



NATIONAL PARLIAMENT OF SOLOMON ISLANDS

BILLS AND LEGISLATION COMMITTEE

REPORT

ON

THE CIVIL AVIATION (AMENDMENT) BILL 2009

AND

THE FISHERIES (AMENDMENT) BILL 2009

National Parliament Paper No. 7 of 2009

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1. TERMS OF REFERENCE

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

- 1. The Fisheries (Amendment) Bill 2009;**
- 2. The Civil Aviation (Amendment) Bill 2009; and**

2. FUNCTIONS OF THE COMMITTEE

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 comprises:

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

4. PART 1 – THE FISHERIES (AMENDMENT) BILL 2009

4.1 PURPOSE OF THE BILL

The objects and reasons as stated at the end of the Bill are as follows:

“The objects of the Bill is [sic] to amend the penalties under the principal Act to ensure that they have a deterrent effect, in light of the nature of the fishing industry and the commercial players in it”.

4.2 BACKGROUND – REASONS FOR INCREASING PENALTIES

The Fisheries (Amendment) Bill 2009 seeks to amend the *Fisheries Act* 1998. The Bill does not propose any amendment to the substance of the provisions of the Act but only proposes to increase the penalties for certain offences under that Act.

The proposed amendments came about as a result of an initiative of the Ministry of Fisheries. Since the enactment of the Act in 1998, there had been increasing concerns that the penalties in the Act, particularly those relating to offences for illegal fishing and similar activities by foreign vessels were no longer appropriate. In 2008, a few illegal fishing cases demonstrated clearly that the penalties in the Act are inadequate and thus do not have the desired deterrent effect. Thus, recently the Ministry of Fisheries formally requested the Ministry of Finance and Treasury to look at the penalties in the Act and to revise their values. The Ministry of Finance and Treasury undertook this exercise and based on its calculations suggested increases. The Ministry of Fisheries thereafter had this Bill drafted to reflect the suggested increases to penalties. The Ministry however did not see the need to increase the corresponding imprisonment terms and made no such attempt in this Bill.

4.3 OBSERVATIONS ON THE BILL

The Committee held a public hearing on Friday 13 March 2009 to receive evidence from the relevant government ministry and key stakeholders on the “**Fisheries (Amendment) Bill 2009**”. Due to the fact that the Permanent Secretary of the Ministry of Fisheries was overseas and other officials were unable to appear on his behalf, there was no representative from that Ministry at the hearing. Thus, the Committee was only able to hear from:

- The Legal Draftsman, Attorney-General's Chamber.

Details of the witness are provided in "**Appendix 2**".

The following section highlights the issues noted by the Committee in relation to the Bill.

4.3.1. **Rate of Increase to Penalties**

The Committee notes with interest the rate at which the penalties in the Act are proposed to be increased. The Committee accepts that deterrence is necessary but still believes that any increase to penalties in any Act must be reasonable and fair. On that basis, the Committee questioned whether increases to penalties ranging from 100% to 300% are reasonable in the circumstances.

As there were no officers from the Ministry concerned, the representative of the Attorney-General's Chamber could only explain the rate of increase from drafting instructions received by the Chamber in respect of the Bill. The Committee was informed that the Ministry of Finance and Treasury relied on a report on the International Monetary Fund Outlook 1997 – 2007 in the review of the penalties in the Act. Thus, based on estimates in that report, the Ministry used a formula which it believes is realistic and in line with penalties in other jurisdictions' fisheries laws. The final recommendation from that Ministry was for increases of between 250% and 500% to achieve the level of deterrence desired by the Ministry.

As to the reasonableness of such rates, the Committee was advised that this is a policy matter for the government to determine and that it is not in breach of any laws relating to penalties for criminal offences. Parliament of course has the ultimate say to accept such or reject it on the ground of unreasonableness.

The Committee accepts the rationale of the increases and trusts that the Ministry of Finance and Treasury used a formula that is realistic and reasonable. The Committee however recommends that the two Ministries involved explain at Committee Stage, for the information of Members, the actual formula used and variables considered.

On a related matter, the Committee questions whether the increases proposed will be sufficient to have the deterrent effect expected of them. The Committee notes that although the penalties of certain offences will be increased, only the maximum is to be increased in respect of an offence. This means that the courts may impose a fine that ranges from \$1 to the new maximum. While the Committee accepts that the courts have the jurisdiction and wisdom to deal with sentencing, it feels that

Parliament should send a clear message by legislation that robbing the country of its marine resources (illegal fishing and related practices) will not be treated lightly. To that end, the Committee is of the view that a better approach, if deterrence is to be maintained, would be to set both a minimum and a maximum level for a monetary penalty. Thus, the old maximum should be retained as the minimum so that the range that a court may impose is between the old amount and the introduced amount (proposed in the Bill). For example, Section 12 (4) of the principal Act could be amended to read as follows:

(4) Any person who fails to comply with an order made under subsection (3) shall be guilty of an offence and be liable to pay in addition to compensation ordered under subsection (3) a further fine not less than **five hundred dollars** [*minimum*] **and not exceeding \$2,000** [*maximum*] or imprisonment of six months.

4.3.2. Selective Increases

The Committee also questions why the Bill proposes to increase the penalties of certain offences but not others. This was a matter that the Attorney-General's Chamber could not explain as it related to a policy matter. However, the Committee believes that Members should be informed of such selective increases.

The Committee notes that the following offences will have increased penalties if this Bill is passed:

Penalties to be Amended

Section 10 – Power of Provincial Assemblies to make Ordinances

(3) Ordinances made under this section may provide for any or all of the following -
...

(k) prescribing penalties for offences against any Ordinance or by-law made under this section, not exceeding ~~two thousand dollars~~ **\$5,000** for an offence against any Ordinance and one thousand dollars for an offence against a by-law.

Section 12 – Customary fishing rights

...

(3) When it is proved that customary fishing rights have been breached the court may order compensation to be paid to the customary fishing rights holders.

(4) Any person who fails to comply with an order made under subsection (3) shall be guilty of an offence and be liable to pay in addition to compensation ordered under subsection (3) a further fine not exceeding ~~five hundred dollars~~ **\$2,000** or imprisonment of six months.

Section 14 – Local fishing vessel licences

...

(9) Where a local fishing vessel in respect of which a licence has been issued under this section is used in contravention of any condition of that licence, or is used for fishing in provincial waters without the endorsement of the relevant provincial government under subsection (7) or contrary to the terms of that endorsement, the master, operator, owner and charterer shall each be guilty of an offence and shall be liable to a fine not exceeding ~~one hundred thousand dollars~~ **\$250,000**.

Section 16 – Foreign fishing vessel licences

(12) Where a foreign fishing vessel is in breach of any conditions of its licence or has contravened the provisions of subsection (9) the operator shall on conviction be liable to a fine not exceeding ~~one million dollars~~ **\$2,500,000** and such foreign fishing vessel shall have its licence revoked.

Section 19 – Fisheries research and survey operations

...

4) Any person who undertakes or assists in any fisheries research or survey fishing operations in Solomon Islands waters -

(a) without authorisation under subsection (1); or

(b) in contravention of any condition or conditions attached to the authorisation under subsection (3),

shall be guilty of an offence and shall on conviction be liable to a fine not exceeding ~~two thousand dollars~~ **\$5,000** or sentenced to imprisonment for a period not exceeding six months.

Section 20 – Stowage of fishing gear by foreign fishing vessel

(1) All fishing gear on board a foreign fishing vessel in Solomon Islands waters shall be stowed in such a manner that it is not readily available for use for fishing.

(2)...

(3) Where a foreign fishing vessel contravenes subsection (1), the master, owner and charterer shall each be guilty of an offence and shall each be liable to a fine not exceeding ~~five hundred thousand dollars~~ **\$1,500,000**.

Section 21 – Power to enter into regional agreements

(2) For the purpose of giving effect to any arrangement or agreement entered into under this section, the minister may by order:

(b) prescribe the conditions to be observed by operators of foreign fishing vessels exempted under paragraph (a) while fishing or navigating in Solomon Islands waters;

(c) provide that where any foreign fishing vessel is used in contravention of any of the conditions prescribed under paragraph (b), the master, owner and charterer shall each be guilty of an offence and provide for a penalty of a fine not exceeding ~~one million dollars~~ **\$2,500,000** for such offence ...

Section 23 – Commercial sport fishing by foreign vessels

(4) Any person who undertakes or assists in any commercial sport fishing operations in Solomon Islands waters without the authorisation of the Minister or in contravention of any condition or conditions attached to the authorisation shall be guilty of an offence and shall be liable to a fine not exceeding ~~one hundred thousand dollars~~ **\$250,000**.

Section 30 – Fishing with explosives etc

(1) Subject to any Provincial Ordinance made under section 10 (3), any person who -

(a) permits to be used, uses or attempts to use any explosive, poison or other noxious substance, for the purpose of killing, stunning, disabling or catching fish or in any way rendering fish more easily caught; or

(b) carries or has in his possession or control any explosive, poison or other noxious substance in circumstances which raise a reasonable presumption that such explosive, poison or other noxious substance is intended to be used for any of the aforesaid purposes,

shall be guilty of an offence, and liable to a fine not exceeding ~~one thousand dollars~~ **\$3,000**.

(2) ...

(3) Any person who, knowing or having reasonable cause to believe that any fish has been taken in contravention of the provisions of this section without lawful excuse receives or is found in possession of such fish, shall be guilty of an offence and liable to a fine of ~~one thousand dollars~~ **\$3,000** or twelve months imprisonment.

(4) Where the circumstances of such receipt or possession raise a reasonable presumption that the fish is intended for the purpose of sale, trade, or profit, such person is liable to a fine not exceeding ~~one thousand dollars~~ **\$3,000** or twelve months imprisonment.

Section 39 – Wilful obstructions, etc

Any person who wilfully obstructs, assaults or threatens with violence an authorised officer in the exercise of any of his powers shall be guilty of an offence and liable to a fine not exceeding ~~two hundred thousand dollars~~ **\$500,000** or to imprisonment for twelve months, or to both such fine and such imprisonment.

Section 40 – Failure to comply with lawful requirements

Subject to section 42, any person who fails to comply with any lawful enquiry made by any authorised officer under this Act, shall be guilty of an offence and liable to a fine not exceeding ~~fifty thousand dollars~~ **\$150,000**.

Section 41 – Failure to stop or facilitate boarding of foreign fishing vessels

Subject to section 42, the master of any foreign fishing vessel within Solomon Islands waters or of any local fishing vessel inside or outside Solomon Islands waters which fails to stop as ordered or who fails to facilitate boarding of the vessel in accordance with this Act, shall be guilty of an offence and shall be liable to a fine not exceeding ~~two hundred thousand dollars~~ **\$250,000**.

Section 45 – Destroying evidence

Any person who, being on board any vessel being pursued or about to be boarded by any authorised officer, throws over board or destroys any fish, fishing gear, explosive, poison, noxious substance or any other thing whatsoever, with intent to avoid the seizure of such fish, fishing gear, explosive, poison, noxious substance or thing, or the detection of any offence under this Act, shall be guilty of an offence and liable to a fine not exceeding ~~one hundred thousand dollars~~ **\$250,000**.

Section 56 – Illegal import of fish etc

(1) Subject to subsection (3), a person who -

(a) on his own account, or as partner, agent or employee of another person, lands, imports, exports, transports, sells, receives, acquires or purchases; or

(b) causes or permits a person acting on his behalf, or uses a fishing vessel, to land, import, export, transport, sell, receive, acquire or purchase,

any fish taken, possessed, transported or sold contrary to the law of another State shall be guilty of an offence and shall be liable to a fine not exceeding ~~one million dollars~~ **\$2,500,000**.

Section 57 – Vessel monitoring system

...

(4) Any person who intentionally, recklessly or negligently destroys, damages, renders inoperative or otherwise interferes with any part of the automatic locations communicator shall be guilty of an offence and liable to fine not exceeding ~~two hundred thousand dollars~~ **\$500,000**.

(5) Any person who intentionally, recklessly or negligently divulges information from the vessel monitoring system, to any person or persons not authorised to receive such information shall be guilty of an offence and liable to a fine not exceeding ~~fifty thousand dollars~~ **\$150,000**.

The Committee notes further that the following offences will not be amended: s.10 (3) (k), s.14 (8), s.16 (11), s.22 (2), s.31 (3), s.32 (3), s.33 (1), (2) and (4), s.34 (3), s.35 (2) and s.59 (1) (xxv). The full provisions are set out below:

Penalties that will not be amended

Section 10 – Power of Provincial Assemblies to make Ordinances

(3) Ordinances made under this section may provide for any or all of the following -

...

(k) prescribing penalties for offences against any Ordinance or by-law made under this section, not exceeding ~~two thousand dollars~~ for an offence against any Ordinance and one thousand dollars for an offence against a by-law.

Foreign fishing vessel licences.

16. (1) Subject to subsection (2), no foreign fishing vessel shall be used for fishing or related activities in Solomon Islands waters without-

(a) a valid foreign vessel licence under this section; or

(b) a regional fishing licence issued in accordance with an arrangement or agreement entered into under section 15.

(11) Where a foreign fishing vessel is used in contravention of subsection (1), the master, owner or charterer shall each be guilty of an offence and shall each be liable to a fine not exceeding one million dollars.

Sport fishing by foreign vessels.

22. (1) No foreign vessel shall be used for sport fishing in waters subject to customary fishing rights without the agreement of the customary fishing rights holder.

(2) Any person who contravenes subsection (1) shall be liable to a fine not exceeding one hundred thousand dollars.

Aquaculture operations.

31. (1) No person shall set up or operate any aquaculture operations without the written permission of the Director and in accordance with such conditions as he may specify.

(3) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred thousand dollars.

Import and export of live fish, etc.

32. (1) No person shall import or export any live fish into or from Solomon Islands without the written permission of the Director.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding five hundred thousand dollars.

Driftnet fishing.

33. (1) Any person who within Solomon Islands waters engages or attempts to engage in any driftnet fishing activities shall be liable on conviction to a fine not exceeding two million dollars.

(2) Where any foreign or local fishing vessel within Solomon Islands waters engages or attempts to engage in any driftnet fishing activities, the operator, master, owner or charterer, if any, of such vessel shall be liable on conviction to a fine not exceeding two million dollars.

(4) It is an offence for any fishing vessel to possess driftnets while licensed to fish in Solomon Islands waters. Any fishing vessel in possession of driftnets shall be liable to a fine of five hundred thousand dollars.

Fish processing establishments.

(3) Any person who operates or causes or allows to be operated any fish processing establishment without a valid licence granted under this section shall be guilty of an offence and liable to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for twelve months, or to both such fine and imprisonment.

Records.

35. (1) Any person engaged in fishing, fish processing, fish marketing or the export of fish or fish products shall keep such records and supply such information relating to such fishing, in such form as the Director may require.

(2) Any person who, without lawful cause, refuses to keep records or supply information as required under subsection (1) or who knowingly supplies false information shall be guilty of an offence and liable to a fine not exceeding one hundred thousand dollars.

Regulations.

59. (1) The Minister may make regulations as may seem to him expedient for carrying into effect the provisions of this Act, and, without prejudice to the generality of the forgoing, such regulations may provide for all or any of the following purposes -

(xxv) penalties for the contravention of any regulation made under this section, which may not exceed a fine of two hundred thousand dollars;

The Committee therefore recommends that the Minister for Fisheries explain at Committee Stage the reason for increasing the penalties of certain offences only.

4.3.3. Method Used to amend Penalties

The Committee is also concerned with the way the amendments are to be effected. First, the Bill proposes to insert figures instead of words as used in the principal Act. The effect of this would be an untidy Act because penalties that will not be amended will remain expressed in words while those to be amended will eventually be incorporated as figures. The Committee believes that it would have been better to also amend the other penalties, not to increase the values, but to change such from words to figures.

Further, in light of the rapid expansion of the fishing industry around the region, the Committee believes that the principal Act will require periodic amendments to ensure that penalties maintain their deterrent effect in years to come. Thus, the Committee is of the view that a better method should be introduced across all legislation to deal efficiently with the need to increase penalties. By way of suggestion, the Committee notes the method employed in the Valuers Bill 2009 which uses penalty units. The advantage of this method is that by assigning the penalty units equivalent to each penalty and then putting a monetary value to one unit, the only change that would be required is the provision which fixes the value of one unit. The Committee therefore recommends that the Ministry of Fisheries consider reviewing the principal Act again with view to use the penalty units method across the Act.

4.4 RECOMMENDATIONS

The Committee has reviewed the **Fisheries (Amendment) Bill 2009** and recommends that the government monitor matters raised in the report, in terms of assessing its implementation and effectiveness in achieving its important objectives, and report to Parliament 12 months after the commencement of the Act, and in particular recommends:

1. That the Minister for Fisheries provide a detailed explanation to the House or during the Committee stage, the actual formula used and variables considered in the proposed increases to penalties;
2. That to ensure that the proposed amendments have the deterrent effect expected of such, the Ministry consider amending the same offences covered by the Bill so that each has a minimum amount (the current maximum) and a maximum (proposed under the Bill);
3. That the Minister for Fisheries also provides a full explanation of the reason for increasing the penalties of certain offences only; and
4. The Committee also recommends that the Ministry of Fisheries consider reviewing the principal Act again with view to introducing a penalty units method of fines.

5. PART 2 – THE CIVIL AVIATION (AMENDMENT) BILL 2009

5.1 PURPOSE OF THE BILL

The objects and reasons as stated at the end of the Bill are as follows:

“The Bill seeks to amend the Civil Aviation Act 2008 to include the continues [sic] of the Special Aviation Fund established under section 24A of the Civil Aviation Act (Cap. 47)”.

5.2 BACKGROUND – REASONS FOR AMENDMENT

The aviation industry plays an essential role in the social and business activities of the Solomon Islands, especially in view of the fact that the country is spread over a large number of scattered islands. Aircrafts are an essential means of covering the long distances between provinces in a reasonably short time. Solomon Islands therefore needs to provide an environment in which an aviation industry can properly function and be regulated in accordance with internationally and regionally recognized standards which are subject to regular update. This has been the key focus of the recent changes in the civil aviation industry, culminating in the enactment of the *Civil Aviation Act 2008* (the principal Act). That Act introduces many changes to the industry that are designed to pull local standards up to international and regional levels.

The principal Act however does not deal with the Civil Aviation Fund. This special fund was created in 2005 through the *Civil Aviation (Amendment) Act 2005*, which formed part of the original Act, the *Civil Aviation Act (Cap. 47)*. At the time when the principal Act was being drafted there appeared to have been uncertainty as to the fate of that Fund. As a result, the principal Act excluded the Fund. There was however an understanding that if the Fund is to be subsequently included, this would be done by way of a saving provision (if that decision was made prior to passage of the principal Act) or through subsequent amendment to the Act. The Act was passed by Parliament in 2008 without any saving provision and thus the Government now having decided to continue the Fund has introduced this Bill to achieve that.

The Bill aims to continue the Civil Aviation Fund which will be used on the recurrent costs of maintaining infrastructure within the civil aviation industry. Any bigger projects however will be forwarded to the National Transport Fund.

5.3 OBSERVATIONS ON THE BILL

The Committee held a public hearing on Friday 13 March 2009 to receive evidence from the relevant government ministry and key stakeholders on the “**Civil Aviation (Amendment) Bill 2009**”. The Committee heard from the following witnesses:

- Permanent Secretary, Ministry of Civil Aviation
- Director of Civil Aviation
- Legal Draftsman, Attorney-General’s Chamber.

A list of witnesses is provided in “**Appendix 2**”.

The following section highlights the issues noted by the Committee in relation to the Bill.

5.3.1. The Relationship with the former Act and the new Act

The Committee is very concerned about the relationship between this Bill and the *Civil Aviation Act* (Cap. 47) as amended in 2005, and the *Civil Aviation Act* 2008. The Committee recalls that in the hearings for the *Civil Aviation Act* 2008, the Committee specifically asked about the Civil Aviation Fund. The response at that time was that the government was still looking into the issue and that the Fund could, if the government so wished, easily be included by way of a savings provision or an amendment to the Act during consideration in Committee of the Whole. As noted previously despite these assurances to this Committee no such changes to the Bill occurred.

This Bill now seeks to amend the 2008 Act accordingly and in so doing, the Bill seeks to preserve or continue a Fund established under the first Act (Cap. 47). This, in the Committee’s view, raises some serious legal issues regarding repealed laws and retrospective commencement of Acts. The Committee is of the opinion that the 2008 Act repealed Cap. 47, together with the 2005 amendment, and thus extinguished the Fund. Although, by Clause 1, the Bill seeks to commence on the same date the 2008 Act commences (thereby retrospectively applying the Bill) in order that there is no point in time when the Fund has no legal basis, the Committee is concerned that there remains a period in which those who managed the Fund did so without an Act – that is, between commencement of the 2008 Act and the enactment of this Bill. The actions of these officers would therefore have been taken in relation to the Fund without the necessary mandate.

In response, the representative of the Attorney-General's Chamber advised the Committee that the 2008 Act has not commenced yet because the Minister was waiting for this Bill so that both could commence on the same date. He further advised that until the 2008 Act comes into force, the former Act (Cap. 47) is still the current law on civil aviation, including the 2005 amendment which established and regulates the Fund. Moreover, even if Cap. 47 has been repealed, the provisions of the *Public Finance and Audit Act* (Cap. 120) would still cover the Fund in terms of its management and control until this Bill becomes law and comes into force.

Despite the explanation given in the hearing, the Committee is still concerned about this particular issue. The Committee is aware that the Governor-General has already given the assent to the *Civil Aviation Act* 2008. Under section 59 (2) of the *Constitution*, once such assent is given, a Bill becomes law. That law however does not come into force until it is published in the Gazette (s.59 (3), *Constitution*). The Committee accepts that until the 2008 Act comes into force, Cap. 47 remains in force. This still raises a few important legal questions.

1. If Cap. 47 is the current law in force, and the 2008 Act is yet to come into effect, is it legally permissible to amend an Act which *has been given the assent but has not commenced*?
2. If commencement is the determining factor, is it then also possible to *repeal* the 2008 Act *prior to commencement*?
3. Where a Minister is given the discretion to fix a date for publication in the Gazette (commencement date), is there a limit to how long the Minister can delay commencement or can the Minister delay indefinitely?

These are some questions that the Committee still have in mind so it is recommended that the Attorney-General table through the Minister written advice which explains, for the benefit of Members, the issue of amending an Act after the assent but before commencement.

5.3.2. Comparison between Bill and 2005 Amendment

The Committee was also interested to know the differences (if any) between the clauses that the Bill seek to insert in the 2008 Act, and the clauses of the 2005 amendment.

The Committee was advised that besides varying drafting styles, the substance of this Bill is the same as that of the 2005 amendment. The only major difference relates to the body which controls and manages the Fund. Under the 2005 amendment, the

Permanent Secretary was the Fund manager, subject to the directions of the Minister. In this Bill, this power and function is transferred to the Civil Aviation Authority, a creation of the *Civil Aviation Act 2008*.

5.3.3. Control and Management of Airspace

The Committee notes that the new section 28A (b) to be inserted through this Bill identifies prescribed air navigation fees as a source of the Fund. The Committee therefore considers airspace control and management as relevant information to discussion of this Bill.

The Committee was informed that in terms of dimensions, Solomon Islands' airspace spreads out horizontally according to the sea borders of the country; and extends upwards, as high as 150 miles above sea level. At present, the Ministry does not have the necessary equipment to manage its own airspace so that function has been delegated by agreement to Air Service Australia. That company manages the Solomon Islands airspace and collect flight fees on the country's behalf, and charges a fee of AUD\$51,000 per month. The Committee was further advised that recently, the revenue from air navigation fees has dropped, ranging between AUD\$94,000 and AUD\$155,000 per month.

The Committee believes that in order to maximise the revenues collected from such fees, Solomon Islands needs to manage and control its own airspace. The excuse usually used by the Government is that the equipment and machines are too expensive to purchase. This, in the Committee's view, is not a solid reason given the long term benefits of collecting full navigation fees.

In response, officers of the Ministry advised that Civil Aviation is currently undergoing major reform, as indicated in the 2008 Act, which is also targeted at lifting local standards to levels that would allow managing and controlling airspace. The Ministry has just completed a corporate plan which outlines the long term goals for civil aviation. One of the long term plans is to purchase the necessary equipment and the Fund will assist in that regard. Once the changes envisaged by the 2008 Act are carried out with the assistance of the Fund, the country would be better placed to carry out many functions it currently cannot undertake.

The Committee approves of the long term plans of the Ministry in respect of airspace management and notes the role that the Fund, if re-established, will play in many aspects of the industry. The Committee therefore recommends that the Ministry execute its Corporate Plan promptly and achieve its aim to be sufficiently

competent to manage its own affairs, not only in terms of administration on the ground, but also management of Solomon Islands airspace.

5.3.4 Purposes of the Fund: Minister's Discretion

The Committee notes that while the proposed section 28C (1) lists specific purposes of the Fund in paragraphs (a) to (e), paragraph (f) allows the Minister to authorise any other purpose. While the Committee appreciates the need to maintain flexibility of the purposes to cater for any unexpected development in years to come, it cautions that leaving too much discretion to the Minister is susceptible to abuse.

The Committee was however assured by the Legal Draftsman that the general purposes of the Fund are quite clearly set out. Further, there is a list of specific purposes. This then means the courts will interpret the Minister's discretion to be subject to the general purposes, and limited to other purposes which are similar to specific ones already listed in the Bill. The Committee however remains of the view that clarity in this Bill would save a matter later having to be dealt with in the Courts.

5.4 RECOMMENDATIONS

The Committee has reviewed the **Civil Aviation (Amendment) Bill 2009** and recommends that the government monitor matters raised in the report, in terms of assessing its implementation and effectiveness in achieving its important objectives, and report to Parliament 12 months after the commencement of the Act, and in particular recommends:

1. That the Attorney-General table written advice through the Minister explaining for the benefit of Members the issue of amending an Act after the assent but before commencement; and
2. That the Ministry execute its Corporate Plan and become sufficiently competent to manage its own affairs, not only in terms of administration on the ground, but also management of Solomon Islands airspace.
3. That the Bill limits the discretion provided to the Minister in relation to the use of the Fund.



Hon. Severino Nuaiasi
Chairman
Bills & Legislation Committee
18 March 2009

APPENDIX 1:



BILLS AND LEGISLATION COMMITTEE

NATIONAL PARLIAMENT OF SOLOMON ISLANDS

Minutes of Proceedings Meeting No. 2

Friday 13 March 2009, Conference Room 2, Parliament House, 2:00pm

1. Members Present

Hon. Hon. Severino Nuaiasi, MP
Hon. Manasseh Sogavare MP
Hon. Isaach Inoke Tosika, MP
Hon. Japhet Waipora, MP

Witnesses

Mr. Luma Darcy, Permanent Secretary, Ministry of Communication & Aviation
Mr. Ben Kere, Director of Civil Aviation
Mr. Rupeni Nawaqakuta, Advisor to the Legal Draftsman

Secretariat

Mr. David Luta, Committee Secretariat
Mr. John Taupongi, Committee Secretariat - Legal
Mr. Warren Cahill, Project Manager, Parliamentary Strengthening Project

1. Opening Remarks & Prayers

The Chair welcomed Members of the Committee and the Secretariat.
Hon. Inoke then opened the meeting with a word of prayer.

2. Deliberation on Issues and Questions for the Public Hearing

The Chair and Members thanked the Secretariat for the preparatory work for the Public Hearing.

The Committee Secretariat (Legal) briefed the Committee.

3. Public Hearing on the Civil Aviation (Amendment) Bill 2009

The Permanent Secretary and Director from the Ministry of Communication and Aviation appeared before the Committee.

The Chair welcomed the PS and the officials from the Ministry of Communication and Aviation and made an opening statement outlining the purpose of the hearing.

The Permanent Secretary made an Opening Statement and invited questions from Members of the Committee.

The Committee questioned the witnesses. Debate ensued.

Evidence concluded.

4. Close

The Chair thanked the witnesses for their attendance, the meeting adjourned at 3:30pm until 3:35pm

Minutes of Proceedings

Hearing on the Fisheries (Amendment) Bill 2009.

Friday 13th March 2009, Parliament House, 3:35pm

1. Members Present

Hon. Severino Nuaiasi, MP (Chair)

Hon. Manasseh Sogavare MP

Hon. Isaach Inoke Tosika, MP

Hon. Japhet Waipora, MP

Witnesses

Mr. Rupeni Nawaqakuta, Legal Draftsman, Attorney Generals Chambers

Secretariat

Mr. David Kusilifu, Committee Secretariat

2 Fisheries (Amendment) Bill 2009.

The Legal Draftsman appeared before the Committee.

The Chair welcomed Draftsman and noted that the Permanent Secretary and Officials of the Ministry were not available for the Hearing. The legal Draftsman then briefed the committee on the said bill.

The Committee questioned the Legal draftsman.

Evidence concluded.

The Committee deliberated.

3. Close

Committee adjourned at 4:30 5pm until 4:35 pm.

APPENDIX 2:

LIST OF WITNESSES & STAKEHOLDERS

- Mr. Ronald Unusi, Permanent Secretary, Ministry of Lands, Housing & Survey
- Mr. Eric Goparana, Under Secretary, Ministry of Lands, Housing & Survey
- Mr. Rupeni Nawaqakuta, Legal Draftsman, Attorney Generals Chambers
- Mr. Chris Robinson, Consultant, Ministry of Infrastructure Development
- Mr. John Taaru, Permanent Secretary, Ministry of Infrastructure Development
- Mr. Graham Powell, Consultant, Ministry of Infrastructure Development
- Mr. Francis Wale, Consultant, Ministry of Infrastructure Development
- Mr. Chris Hunubaeriu, Deputy Secretary to Prime Minister & Cabinet
- Mr. Luma Darcy, Permanent Secretary, Ministry of Communication & Aviation
- Mr. Ben Kere, Director of Civil Aviation