had already borne the costs involved in transportation to pay their bills, more costs were placed on them to access the internet and print their bills. The Council

understands that accessing internet at an internet café can cost up to 5 cents a minute while printing may cost somewhere between 15 to 50 cents per page.

### 3.1 Internet Charges

If such a trend described in 3.0 above were to rise, the same would most likely be the case for necessary expenditures of a consumer to pay for their groceries/ amenities. Subscription of the internet and charges for its usage will form a part of the modern day need.

In such a case, the below reveals the amount of costs involved with this:

Service Provider	Offer	Plans	Data	Cost	Contract
Vodafone	8GB Pocket Wifi		8		24 Months
	VodaHome	Smart Blaze	11	\$35	
		Smart Mate	32	\$50	
		Smart Home	58	\$65	
		Student Plan	8	\$25	Month by Month
Triple Play Home Bundles	Sky Pacific + 58GB for Data (29GB anytime and 29GB off peak (1am - 7am) + 4x Triple Up Any Network Sims with Unlimited Family Calls for only \$79.95 per month	58	\$79.95	24 Months	
Digicel	Unwired	(24GB peak and 24GB off peak)	48	\$47	Prepaid
		(32GB peak and 32GB off peak)	64	\$59	Prepaid
		(Anytime Data)	70	\$94	Postpaid
	Connect Vuvale		50	\$55.92	
Connect	Homelite		30	\$46.44	24 Months
	Velocitylite		5	\$18.96	12 Months
	Connect 4G+	Connect 4G+ (Post pay)	40	\$45	24 Months
		Connect 4G+ Super (Post pay)	100	\$75	24 Months
		Connect 4G+ Prepay (Prepay)	1400MB 7Days Expiry	\$5	
			3GB 14Days	\$10	

			<b>Expiry</b>		
			<b>5GB 14Days Expiry</b>	<b>\$15</b>	
			<b>7GB 14Days Expiry</b>	<b>\$20</b>	
			<b>18GB 30Days Expiry</b>	<b>\$40</b>	
			<b>25GB 30Days Expiry</b>	<b>\$60</b>	
		<b>Connect 4G+ Student Prepay (Prepay)</b>	<b>3GB 14Days Expiry</b>	<b>\$5</b>	
			<b>6GB 30Days Expiry</b>	<b>\$10</b>	
			<b>Available to Students Only</b>		
	<b>Connect Scholar</b>	<b>Nomad</b>	<b>15</b>	<b>\$23.70</b>	<b>12 Months</b>
		<b>Broadband</b>	<b>15</b>	<b>\$23.70</b>	<b>12 Months</b>
	<b>Connect Velocity</b>		<b>10</b>	<b>\$33.17</b>	

Whilst the Council supports having the electronic mode of communication, the consumer must not be denied their right to choose the mode of communication convenient to them.

#### **4.0 Time of Dispatch**

##### **4.1 Problems with Communication Retrieval**

Although deemed to be sent, receiving electronic modes of communication may be a challenge. While Section 6 of the Amendment Act dictates the time of dispatch, the receipt apart from the access to the internet can include the following:

- Restriction on file size;
- Power outages; and
- Software upgrades that can prevent attached documents from being opened.

Given the problems with the retrieval, it can be suggested that for the purposes of communication, businesses must not dictate but agree on a mode of communication with their customers. A good example of this can be demonstrated by the Council where despite having a provision of a designated email address by the consumers, advisories, updates and even

closure advice are sent on the postal address if the consumer prefers this to be the medium over their email addresses. The Council provides this option to consumers in consideration of affordability and other factors such as access to internet, the consumer's computer literacy level, and the preference of the addressee.

#### 4.2 Frequency of Use: Electronic Channel vs. Time of Receipt

The amendments provided in Section 7(1) of the Bill states that *"If the addressee of an electronic communication has designated an electronic address for the purpose of receiving electronic communications, the time of receipt of the electronic communication is taken to be the time when the electronic communication becomes capable of being retrieved by the addressee at that electronic address."* Section 7(3) further dictates that *"An electronic communication is presumed to be capable of being retrieved by the addressee when it reaches the addressee's electronic address."*

This provision can create problems as there may be instances where information is retrieved/read by the consumer at a stage where a bill has expired or the information has become void. Thus, in the case of an amenity bill, a consumer will surely face disconnection or attract penalty fees. It can also result in a legal action in the event of an issuance of a default notice.

This issue again requires the flexibility that should be offered to consumers on the preferred mode of communication.

#### 5.0 Writing

Reference is made to Section 13 of the Amendment Act, where a brief summary of *"giving information"* has been provided. However, the manner in which information may be provided via electronic mode is one of the greatest concerns.

With ease and time efficiency, information or communication via electronic channels may be susceptible to:

- Inadequate information. A good example to describe this problem is advice on the terms and conditions of the use of ATM Cards. A link or the brochure of the terms and conditions can easily be attached by the bank and sent to the consumer with no explanation, specifically on the type of advice being sought. Also, on some occasions, where there may be a large number of attachments, there is a possibility that certain attachments may be missing. Needless to say, due to large attachments, the correspondences may not be delivered to the addressees in a timely manner. There may be instances where the information has not been received by the addressee and the originator may not be aware of the same.
- Incorrect information provided. Since emails are a quick form of communication, information may not be correctly vetted prior to dispatch. In situations of power outages, there may be loss of information which may not be checked by the sender.

**Case Study on Incorrect Information:** Council investigated a complaint where a consumer attempted to withdraw \$200 from a third party bank's ATM. Neither the cash nor the receipt was dispensed from the ATM. The complainant did not inform or seek clarification from the Bank regarding this. She later realised that the failed transaction was reflected in her account statement.



Upon attempts to seek clarification, the Council was advised that cash had not been dispensed from the ATM confirming that the transaction had failed. However, upon follow-up for an advice, the Council was informed that cash had been dispensed from the ATM, meaning that the complainant had been able to withdraw the funds.

This is a clear case where the Council and the complainant were provided with incorrect information by the Bank.

#### 6.0 Failure to Cease Recognition of Electronic Communication at a Certain Stage

The Council has come across instances where institutions (*mainly from the financial sector*) do not wish to recognise electronic communications with their customers at a certain point. For example, although arrangements to obtain a loan and other lengthy advices may have been sought, the request for the discharge of a property title upon full settlement via email can easily be rejected. Instead, a bank may require that such a request come in the form of a formal request duly signed by the requestor/account-holder. Therefore, the Council anticipates that the provisions of the amendment Act will eradicate such problems.

#### 7.0 Accountability

As the objective of the Act is to create an environment to ease the modes of communication by placing adequate emphasis/reliance on electronic communication; disclaimers however, will somewhat defeat the purpose of the legislation. Below are examples of disclaimers that are currently being used:

**Comparison of Disclaimer Messages via Institution/ Industry**

Sector	Institution	Disclaimer Message
Banks	ANZ	This e-mail and any attachments to it (the "Communication") is, unless otherwise stated, confidential, may contain copyright material and is for the use only of the intended recipient. If you receive the Communication in error, please notify the sender immediately by return e-mail, delete the Communication and the return e-mail, and do not read, copy, retransmit or otherwise deal with it. Any views expressed in the Communication are those of the individual sender only, unless expressly stated to be those of Australia and New Zealand Banking Group Limited ABN 11 005 357 522, or any of its related entities including ANZ Bank New Zealand Limited (together "ANZ"). ANZ does not accept liability in connection with the integrity of or errors in the Communication, computer virus, data corruption, interference or delay arising from or in respect of the Communication.

	<b>BSP</b>	This email (including any attachments) is confidential and intended solely for the use of the recipient it is addressed to. It may also be subject to legal or other professional privilege. Information contained in this email should not be copied or forwarded without the consent of the sender. If you have received this transmission in error, please notify the sender immediately and destroy and/or delete all hard and soft data relating to this transmission. Confidentiality or privilege is not waived or lost because this email has been sent to you by mistake. Bank of South Pacific has active anti-virus measures on its email systems but does not accept any liability in connection with any computer virus, data corruption, delay, interruption, unauthorised access or unauthorised amendment. Any views expressed in this email are those of the individual sender, except where expressly stated to be a representation by Bank of South Pacific.
<b>Insurance</b>	<b>Sun Insurance</b>	This e-mail and any attachments are confidential. They may contain privileged information and are intended for the named addressee(s) only. They must not be distributed without consent. If you are not the intended recipient, please notify us immediately and do not disclose, distribute, or retain this e-mail or any part of it. Unless expressly stated, opinions in this e-mail are those of the individual sender and not of SUN Insurance Company Ltd. We believe but do not warrant that this e-mail and any attachments are virus free. You must therefore take full responsibility for virus checking. SUN Insurance reserves the right to monitor e-mail communications through its networks. If you have received this transmission in error, please telephone +679 3313 822 immediately so that we can arrange for its return.
	<b>QBE</b>	<b>IMPORTANT NOTICE:</b> The information in this email is confidential and may also be privileged. If you are not the intended recipient, any use or dissemination of the information and any disclosure or copying of this email is unauthorised and strictly prohibited. If you have received this email in error, please promptly inform us by reply email or telephone. You should also delete this email and destroy any hard copies produced.
	<b>Tower Insurance</b>	The information contained in this email message is confidential and may be legally privileged. If you are not the intended recipient, please note that any use, dissemination, distribution, or reproduction of this message in any form whatsoever, is strictly prohibited. If you received this email in error, please

		notify me by return email, delete your copy, and accept my apologies for any inconvenience caused. Please note that your receipt of this email from TOWER's email address does not constitute TOWER's consent for you to send any other electronic information to TOWER by return, unless specifically stated otherwise.
<b>Hire Purchase</b>	<b>Carpenters Finance</b>	This e-mail message, together with any attachments, is for the intended recipient only and may not be disclosed to any other person. If you are not the intended recipient and you have received or seen this message through an error, please notify the sender immediately and delete the e-mail from your system. Unauthorised use or disclosure of the message, or information it contains, may be unlawful. Carpenters Fiji Limited accepts no responsibility for changes made to this e-mail or to any other attachments after transmission from Carpenters Fiji Limited. The information contained in this e-mail, together with any attachments, does not necessarily represent the official view of Carpenters Fiji Limited. It is your responsibility to check this e-mail and any attachments for viruses.
	<b>Courts</b>	This email and any files transmitted with it contains confidential information and is intended solely for the use of the individual or entity to whom they are addressed. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. E-mail transmission cannot be guaranteed to be secure or error-free as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender therefore does not accept liability for any errors or omissions in the contents of this message, which arise as a result of e-mail transmission. If verification is required please request a hard-copy version.
<b>Hardware</b>	<b>BlueScope Lysaght</b>	NOTICE - This message and any attached files may contain information that is confidential, legally privileged or proprietary. It is intended only for use by the intended recipient. If you are not the intended recipient or the person responsible for delivering the message to the intended recipient, be advised that you have received this message in error. Any dissemination, copying, use or re-transmission of this message or attachment, or the disclosure of any information therein, is strictly forbidden. BlueScope Lysaght (Fiji) Limited does not represent or guarantee that this message or attachment is free of errors, virus or interference. If you have received this message

		in error please notify the sender immediately and delete the message. Any views expressed in this email are not necessarily the views of BlueScope Lysaght (Fiji) Limited.
<b>Motor Vehicle</b>	<b>Carpenters Motors</b>	This e-mail message, together with any attachments, is for the intended recipient only and may not be disclosed to any other person. If you are not the intended recipient and you have received or seen this message through an error, please notify the sender immediately and delete the e-mail from your system. Unauthorised use or disclosure of the message, or information it contains, may be unlawful. Carpenters Fiji Limited accepts no responsibility for changes made to this e-mail or to any other attachments after transmission from Carpenters Fiji Limited. The information contained in this e-mail, together with any attachments, does not necessarily represent the official view of Carpenters Fiji Limited. It is your responsibility to check this e-mail and any attachments for viruses.
	<b>Asco Motors</b>	The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful. This email has been scanned for viruses and malware, and may have been automatically archived by <b>Mimecast Ltd.</b>
<b>Airline</b>	<b>Fiji Airways</b>	This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the system manager. Scanned by the Clearswift SECURE Email Gateway.
<b>Manufacturing</b>	<b>Golden Manufacturers Ltd</b>	This email message is intended only for the use of the recipient above. It may contain confidential or legally privileged information. If you are not the intended recipient, please notify Golden Manufacturers Limited Immediately PLEASE NOTE that any use or dissemination of this communication is prohibited. Golden Manufacturers Limited will not be responsible for any action that may arise from the use of the contents of this e-mail message. Finally, the recipient should check this email and any attachments for the presence of viruses. The company accepts no liability for any damage caused by any virus transmitted by this email.
<b>Communication</b>	<b>Vodafone</b>	The content of this email including any attachments is confidential and may contain information that is proprietary and privileged.

		<p>If you are not the intended recipient be advised that you have received this email in error and that any use, dissemination, forwarding, printing or copying of this email is strictly prohibited. If you have received this email in error please notify E-mail Administrator on <a href="mailto:admin@vodafone.com.fj">admin@vodafone.com.fj</a> Please also destroy and delete this message from your system. Vodafone Fiji Limited does not guarantee that this message is free from computer virus or any other defect. The reader accepts full responsibility for taking defensive and counteractive action needed to rectify the computer virus or other defects caused.</p>
<b>Education</b>	<b>USP</b>	<p>This e-mail is intended solely for the addressee. If you are not the addressee please do not read, print, re-transmit, store or act in reliance on it or any attachments. Instead, please email it back to <a href="mailto:alumni@usp.ac.fj">alumni@usp.ac.fj</a> and then immediately permanently delete it. Unless otherwise expressly agreed by the sender of this email, this communication may contain confidential information and may also in certain circumstances be subject to applicable legal privilege. This information may not be used or disclosed except for the purpose for which it has been sent.</p>
	<b>FNU</b>	<p>The Fiji National University inclusive of all its Colleges, Centres, and Divisions (hereinafter referred to as the FNU) states as follows: THAT ANY information contained in this email is confidential and may contain proprietary information. It is meant solely for the intended recipient. Access to this email by anyone other than the recipient is unauthorized. If you are not the intended recipient, any disclosure, copying, distribution or any action taken or omitted in reliance on this, is prohibited and may be unlawful. If you have received this transmission in error, please notify the sender immediately and destroy and/or delete all hard and soft data relating to this transmission. FNU shall not accept any liability or responsibility if information or data, for whatever reason is corrupted or does not reach its intended recipient. No warranty is given that this email is free of viruses. The views expressed in this email are, unless otherwise stated, those of the author and not those of FNU or its management. FNU Group reserves the right to monitor, intercept and block emails addressed to its users or take any legal action in accordance with its ICT/email usage policy.</p>
<b>Entertainment</b>	<b>Pro Photos and Designs Fiji Limited</b>	<p>The sender believes that this E-Mail and any attachments were free of any virus, worm, Trojan horse, and/or malicious code when sent. This message and its attachments could have been infected during transmission. By reading the message and</p>

		<p>opening any attachments, the recipient accepts full responsibility for taking proactive and remedial action about viruses and other defects. The sender's business entity is not liable for any loss or damage arising in any way from this message or its attachments. The sender believes that this E-Mail and any attachments were free of any virus, worm, Trojan horse, and/or malicious code when sent. This message and its attachments could have been infected during transmission. By reading the message and opening any attachments, the recipient accepts full responsibility for taking proactive and remedial action about viruses and other defects. The sender's business entity is not liable for any loss or damage arising in any way from this message or its attachments.</p>
--	--	--

From the table above, some problems that have been identified include:

- i. The disclaimer mitigates the risk of a confidential email that is or may be forwarded to the third-party/recipient(s). Organisations may use the disclaimer to warn such recipients that they are not authorised recipients and to ask that they delete the email. In certain cases, if unintended parties are copied in the emails, the addressee's information is revealed to the unauthorised recipient while the sender evades any penalty of such an error.
- ii. The common law requires that one must be obliged to take proper and due care when giving advice which the third party relies on, a disclaimer may prevent the organisation being represented by the sender from any liability of negligent misstatements.
- iii. A disclaimer may state that the email does not form part of a contract. This may not be effective as the substantive body of the email may contradict the information provided to the addressee. Such a disclaimer is noticed in BSP's emails where it is stated that *"Any views expressed in this email are those of the individual sender, except where expressly stated to be a representation by Bank of South Pacific."* In such situations, one can say that banks do not have any control over the electronic communication of their employees.
- iv. The burden to prevent the risk of computer viruses via email is mitigated by the addressee. As the disclaimers may warn of the possibility of infection, the advice is generally for the recipient to conduct their own scan.

The Council submits that the same level of accountability that applies to paper-based communication should apply to electronic mode of communication.

## 8.0 Conclusion

The Consumer Council of Fiji, after deliberating on the above, reiterates that whilst supporting the provisions in the proposed Bill, consumers and businesses who are involved in transactions and dealings need to agree on the mode of communication. This will safeguard consumer interests and prevent businesses to dictate a fixed mode of communication.

The Council welcomes the State's interest in becoming a party to the Convention on the use of Electronic Communications in International Contracts (2005). It is understood that the Electronic Transactions (Amendment) Act 2016 seeks to harmonise provisions of the Promulgation with the Convention to promote international trade and commerce through the internet. However, the State must note the concerns discussed in this submission that will ensure the facilitation of international trade as well as safeguard consumer interests. The Amendment Act should proactively iron out the possibility that information provided via electronic mode and the traditional paper-based mode may vary. As there may or may not have been such instances, the Amended Act must provide consideration to these problems that could occur.

Having a single window concept to promote international trade and commerce is much more convenient, involves less paperwork and promotes an efficient process. This will be made easier on the part of the consumers and companies who are involved in the exchange of goods and services which will allow for trade to occur at a faster rate.

It is also important to note that the State must have the resources, tools, technology and expertise available to carry forward with the implementation of a framework for electronic transactions that is modern and considered relevant to the needs of e-commerce in the Pacific region. It is agreed that such a framework will enhance service delivery by the Government to consumers. Nonetheless, the framework must be adapted correctly and effectively communicated throughout the Government agencies involved to achieve the objective of the State being a party to the Convention.

## PART 2

### 1.0 Introduction

The Consumer Council of Fiji, after a comprehensive review of the “Electronic Transactions (Amendment) Act” submits the following concerns/ recommendations specifically to the provisions therein:

#### 1.1 Section 5A (1)

*“Where any written law requires information or documents to be presented, stored, retained or generated in its original paper based form, such requirement is deemed to be satisfied by information contained in a data message, electronic document, electronic record or other communication in electronic form, if there exists a reliable assurance with regard to assessing the integrity of the said information from the time such information in a data message, electronic document, electronic record or other communication is available in electronic form and the information contained in the data message, electronic document, electronic record or communication is available and can be used for subsequent reference.”*

**Concern:** The above provision does not describe the factors to determine how the information can be kept with its integrity in electronic form.

**Recommendation:** The law must set out factors to provide a guideline to satisfy before keeping information in the electronic form. The guideline must prevent any authorised or unauthorised alteration of the information, set specific procedures for any necessary amendments, as well as consider the safe-keeping of the information on the electronic mode (*that is, security and back-up*).

#### 1.2 Section 6

*“(1) If an electronic communication leaves an information system under the control of the originator or of the party who sent it on behalf of the originator, the dispatch of the electronic communication is taken to occur when it leaves that information system.*

*(2) If an electronic communication has not left an information system under the control of the originator or of the party who sent it on behalf of the originator, the dispatch of the electronic communication is taken to occur when it is received.”*

**Concern:** The above provision does not fully describe the control of information. Hence, liability for any misstatements whether deliberate or not can easily be overlooked as it becomes easy to argue that the information was under construction at the time of dispatch. In other words, how can one verify whether the electronic information is sent or has been received?

**Recommendation:** The law must contain a provision for originators to have policies that will impose control of the electronic communication.



### 1.3 Section 7(1) and (3)

*(1) "If the addressee of an electronic communication has designated an electronic address for the purpose of receiving electronic communications, the time of receipt of the electronic communication is taken to be the time when the electronic communication becomes capable of being retrieved by the addressee at that electronic address."*

*(3) "An electronic communication is presumed to be capable of being retrieved by the addressee when it reaches the addressee's electronic address."*

**Concern:** The above provision may not be able to provide reasonable assurance that information disseminated has been received/retrieved on the designated electronic address in a timely manner.

**Recommendation:** The provision to include confirmation of message deliveries. That is, ensuring that delivery notices are obtained for all/any electronic communication sent. Such delivery notifications must also be adequately filed in the records including record-keeping via electronic mode as per the provisions in Section 16 of the Amendment Act.

### 1.4 Section 12A

*"A proposal to conclude a contract made through one or more electronic communications which is not addressed to one or more specific parties, but is generally accessible to parties making use of information systems, including proposals that make use of interactive applications for the placement of orders through such information systems, is to be considered as an invitation to make offers, unless it clearly indicates the intention of the party making the proposal to be bound in case of acceptance."*

**Concern:** The above provision does not take into consideration that certain offers may require information to be private and confidential up to a certain point in time. For example, an expression of interest to bid for a mortgage tender via email. As commonly understood, information in the expressions of interest should only be verified upon a SPECIFIC date and time. Therefore, for tenders submitted via electronic mode, information can easily be accessed several times by any authorised personnel hence, compromising independence/integrity.

**Recommendation:** The provision to compel originators to develop consistent standards on privacy/confidentiality for expressions of such interests via electronic modes. The regulations can also have consistent minimum guidelines which the originators can use to develop their standards.

### 1.5 Section 16C (1)

*"(1) Where a natural person makes an input error in an electronic communication exchanged with the automated message system of another party and the automated message system does not provide the person with an opportunity to correct the error, that person, or the party on whose behalf that person was acting, has the right to withdraw the portion of the electronic communication in which the input error was made if—*

*(a) the person, or the party on whose behalf that person was acting, notifies the other party of the error as soon as possible after having learned of the error and indicates that he or she made an error in the electronic communication.”*

**Concern:** The above provision stipulates that an error is communicated as soon as possible. The provision does not have a specific timeframe within which the error by the originator should be communicated and withdrawn.

**Recommendation:** The provision to have a timeframe within which any error should be communicated to the recipient party. It is strongly suggested that such an error is recalled and rectified within 72 hours or less in order to prevent any losses of any benefits to either party.

## **2.0 Insertion of Provision**

The Consumer Council of Fiji, after a comprehensive review of the “Electronic Transactions (Amendment) Act” recommends the insertion of the following to the Amendment Act:

### **2.1 Insertion of New Provision as Section 5(3)**

*Section 5(3) “Parties involved in transactions and dealings may agree on the preferred mode of communication rather than a fixed mode of communication.”*

--- ENDS ---