



NATIONAL PARLIAMENT OF SOLOMON ISLANDS

BILLS AND LEGISLATION COMMITTEE

REPORT

ON

THE MINES AND MINERALS (AMENDMENT) BILL 2008

National Parliament Paper No. 7 of 2008

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1. TERMS OF REFERENCE

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

"The Mines and Minerals (Amendment) Bill 2008"

2. FUNCTIONS

According to Standing Order 71, 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 comprises the following members:

Hon. Severino Nuaiasi , MP	-	Chairman
Hon. Nelson Ne'e , MP	-	Member
Hon. Siriako Usa, MP	-	"
Hon. Isaac Inoke Tosika , MP	-	"
Hon. Augustine Taneko , MP	-	"
Hon. Manasseh Sogavare , MP	-	"
Hon. Japhet Waipora , MP	-	"

4. PURPOSE OF THE MINES AND MINERALS (AMENDMENT) BILL 2008

The objects and reasons as stated in the Bill are to:

“...ensure that companies applying for reconnaissance permit, prospecting licenses and mining leases are diligently checked by the Ministry and its officers. The Bill further seeks to restrict the issuance of prospecting licenses through control made by the Director.

International tender has also been opened up by this Bill by placing land areas proposed for reconnaissance, prospecting or mining in open market, whether domestically or internationally.”

5. OBSERVATIONS

The Bills and Legislation Committee met on Monday, 7 April 2008 to examine and make its observations and recommendations on “**The Mines and Minerals (Amendment) Bill 2008**”.

5.1 Specific Observations

Clause 2

The Committee noted that these amendments provide for two new definitions of “associate company” and “tender” that were new terms introduced in the amending legislation. The Committee was informed that the definition of “associate company” was inserted to cover the various types and forms of companies that would usually apply for prospecting or mining licenses. This definition would cover the companies in various structures under the single definition of “associate company”.

The Committee further noted that the insertion of the definition of “tender” is included to allow investment in the mining sector by placing land areas identified for mining, in the open market under a fair and transparent process. The procedures for tender however would be contained in subordinate legislation or regulations.

Clause 3

The Committee was informed that the insertion of the new paragraph (c) was done to give the Director additional power to conduct “independent assessment

of the companies intending to or are applying for reconnaissance permits, prospecting licenses and mining leases.” The Committee welcomed this particular amendment because it would ensure that the due diligence and credentials of applicant companies are duly checked and verified prior to the issuance of any permit. Under the principle Act, the Director did not have this power.

Similarly, the insertion of paragraph (d) gives the Director the opportunity to interview or hold meetings with an applicant company for the purpose of resolving matters that the Minister or the Director may deem necessary for the board’s purposes. Again, this amendment enhances the due diligence powers of the Director.

Clause 4 (c) (ii)

The new paragraph (5)(c) gives one more ground or condition for the Director to refuse an application. The reason for this amendment is to prevent continued issuance of prospecting licenses to mining companies that have not undertaken any mining operations. This amendment gives the Director the power to make a preliminary assessment of the applications before it goes to the Mining Board.

However, the Committee notes that this will not affect companies that currently hold licenses, but it is for new applications after the passage of this Bill. The Committee asked if companies who currently have 3 or more licenses and have not yet commenced mining in at least one of them, would also be disqualified under the new amendments. The Attorney-General clarified that the issues of current license holders have to be dealt with under the terms and conditions of their current license (acquired rights) and that legislation does not have retrospective effect. The Attorney-General also raised the possibility of further amendments in the near future to deal with these kinds of issues and to further strengthen the Act.

5.2 General Observations

The Committee yet again emphasizes the need for ample time to be given to the Committee to conduct its deliberations on the Bill before it is presented to Parliament for its Second Reading. The Chair noted that in future the Committee expects draft legislation to be provided to the Committee 1 week prior to the proposed introduction into the House.

On the whole the Committee concurs with the proposed amendments, and is pleased with the intentions of incorporating mechanisms for a more transparent process for prospecting and mining. However the Committee notes that these amendments will in turn require the establishment of regulations. Therefore the Committee believes that for purposes of parliamentary oversight, it would assist the committee if they were given time to review regulations made prior to them being gazetted.

5.3 Observation on Subsidiary Legislation and Regulation

The Committee noted that much of the substantial details to the proposed amendments, including the process of tender as proposed by the Bill will be provided for in subsidiary legislation/ regulation. The power to enact laws is a constitutional power of Parliament. Parliament, however, frequently enacts legislation containing provisions that empower the executive government, or specified bodies or office-holders, or the judiciary, to make regulations or other forms of instruments that, provided that they are properly made, have the effect of law. This form of law is commonly known as “delegated legislation”, “subordinate legislation”, “subsidiary legislation” or “legislative instruments”.¹ Once Parliament has by statute laid down the principles of a new law, the executive may by means of delegated legislation, work out the application of the law in greater detail within the principles of the new law.

The Committee notes its Report on Subordinate Legislation in 2007 (Report No. 25 of 2007) wherein it outlined its position on the need for Parliament to properly review subordinate legislation and regulations created under an Act, to ensure that such subordinate legislation and regulation comply with the powers granted by the primary Act. In the said report, the Committee recommended an amendment to the *Interpretation and General Provisions Act* [Cap. 85] to allow tabling of subsidiary legislation on sitting days and not on calendar days, as this would ensure that all subsidiary legislation are actually reviewed by Parliament.

The Committee noted that as this Bill intends to introduce a fair and transparent process of dealing with permit applications and tenders, any regulation that is subsequently made by the Minister should and must comply with that principle.

¹ Odger's Australian Senate Practice 9th Ed. Pg. 329

6. **RECOMMENDATIONS**

With the above observations, the Committee recommends that “**The Mines and Minerals (Amendment) Bill 2008**” be presented and debated on in Parliament.

Hon. Severino Nuaiasi, MP
Chairman
Bills & Legislation Committee
8 April 2008