



National Parliament of Solomon Islands

Bills and Legislation Committee

Committee Report

Report on the Ombudsman Bill 2016
(No. 17 of 2016)



NP-Paper No. 4 of 2017

Presented on 20th February 2017

National Parliament Office

COMMITTEE MEMBERS

The current members of the Bills and Legislation Committee (10th Parliament) are:

Hon. Connelly Sandakabatu, MP (Chairman)

Hon. Jeremiah Manele, MP

Hon. Dr Derek Sikua, MP

Hon. Rick Houenipwela, MP

Hon. Matthew C. Wale, MP

Hon. Dr Culwick Togamana, MP

Hon. Steve Abana, MP

Hon. Commins A. Mewa, MP

Hon. Peter Tom, MP

Hon. Namson Tran, MP

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CHAIR'S FOREWORD



Hon. Connelly Sandakabatu, MP, Chairman

REPORT OF THE BILLS AND LEGISLATION COMMITTEE

Mr. Speaker,

Pursuant to Standing Orders No. 71 (g) of the National Parliament of Solomon Islands, Sir it is an honour and pleasure for me to present the Report of the Bills and Legislation Committee on its Inquiry into the **Ombudsman Bill 2016 (National Paper No.17 of 2016)**, for laying before Parliament.

A handwritten signature in black ink, appearing to read 'Connelly Sandakabatu'. The signature is stylized with a large loop at the top and a horizontal line extending to the right.

Hon. Connelly Sandakabatu

Chairman

Bills and Legislation Committee

20th February, 2017

COMMITTEE FUNCTIONS

The Committee is established under *Standing Order*⁷¹; an Order made pursuant to the *Constitution*¹ and has the functions, together with the necessary powers to discharge such, to:

- (a) examine such matters as may be referred to it by Parliament or the Government;
- (b) review all draft legislation prepared for introduction into Parliament;
- (c) examine all subsidiary legislation made under any Act so as to ensure compliance with the Acts under which they are made;
- (d) monitor all motions adopted by Parliament which require legislative action;
- (e) review current or proposed legislative measures to the extent it deems necessary;
- (f) examine such other matters in relation to legislation that, in the opinion of the Committee require examination; and
- (g) make a written report to each Meeting of Parliament containing the observations and recommendations arising from the Committee's deliberations.

¹Section 62, *Constitution of Solomon Islands 1978*.

EXECUTIVE SUMMARY

A priority policy intention of the Democratic Coalition for Change Government (DCCG) includes providing a vibrant, prudent and accountable Government. Integrity institutions play an important role in ensuring this can be achieved. This Bill is one of a number of bills to strengthen each of integrity institutions.

The role of the Ombudsman is important to ensuring citizens are treated fairly and justly by government agencies in their exercise of administration. It is therefore critical that qualifications for appointment to this important office set a high standard. However, section 96 of the Constitution that deals with the appointment of the Ombudsman does not set any qualifications or allow Parliament to set qualifications for appointment. Therefore, consistent with the Constitution, this Bill sets no minimum qualifications for appointment to the office of Ombudsman. The Committee urges government to consider amending the Constitution to allow such minimum qualifications to be set either in the constitution, or better still in legislation.

The Committee commends the Office of the Ombudsman for the good work it continues to do in ensuring that aggrieved citizens can have their complaints investigated and recommendations made to improve the conduct of administration.

The Committee urges the government to resource the Ombudsman's adequately so that it can perform its mandate effectively. The Committee notes there is a backlog of cases pending for investigations because of resource constraints.

The Committee notes with interest the establishment of Focal Points across the public service and in the provincial administrations. The Committee commends this creation which has increased the reach of the Ombudsman beyond its office. However, the Committee is concerned that officers performing the role of Focal Point for the Ombudsman are doing it on a voluntary basis, which clearly affects their ability to be more active and committed. The Committee regrets that this arrangement will remain the same under the proposals in this Bill. Such officers ought to be appropriately remunerated.

The Committee fully supports the intentions under the Bill to give financial and administrative autonomy to the Office of the Ombudsman.

The Ombudsman Bill 2016 is a well-crafted response to mal-administration and corruption. Through its collaborative efforts with the RSIPF, DPP, LCC, the Ombudsman will play an important role in the

fight against corruption in the public sector. The features of the Bill that will enable the Ombudsman to be effective are:

- a) The Ombudsman will be able subpoena evidence, without warrant from a Court
- b) The Ombudsman will be able to subpoena witnesses, without a warrant from a Court
- c) Heavy penalties are imposed for non-compliance with a request for attendance before the Ombudsman or request for evidence/information
- d) The Ombudsman will be able to enter into collaborative arrangements with other key agencies like the RSIPF, DPP, LCC, and the Public Service ministry
- e) The Ombudsman will be able to refer matters that fall outside its mandate to the relevant agencies such as the RSIPF, DPP, LCC

Whilst the mandate of the Ombudsman will remain focussed on mal-administration, the Bill will succeed at allowing the Ombudsman to be an opening into other potentially corrupt/criminal investigations. The Committee welcomes this and sees it as a good response as part of the series of measures necessary to fight corruption.

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1.0 INTRODUCTION

This report outlines the findings and recommendations by the Bills and Legislation Committee (“the Committee”) of its inquiry into the Ombudsman Bill 2016.

In compliance with the Standing Orders, as well as to fulfil the Legislature’s oversight role the report is compiled to assist Members of Parliament in their debate of the Bill in the House. The report highlights issues raised during the inquiry and outlines the Committee’s views on such issues.

The Committee conducted its inquiry into the Bill on the 23rd and 24th January, 2017. All hearings were held at the Conference Room II of the Parliament House and were open to the public. The list of witnesses who appeared before the Committee and the minutes of those hearings are listed in Appendices 1 and 2 respectively of this report. There was only one Written Submission received during the inquiry.

The Committee sincerely thanks the Office of the Ombudsman and the Office of the Prime Minister and Cabinet (Sponsoring Ministry), the Office of the Leadership Code Commission, the Office of the Director of Public Prosecutions, the Office of the Public Solicitor and the Attorney General’s Chambers for providing the Committee with valuable evidence.

2.2 Objectives of the Bill

The Bill seeks to:

- (a) Repeal and replace the current Ombudsman (Further Provisions) Act (Cap.88) to give effect to the Constitutional independence and mandate of the Office of the Ombudsman in an improved manner;
- (b) Ensure there is continuity in the functions of the Ombudsman even in cases where the position of the Ombudsman is vacant;
- (c) Ensure there is more responsiveness on the part of prescribed persons and bodies in relation to implementing the recommendations of the Ombudsman;
- (d) Provide more transparency, accountability and protection from arbitrary and unfair decisions by prescribed persons or bodies against citizens and residents of Solomon Islands.

The passage of this Bill will secure some level of financial and administrative autonomy to enhance the Office of the Ombudsman's capability to implement its mandate.

2.3 Commencement Date

Although the Bill's commencement will be on a date to be determined by the Minister, the Ombudsman indicated that it is expected to be commenced in July 2017.

The conduct of investigations by the office of the Ombudsman may include:

- Summoning information from government agencies;
- Entry into official premises to collect information; or
- The collection of any document or items that may be useful in its investigations.

The Ombudsman may summon witnesses. The Ombudsman may refuse to investigate a complaint if:

- it appears that the complaint is trivial, frivolous;
- the complainant has no sufficient personal interest; or
- the complaint is more than 12 months old.

Where the findings warrant, the Office then makes recommendations on remedial action to the Office of the Prime Minister and or to the concerned ministry.

The Committee was informed that where its recommendations are not adhered to, the Office of the Ombudsman must report on the matter to Parliament. The Committee notes that this Bill seeks to provide further powers to the Office to enforce implementation of recommendations.

It was reiterated during the hearing that strengthening the roles and functions of the Office is vital in enabling citizens to hold their government accountable. This is fundamental in a democracy such as in Solomon Islands. And the Committee affirms this important intention.

Collaboration with other integrity institutions

The Committee affirms the strengthening of the office of the Ombudsman as proposed in this Bill and looks forward to further reforms to the Leadership Code Commission in the same direction. It is important that these two institutions collaborate with each other, the RSIPF and the DPP to ensure maximum sharing of information and resources. Such collaboration must extend to include the Solomon Islands Anti-Corruption Commission, once established.

Recommendation 2

The Committee recommends that an administrative mechanism be established to facilitate collaboration between integrity institutions, to enhance resource and information sharing.

Office Capacity

Financial/Administrative Autonomy

The Office of the Ombudsman is currently funded and administered through the Office of the Prime Minister and Cabinet. It is noted that this arrangement has raised doubts, not only in terms of the integrity, but also on the effectiveness and efficiency of the Office. Furthermore, under current arrangements, the Ombudsman is usually in the awkward situation where it depends on the Prime Minister's Office for funding of his investigations into and reports on maladministration of government affairs.

The Committee heard that the Bill seeks to strengthen the financial and administrative autonomy of the Office of the Ombudsman. The Bill designates the Ombudsman as an accountable officer and gives power to the Office to develop and implement its own budget. The Bill proposes financial autonomy to strengthen the independence of the Ombudsman's office and to ensure effective and efficient systems in its operations. The Bill will provide the Ombudsman with a separate budget head and obligates the government through the Ministry of Public Service to provide the Ombudsman's office with adequate staff and other necessary resources.

The Bill also provides for administrative powers to the Ombudsman to control the Office operational affairs more independently. For example being able to determine their own activities and to make recruitment. These provisions are deemed necessary for an efficient and effective Ombudsman Office.

The Committee noted that these reforms are consistent with the policy intentions of the DCC Government in its quest to promote good governance.

Committee Comment

The Committee supports the intentions for an independent administrative operation of the Office of the Ombudsman. It notes this would safe guard that Office from external interference and other influences which may undermine the integrity of investigations by the Office as well as public confidence in the Ombudsman.

Recommendation 5

The Committee recommends that upon the enactment of this Bill the Ombudsman, the Ministry of Public Service, PMO, and the Ministry of Finance work out administrative

Referrals

The Committee was informed that the Office of the Ombudsman only deals with maladministration, and not corruptions. On instances where a reported maladministration may be deemed as corruption or criminal, such cases may be referred to other agencies.

Committee Comments

The Committee is concern that the method for recording of evidence as prescribed by the Bill may limit the Office of the Ombudsman from the usage of other modern medium of recording.

With regards to engaging expertise, the Committee acknowledges that the Bill will enhance the role of the Ombudsman to investigate specific complaints, when and where it is required.

The Committee is concerned that the Bill needs to be aligned with Section 97(3) of the Constitution. The Committee notes that this clause is not clear on its intentions under Clauses 5(3)(c) which may be misinterpreted to also include, the Office of the Governor Generals, the office of the Director of Public Prosecution and Parliament.

Recommendation 6

The Committee recommends that the Bill be amended in Clause 5(3)(c) as follows, the words "subject to section 97 of the constitution" be inserted before the words "a body of office...".

Recommendation 7

The Committee recommends that the Bill makes provision for the usage of other medium of recording.

3.3 Liaisons with other Agencies

It is noted that the Bill limits the conduct of investigations to the Office of the Ombudsman only. But it allows the Ombudsman to refer matters that, in the course of an investigation or in the nature of a complaint that fall outside his mandate to relevant agencies.

4.0 RECOMMENDATIONS

Based on the evidences collected at the hearing, the Committee makes the following recommendations:

Recommendation 1

The Committee recommends that government consider amending the constitution to set qualification/disqualification standards for eligibility for appointment as Ombudsman.

Recommendation 2

The Committee recommends that an administrative mechanism be established to facilitate collaboration between integrity institutions, to enhance resource and information sharing.

Recommendation 3

The Committee recommends that the Ombudsman has at least one of his own officers in each of the nine provinces. And where Focal Point Personnel are still used, that guidelines are established to protect the integrity of the Ombudsman and its mandate from being brought into disrepute.

Recommendation 4

The Committee recommends that the Ministry of Public Service and the Ministry of Finance and Treasury work together with the Office of the Ombudsman to urgently pursue recruitment within the next 12 Months.

Recommendation 5

The Committee recommends that upon the enactment of this Bill the Ombudsman, the Ministry of Public Service, PMO, and the Ministry of Finance work out administrative arrangements that will give effect to the autonomy requirements imposed by this Bill.

Recommendation 6

The Committee recommends that the Bill be amended in Clause 5(3)(c) as follows, the words "subject to section 97 of the constitution" be inserted before the words "a body of office...".

5.0 APPENDICES

Appendix 1: Witnesses

Date	Name	Position & Organization
23th Jan 2017	Mr Joe Porowai	Ombudsman, Office of the Ombudsman
	Mr Nelson O Dhita	Director Legal, office of the Ombudsman
	Ms Catriona Steele	Legal Drafter, Office of the Attorney General
24th Jan 2017	Mr Joe Porowai	Ombudsman, Office of the Ombudsman
	Mr Nelson O Dhita	Director Legal, office of the Ombudsman
	Ms Catriona Steele	Legal Drafter, Office of the Attorney General
	Mr Solomon Kalu	Chairman, Leadership Code Commission
	Mr Douglas Hou	Director , Public Solicitor
	Mrs Sirepu Ramosaea,	Principal Legal Officer
	Mr Ronald Bei Talasasa,	Director, Public Prosecution

The hearing adjourned at 10:10am

Minutes of Proceedings
Committee Hearing No: 02

Tuesday 24th January 2017, Parliament Conference Room II, 9:33am

1. Members Present

Hon Connelly Sandakabatu - (Chairman)
 Hon Rick Houenipwela
 Hon Derek Sikua
 Hon Culwick Togamana
 Hon Jeremiah Manele

2. Absent/Apologies

Hon. Matthew Wale
 Hon. Peter Tom
 Hon. Namson Tran
 Hon. Commins Mewa
 Hon. Steve Abana

3. Support Staff

Ivory Iruha'a, Committee Secretariat
 Mr Lawrence Scott, Media Officer
 Mr Ignatius Talifilu, Hansard Officer

4. Inquiry into Ombudsman Bill 2016

The Chairperson made the opening statement. The Chair informs the witnesses of the Parliamentary privileges.

The following witnesses were examined;

Mr Joe Pora'awai (Ombudsman – Ombudsman office)
 Mr Nelson O Dhita (Director Legal Service –Ombudsman office)
 Ms Catriona Steele (Legal Drafts Lady – Attorney general Office)

The Committee conclude their examination and suspended for lunch at 11:13am

The meeting resumes at 2:05pm.

The following witnesses were examined;

Mr Solomon Kalu, Chairman Leadership Code Commission
 Mr Douglas Hou, Public Solicitor
 Mr Ronald Bei Talasasa, Director Public Prosecution
 Mrs Sirepu Ramosaea, Principal Legal Officer

The witnesses made their presentation before the Committee. The Committee questioned the witnesses based on evidences presented. Evidence concluded and witnesses withdrew.

5. Adjournment

The hearing adjourned at 3:38pm.

