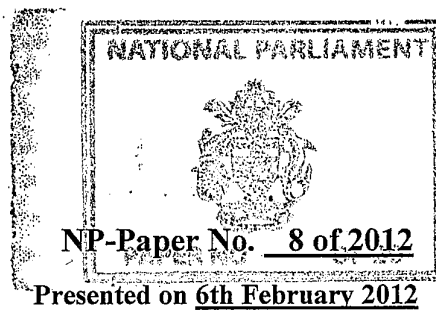




**NATIONAL PARLIAMENT OF SOLOMON ISLANDS
BILLS AND LEGISLATION COMMITTEE**

Report on the Immigration Bill 2012



National Parliament Office

Table of Contents

1	INTRODUCTION	2
	Terms of Reference	3
	Functions of the Committee.....	3
	Membership	3
2	POLICY BACKGROUND.....	4
	Purpose of the Bill.....	4
	Background.....	4
3	REVIEW OF THE BILL.....	5
	Public Hearing.....	5
4	Issues Arising, Evidences and Discussions.....	6
	a) Skill labour mobility and economic development.....	6
	b) Border Issues	6
	c) Border Management System	7
	d) Human rights obligation and Health and medical examination.....	8
	e) Detention and detention centre	8
	f) Reference to the Refugee Determination Act.....	9
	g) Deportation of foreigner married to a Solomon Islands national.....	9
5	RECOMMENDATIONS.....	10
	APPENDIX 1:	11
	MINUTES OF PROCEEDINGS	11
	APPENDIX 2:	15
	WITNESSES	15

1 INTRODUCTION

This report is based on the review conducted by the committee on the *Immigration Bill 2011* (Bill). The Bill was received on 2 December 2011, noticed on 5 December and first read in the House on 12 December.

Under the mandate of Standing Orders 71 (b), the *Bills and Legislations Committee* (Committee) is to review all draft legislation prepared for introduction into Parliament.¹ By this provision, the committee conducted numerous reviews on various Bills tabled before Parliament.

Deliberation on the Bill commenced on 7 December at which time the committee resolved to hold public hearing on the *Immigration Bill 2011* together with the *Passports Bill 2011* in 2012. The hearing postponement permits the Public Accounts Committee to conduct its hearings on the 2012 budget as there are limited committee resources to conduct hearings simultaneously. Thus the Bill was shelved during Christmas period, as most of the members went on holidays.

During Parliament recess, it was realised that few clauses of the Bill needs to be amended. One such amendment was the title of the Bill that has been changed from the *Immigration Bill 2011* to the "*Immigration Bill 2012*". It took time to make the amendments and to print hard copies as there is no government printery to do the printing job and the committee hearing was delayed for a number of days awaiting the amended copies.

When the Bill was finally amended on 23 January 2012, the Committee consequently hold a public hearing on the same date, The hearing was attended by Officials from the Ministry of Commerce Employment and Trade - Immigration Division and Representative from the Attorney General's Chambers².

¹ Standing Orders 71(b)

² See full list of witnesses on Appendix 2

Terms of Reference

The terms of reference of the Committee in this instance; is to examine the Bill and to report its observations and recommendations on the Bill to Parliament.

Functions of the Committee

The Bills and Legislation Committee is established under *Standing Order 71*, an Order made pursuant to the *Constitution*³, and under that Order 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.

Membership

The current members of the Bills and Legislation Committee (9th Parliament) are:

1. Hon. Manasseh Sogavare, MP (Chair)
2. Hon. Seth Gukuna, MP
3. Hon. Mathew Cooper Wale, MP
4. Hon. James Tora, MP
5. Hon. Milner Tozaka, MP
6. Hon. John Maneniaru, MP
7. Hon. Mark Kemakeza, MP
8. Hon. Shemuel Iduri, MP
9. Hon. Dr Derek Sikua, MP

³ Section 62, *Constitution of Solomon Islands 1978*.

2 POLICY BACKGROUND

Purpose of the Bill

The Objects of the Bill are—

- a) To repeal and replace the current Immigration Act (Cap 60) and the Deportation Act (Cap 58) to modernise the immigration system
- b) To introduce an immigration system which is strongly equipped to promote and protect national interest
- c) To tighten border control to ensure that the interest of the government and the community are protected
- d) To ensure that non citizens employed in Solomon Islands do so on a lawful and transparent manner
- e) To ensure that decision making processes are based on well defined criteria
- f) To provide a visa entry system which supports economic development while at the same time strengthening border control and protecting community from the entry of non citizen who may engage in criminal activity or otherwise pose a threat to the community
- g) To strengthen the powers to take lawful reasonable action against those who work illegally or otherwise fail to comply with immigration laws.

Background

The *Immigration Bill 2012* (if passed) is intended to repeal two existing Acts; *Immigration Act (Cap 60)* and the *Deportation Act (Cap 58)*. The Bill is an entirely new bill—a combination of the two Acts it intends to repeal. Its focus is to provide a comprehensive coverage of immigration issues to meet the specific need of the unique environment of Solomon Islands and a platform for range of technological innovation to keep pace with rapid changes to world immigration systems and requirements.

Successive governments have recognised that a strong and modern immigration system is vital, for the tourism sector, labour, trade, economic development, security and international movement of people trans-boundary. Thus for a number of years since 2005 the process of consulting and reviewing immigration laws began, in an effort to modernize the Solomon Islands immigration laws.

The reviews final outcome would be three comprehensive Bills intended to provide a legislative framework for a modernized immigration system. These include the *Passport Bill 2012*, *Immigration Bill 2012*, and the *Refugee Determination Bill*. The committee understand that the immigration and passports bills are currently before Parliament while the *Refugee Determination Bill* is expected to be brought to the House later. It is a part of the immigration review process and is intended to operate with the other Bills mentioned, all structured to modernize Solomon Islands Immigration system.

3 REVIEW OF THE BILL

In its review of the Bill, the Committee heard from key witnesses from the Ministry of Commerce Industries Labour and Immigration and Attorney General's Chambers.

Public Hearing

The Committee held public hearings on Monday 23rd January 2012, with the view to hear from relevant officials of the Ministry of Commerce Industries Labour and Immigration. The following witnesses appeared before the Committee at the hearing:

- Permanent Secretary, Ministry of Commerce Industries Labour and Immigration.
- Director of Immigration
- Technical Advisor, Immigration Border Strengthening Program, Ministry of Commerce Industries Labour and Immigration
- Representative from the Attorney General's Chambers

A complete list of witnesses who appeared at the hearing is annexed **Appendix 2**.

4 Issues Arising, Evidences and Discussions

While various relevant issues have been discussed during the inquiry by the committee, significance issues arising from evidences given are outlined below. A few recommendations on specific issues are also provided

a) Skill labour mobility and economic development

The committee recognized that there are certain skills absent in the domestic pool of labour and skill resources, of which, Solomon Islands normally import overseas skills personnel to meet the need. In this regard, committee's concern is about how the Bill makes provisions for controlling the national border while balancing quality human resources labour from overseas to advance and contribute to the Solomon Islands developing economy.

In his oral evidence, the Director of Immigration-Mr Jeffrey Deve explained that the provisions of the Immigration Bill 2012 cut across a wide range of issues relevant to the economy and country. The Bill provides capacity to effectively regulate and monitor the entry and stay of foreign nationals. It has a high degree of safeguarding national borders and the interest of domestic labour market. Furthermore it facilitates genuine tourists who bring revenue and employment to the country and as well as international business activities, temporary employment of foreign nationals to meet skill demands. There is support to promote foreign investment as according to requirements of the country's law. Socially, it facilitates family reunions, sporting, cultural and religious exchanges as well.

b) Border Issues

Another issue raised by the committee is National Border Security. The committee questioned the panel on how the Bill accounts for security issues and whether the current capacity of immigration is sufficient to provide effective and efficient border security control.

Immigration Director Mr Deve pointed out that Border management and control has always been a challenging task. He presented to the committee that the *Immigration Bill 2012* provides for a new visa regime that will enable immigration authority to thoroughly examine and screen application through access to systems abroad and allowing online visa application

for any categories. As such, the Immigration authority will be able to know who is entering the country before the person landed.

In regards to the Immigration Division's capacity to effectively control and monitor borders, Mr Deve informed the committee that border security will need advance infrastructures to cater for the current shortfalls experienced by the division. He submitted to the committee that the capacity to deploy immigration officers to manage ports of entry such as in Western and Temotu provinces, are difficult because infrastructures need to be in place before staff deployment. When inquired on what has been done so far to alleviate the staff accommodation problem, Permanent Secretary Mr Vaekesa informed the committee that a submission for maintenance and repairs of staff accommodation in the provinces have been included in the 2012 budget.

c) Border Management System

Another issue raised by the committee is in relations to a need for a technological system that can produce an efficient and faster means of processing documents of persons arriving into the country than the current manual system of filling up of forms.

According to the Director of Immigration Mr Deve, Solomon Islands does not have a post processing system that provides information about a person before he or she arrives. The current manual system in place to process visitors means that Immigration officers only become aware of visitors on arrival. An advance system is capable of providing detail information of persons before they land. However, such systems are expensive.

Mr Deve revealed to the committee in his evidence that current legislative reforms in the Ministry is a build up to a long term plan to establish a basic Border Management System (BMS). A basic BMS will record peoples' movement on arrival and departure resolving the issue of tedious manual tracking, processing and regulating visas and visitors on arrival.

When questioned by the committee on whether there any work of initial planning being done by the Ministry to address the issue of border management system, the Director of Immigration referred to necessary current legislative framework, as the objective of proposed

Immigration Bill 2012. This is essential to set the basis for advancing towards obtaining a basic border management system, which is costly but effective.

The committee notes that reform processes towards achieving an effective Border Management System (BMS) is already progressing in the Immigration Division. This is evident in the Ministry's capacity to issue electronic passports, and the current proposed laws-*Immigration Bill 2012* and *Passports Bill 2012* which are before Parliament.

The committee appreciates the ongoing effort and the initiative taken by the Ministry thus far. The committee sees the importance of having a BMS suitable for Solomon Islands. A BMS relevant to Solomon Islands environment need to be thoroughly assessed before being installed.

The committee therefore recommends that the Ministry assess and design a suitable Border Management System (BMS) unique to Solomon Islands experience and install it in phases affordable enough to be achieved.

d) Human rights obligation and Health and medical examination

The committee request further clarification on Clause 24 which, refers to *rules about serious health concern that may represent a threat to SI community* and whether it is too harsh in relations to Solomon Islands human right obligations. Mr Deve pointed out that it is the responsibility of the immigration officer to weigh the danger of carrier and the nature of the disease and its potential threat to national interests, and whether to refuse or allow the person on the ground. In cases where the person already arrived in the country, immigration authority will liaise with Ministry of health for final medical examination and advice on confinement or treatment. If the applicant health report shows medical threat before arrival, the person is likely to be refused entry.

e) Detention and detention centre

While the Bill specifies in Clause 39(2) the administrative procedures for detention of unlawful foreign nationals, the committee raised concern about potential unlawful detention by immigration officers. Particularly, where the detainee can lay compensation claims for his/her unlawful detention.

According to Mr Deve a legitimate period of seven days permits examination of the detainee and the person is subjected to provide further information when required. Mr Muir pointed

out that the clause calls for discipline in the immigration department and a cautious approach on the part of immigration officers on application of detention powers to ensure that the decisions made are sound and fair and do not expose themselves to any legal action.

The committee asked the panel about where detainees are usually detained. Mr Deve informed the committee that currently there is not a specific immigration detention centre per se, but the reformed *Correctional Services Acts* allows detention of detainees at the *Correctional Services centre*. Future plan of the ministry, according to Mr Deve is to establish its own detention centre.

f) Reference to the Refugee Determination Act

Clause 7(2) of the Bill made reference to the Refugee Status Determination Act which is not an existing Act. This prompts the committee to seek clarification from the legal draftsman and the panel with respect to the reference and legal operations of the system in regards to clause 7(2) in particular.

As was raised by Mr Roy Muir, during the discussion on the Passports Bill 2012, all references to the *Refugee Status Determination Act* in both the Passports and Immigration Bills are reserved provision and therefore of non effect until such an act is set in place.

The committee therefore recommends that the Ministry of commerce Industries Labour and Immigration dispose the Refugees Determination Bill early and bring it to Parliament in the next meeting for enactment to be operable with the Immigration Act and the Passports Act.

g) Deportation of foreigner married to a Solomon Islands national.

The committee inquired about how the Bill accounts for the deportation of a foreign national legally married to a Solomon Islander.

Mr Deve informed the committee that deportation is a process involving inspection of relevant documents and weighing the unlawful activity against deportation. Additionally, the Minister has discretionary powers to deal with all cases of deportation and a genuine and legitimate case stands a chance of the foreigner not deported. But the Minister has the ultimate say and the power to decide based on the evidence provided in the documents.

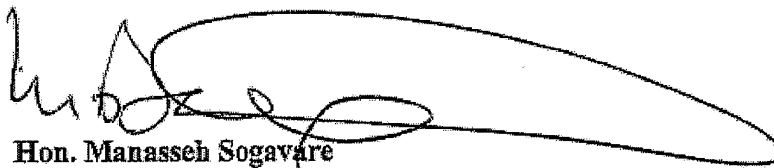
The committee noted the noble intention of the Bill and acknowledged the ongoing reforms that are happening in the Ministry of Commerce Industries Labour and Immigration.

5 RECOMMENDATIONS

After consultation and review of the bill with stakeholders, the Bills and Legislation committee is satisfied with the intentions of the bill and the committee made the following recommendations in the light of the issues raised during the public hearings.

The Bills and Legislation Committee recommends that:

1. the Ministry assess and design a suitable Border Management System (BMS) unique to Solomon Islands experience and install it in phases affordable enough to be achieved.
2. the Ministry of commerce Industries Labour and Immigration to bring the Refugees Determination Bill early to Parliament in the next meeting for enactment to be operable with the Passports Act and Immigration Act.



Hon. Manasseh Sogavare

Chairman

Bills and Legislation Committee

APPENDIX 1:

MINUTES OF PROCEEDINGS



BILLS AND LEGISLATION COMMITTEE

NATIONAL PARLIAMENT OF SOLOMON ISLANDS

MINUTES OF DELIBERATIVE MEETING

Meeting No 1: Deliberative Meeting

Wednesday 7th December 2011

Library Room, Parliament House 12:15pm

1. Members Present

Hon. Manasseh Sogavare, MP (Chair)

Hon. Matthew Wale, MP

Hon. Seth Gukuna, MP

Hon. Sam Iduri, MP

Hon. Milner Tozaka, MP

Hon. John Manenuira, MP

Hon. James Tora, MP

Hon. Derek Sikua, MP

Secretaries

Mr. Ian Rakafia, Committee Secretary

Miss. Natalina Hong, Committee Secretary

1. Committee Membership changes

Committee members were informed of changes to membership since Hon. Alfred Ghiro became a Minister of Public Service and therefore no longer a member of the Bills Committee

2. Committee deliberated respectively on the:

- i. Passports Bill 2011
- ii. Immigration Bill 2011

3. Public Hearing

The committee resolved to hold public hearings on the bills presented.

4. Stakeholders for public hearing

The committee resolved that the following stakeholders to appear in the public hearings for respective bills:

Passports Bill

- Passports officer

Immigration Bill

- Director Immigration
- PS Foreign Affairs
- Attorney General Chambers
- Ports Authority
- Customs and Excise
- Forestry Association
- Chinese Association
- Solomon Island Christian Association
- Solomon Island Full Gospel Association
- National Training Unit, Ministry of Education & Human Resources Development
- Chamber of Commerce
- Foreign Diplomatic Missions

5. Presentation of the Bills

The Committee deliberate on the two bills and discussed the time frame available in the current Parliament meeting before Christmas holidays and given the fact that Parliament for the next two weeks will concentrate on the 2012 budget the Committee therefore resolved that the Bills are to be presented in the next meeting in 2012 but that the secretariat distribute copies of the bill to stakeholders and invite them to make written submissions.

6. Close

The committee ended their deliberation and resolved that the secretariat advise on the next BLC meeting.



BILLS AND LEGISLATION COMMITTEE

NATIONAL PARLIAMENT OF SOLOMON ISLANDS

MINUTES OF DELIBERATIVE MEETING

Meeting No 1: Deliberative Meeting

Tuesday 17th January 2012

Dining Hall, Parliament House 2.00pm

Members Present

Hon. Manasseh Sogavare, MP (Chair)

Hon. Seth Gukuna, MP

Hon. Milner Tozaka, MP

Hon. John Manenuira, MP

Apologies

Hon. Matthew Wale, MP

Hon. Sam Iduri, MP

Hon. James Tora, MP

Hon. Derek Sikua, MP

Secretaries

Mr. Celsus Talifilu, Committee Secretary

Miss. Natalina Hong, Committee Secretary

Mr. Wilson Anii, Committee Secretary

Prayer and welcome

The Chair welcomed the Committee members and Hon John Maneniaru opened the meeting with a word of prayer

Deliberations on the Immigration and Passport Bills 2011

The committee deliberated and resolved:

- to hold a public hearing inquiry into the Immigration and Passport Bills 2011 on Thursday 19th January 2012 in the parliament conference room 2, as soon as parliament adjourns for the day.
- that the hearing will be a discussion with panel of stakeholders.
- that the diplomatic corps in the stakeholder list will have a separate hearing time as part of protocol and are scheduled for Friday 20th January 2012.

AOB

Attorney General office will be reprinting the date on the Immigration Bills 2011 and Passport Bill 2011 to change the date year “2011” to “2012”.

There is response from Minister for Finance regarding the formal withdrawal on the floor of parliament, of the Customs Valuation Bill 2011 for further consultation. Since the Bill had already been tabled in Parliament and the committee had already inquired and made a report on it. It is procedural that the bill be formally withdrawn by the minister in accordance with Standing Order 59

Close

Meeting ends at 2.45 pm with a closing prayer from Hon Gukuna

APPENDIX 2:

WITNESSES

Witnesses who appeared before the Bills and Legislation Committee

Witnesses

1. Mr Hence Vaekesa Permanent Secretary of the Ministry of Commerce Industries Labour and Immigration
2. Mr Jeffery Sade Deve, Immigration Director, Ministry of Commerce Industries Labour and Immigration
3. Mr Roy Muir--Project Coordinator, International Organisation for Migration and Technical Advisor for Immigration Border Strengthening Program.
4. Mr Anthony Makabo --Legal draftsman, Attorney General's Chambers