



NATIONAL PARLIAMENT OF SOLOMON ISLANDS

BILLS AND LEGISLATION COMMITTEE

REPORT

ON

THE CORRECTIONAL SERVICES (AMENDMENT) BILL 2008

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1. **TERMS OF REFERENCE**

To examine and report to Parliament the Committee's observations and recommendations on:-

"The Correctional Services (Amendment) Bill 2008"

2. **FUNCTIONS**

In accordance with Section 62 of the Constitution as read with Section 71 of the Standing Orders, the Bills and Legislation Committee's functions in addition to the provisions in Standing Orders 50 and 55, shall be 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.

3. **MEMBERSHIP**

The Membership of the Bills & Legislation Committee is made up of:

Hon. Severino Nuiasi (Chairman)

Hon. Nelson Ne'e, MP

Hon. Manasseh Sogavare, MP

Hon. Augustine Taneko, MP

Hon. Isaac Inoke Tosika, MP

Hon. Siriako Usa, MP

Hon. Japhet Waipora, MP

4. **PURPOSE OF THE BILL**

The Correctional Services (Amendment) Bill 2007

Objects and Reasons:

The Object of the Bill is to amend the principal Act to ensure that it is consistent with the provisions of the Constitution, dealing with the powers of the Police and Prison Services Commission to make appointments and to remove and discipline senior correctional officers. It is also aligned with the power of the Commission to make regulations under section 137 of the Constitution for the proper facilitation of its constitutional powers.

The Bill also makes provisions for the transfer of foreign prisoners who are serving jail terms of 3 months or more, to their country of citizenship or residence.

5. EVIDENCE AND RECOMMENDATIONS

The Bills and Legislation Committee met on Tuesday 29 July 2008 to inquire into “**The Correctional Services (Amendment) Bill 2008**”.

Witnesses

- Mr George Hiele, Permanent Secretary, Ministry of Police, National Security and Correction Services
- Ms Pamela Wild, Legal Policy Adviser, Law & Justice Program
- Mr John Hauirae, Legal Draftsman, Attorney General’s Chambers
- Mr Rupeni Nawaqakuta, RAMSI Adviser, Attorney General’s Chambers

The Committee was informed that the proposed amendments are a result of a court case involving His Excellency the Governor General which is still pending. The Governor General argues that the Correctional Services Act 2007 is unconstitutional on the basis that the Act and the Constitution dealing with appointments, disciplinary control, are inconsistent. [Civil Action No. 153 of 2008] The case has been adjourned sine die pending legislative amendments.

The Committee is satisfied with the Permanent Secretary and Adviser’s presentation and explanation of the Bill and notes their extensive knowledge and understanding of the effects and the intention of the Bill.

Issues raised;

1. The Committee noted that the proposed amendments are to rectify issues that were raised by the Governor General, which are now a matter before the Courts. The Committee has assured that the Governor General’s office has been fully consulted in relation to these

legislative proposals which addresses his concerns on the proposed bill and has not made any negative feedback.

2. The Committee does not oppose the Bill, however reservations were raised in terms of whether the matters now before the courts would be more adequately addressed by quite simple amendments to the Constitution which also have the benefit of creating consistent terminology in both the Constitution and the principal act. The Committee accepts the rationale put forward by the witnesses but believes that the legislative methods used to achieve the objectives of both the principal Act and this amending Act suffer from avoiding the more direct approach of amending the Constitution as required.
3. The Committee raises a general view that whilst the proposed changes are important and timely the Committee would also like to see the act clearly cater for the rehabilitation of prisoners in their respective provinces so that they can feel the environment of serving their term in their own provinces.
4. On a separate matter the Committee also suggested to the advisers from the Attorney Generals Office that consideration be given to an annual Bill which “tides up” and makes minor amendments to a number of Acts. [e.g. Statue Law (Miscellaneous Provisions) Bill] This would provide many benefits including avoiding the necessity of Parliament to consider and debate numerous Bills making minor improvements to the operation of Acts in force.
5. Retrospectivity, a principle of law which the Bills and Legislation committee identified as a matter of concern is that the Bill encompasses retrospective legislation.

For instance the commencement date as stated in clause 1 on page 4 stipulates that the Act is deemed to have come into force on 1 April 2008. Although in this case the Committee is assured that the act would not affect any rights of any persons as it is just administrative amendments, one of the key principles of law making is that laws are prospective, open and clear.

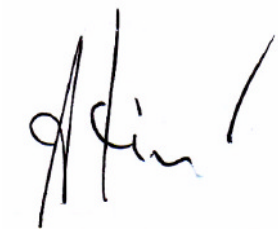
Retrospectivity literally means that the law 'looks backwards' by dealing with cases that came into existence in the past. This in effect changes the law as it applied to circumstances in the past. In other words, matters which were regulated by earlier law until the new law is passed are now subject to the new law.

None the less, the committee is of the view that "Parliament may authorise retrospective legislation, but this is an exception to the general principle that legislation should deal with future acts and not alter the character and past transactions lawfully carried out".

Recommendations

- (a) The Committee has reviewed the Bill and **recommends that the Correctional Services (Amendment) Bill 2008 be presented and debated in Parliament.**

- (b) The Committee also suggests **that the government develop a coordinated whole of government approach to the review and updating of all statute laws.**

A handwritten signature in black ink, appearing to read 'Severino Nuaiasi', with a large, sweeping flourish at the end.

Hon. Severino Nuaiasi

Chairman

Bills & Legislation Committee