



NATIONAL PARLIAMENT OF SOLOMON ISLANDS

BILLS AND LEGISLATION COMMITTEE

REPORT

ON

THE NATIONAL TRANSPORT FUND BILL 2009

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1. TERMS OF REFERENCE

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

"The National Transport Fund Bill 2009"

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. PURPOSE OF THE BILL

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

“The Bill seeks to establish a special fund pursuant to section 100 of the Constitution to be called the National Transport Fund. The purpose of the Fund is to provide funds for the development, management and maintenance of road and maritime transport system”.

5. BACKGROUND – THE NEEDS FOR A NEW SPECIAL FUND RELATING TO TRANSPORTATION

The purpose of the proposed National Transport Fund Act is to create a special fund into which the resources of aid donors and partners of the Solomon Islands Government (SIG) can be pooled and used to assist in the development of transport services and infrastructure in the country. Special funds are can be created under section 100 of the Constitution and managed in accordance with existing financial rules. While the provisions of the Constitution have been utilised in other areas, it is only until recent years that this mechanism was identified by the SIG and donors as a means of coordinating efforts to enhance and maintain transport services and infrastructure.

In past years, the SIG tried to develop transport services and infrastructure on a wide scale but not much progress was made. Thus, although a National Transport Plan was designed years ago, effective implementation of that Plan was beyond the capacity of successive governments for many years. On their part, donors and partners who were keen to assist in this area approached development proposals individually and on a project-by-project basis. There was no proper coordination of the efforts of donors and partners who share a common aim. This approach of course proved expensive and it was difficult to make any lasting impact nationwide through scattered projects. The fact that shipping services to remote areas throughout the country remained poor despite millions of dollars of aid money spent on transport related projects is testimony to the difficulties that both SIG and donors faced.

For Solomon Islanders, particularly those in rural areas, poor transport services and the lack of transport infrastructure continued to hinder economic growth. In remote areas where shipping routes are uneconomical, such services remain virtually non-existent even today. In such a setting, development simply could not take place. In recent years however donors came to realise that the key to

meaningful economic development in rural areas lies in transport services and infrastructure development, particularly efficient shipping services. The SIG on the other hand has always known this and has tried various ways to improve the situation but could not do much due to lack of funds and poor management of the limited projects that received funds.

It is against this backdrop that the notion of a special fund was developed. In 2006, the SIG through the Ministry of Infrastructure Development started discussions with major donor partners on how to pool resources and coordinate all major initiatives geared towards improving transport services and infrastructure. It was then decided that a special fund would be an appropriate vehicle to achieve this. The concept was to set up a special fund so that donors could provide the necessary funding but through a separate fund which is easier to monitor, whilst the SIG use its existing processes and human resources to translate such funding into development initiatives focussed on transport services and infrastructure. It was soon realised however that such a proposal required major reforms, including legislative reform, better coordination amongst donors and better management within the SIG, and more importantly, combined and up-to-date planning and monitoring.

In following years, as increasing interest developed in the idea, interested donors and SIG worked together to establish a more realistic framework within which issues relating to transport services may be addressed. The Asian Development Bank, through transport-based projects took a strong interest in this approach and while it continued with its own initiatives in Solomon Islands, it also led the process of exploring and investing in the idea of a combined approach, especially in terms of shipping services.

The Fund that the Bill seeks to establish is thus only part of a broader approach. Other areas need to be strengthened and resourced. This approach also calls for the involvement of other Ministries and improvements to existing SIG processes relating to financial management and policy implementation. Attracting other donors to join the cause is also another major feature of the approach. Donor partners and the SIG therefore spent the last few years working on these areas and by this year, 2009, are now in a position to start putting into place the legal framework for their grand scheme. The National Transport Fund is absolutely essential to this design. Progress is also being made in related legislative reforms, particularly in the laws regulating shipping services. Work continues on modernising the National Transport Plan and strengthening the capacity of local institutions and officers to make effective contributions.

The National Transport Fund Bill 2009 is therefore the forerunner of a broader and long term reform that will see a series of legislative and administrative changes which are expected to enhance and maintain transport services and infrastructure in Solomon Islands. This, if achieved, is expected to stimulate economic activities throughout the country. The proposed Fund is thus a cornerstone of the reform.

6. OBSERVATIONS ON THE COMPANIES BILL 2009

The Committee held a public hearing on Friday 13 March 2009 to receive evidence from the relevant government ministry and key stakeholders on the “**National Transport Fund Bill 2009**”. The following witnesses appeared before the Committee:

- Permanent Secretary, Ministry of Infrastructure Development;
- Legal Advisor, ADB Domestic Maritime Project;
- Technical Assistant attached to the Ministry;
- Local Consultant (Legislative & Legal Reforms) attached to the Ministry; and
- Legal Draftsman, Attorney-General’s Chamber.

A list of witnesses is annexed as “Appendix 2”.

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

6.1 Implementation of the National Transport Plan

The Committee notes that the National Transport Plan or its equivalent has been around for many years and despite the best of intentions, Solomon Islanders have yet to see the Plan come into fruition. The Committee is concerned that the Bill seeks to fund yet another Transport Plan that could just as easily become defunct for the same reasons other plans have failed in the past.

The Committee was informed that the Plan referred to in Clause 5 (3) of the Bill is indeed that which was formulated years ago. The ADB consultant however acknowledged that the Plan is in need of urgent review and assured the Committee that such a review is already underway, spearheaded by a team of Ministry officials and experts brought in by donors through their projects. Once that review is completed and a new Plan is in place, it would be much easier to

coordinate existing donor funded projects and there would also be clarity on the types and size of projects that the National Transport Fund could take on.

In support of their faith in a new Plan supported by the Fund (if created by Parliament through the Bill), Ministry officials and their consultant drew the attention of the Committee to two ongoing ADB funded projects: a franchise shipping scheme and a project to build wharves in certain parts of the country. The shipping scheme is expected, amongst other things, to subsidise local private shipping operators to service certain shipping routes that have been proven to be uneconomical. The wharves project on the hand was cited as an example of a donor initiative targeting transport infrastructure.

The Committee was also informed that there are many similar projects throughout the country and these efforts, if combined under the Fund and guided by a revised and modernised Plan, could make much more progress than what has been the case in the past. Such an approach is appealing to donors in that they could cut back on costs related to multiple and prolonged support projects, and instead support the Fund if established. The Committee was assured that it is this direct and combined support for the revised National Transport Plan, provided through the Fund, which will make the difference in terms of implementation of that Plan.

The Committee feels that establishing the Fund when the Plan is still under review may be a case of “placing the cart before the horse”. On that basis, the Committee recommends urgent completion of the Plan and that the Minister table the new Plan in Parliament and make it publicly available.

6.2 Sources of the National Transport Fund

Another area that the Committee sought clarification on was the sources of the Fund outlined in Clause 4 of the Bill. The main issue raised was whether the government proposes to borrow funds and if so whether such monies could be transferred into the Fund.

It appears that those who have been working on creating the Fund established have yet to consider this issue. The Committee was advised that it is not anticipated that loans will be further sources of the Fund although there is no legal impediment for having it so. ADB consultants however pressed the point that the whole idea behind establishing the Fund in the first place was to provide a mechanism through which Solomon Islands could apply donor assistance and

make the best possible use of such funds and in so doing avoid having to rely on loans (at least in the area of transport services and infrastructure).

The Committee recommends that the Ministry consult the Ministry of Finance and particularly the donors involved to be clear on the limitations, if any, to the potential sources of the proposed Fund, including loans.

6.3 **The Fund Board – Risks associated with a Co-ordinated Approach**

The Committee also has some reservations about the proposed Fund Board, especially in view of the coordinated approach that has been taken. The Committee notes that Clause 7 of the Bill simply leaves all matters relating to the proposed Board to the Minister of Finance, who will create the Board and its internal mechanisms and rules by way of regulations.

(a) Qualification and composition of the Board

The Committee is concerned that omitting certain key requirements from the Bill could be highly risky and problematic to the long term success of the Fund. Examples of such key requirements include minimum requirements for eligibility and qualifications of members of the Board. If the Bill does not set a threshold and the regulations turn out to be unclear on the issue of Board membership, there is a real risk that the Board could end up with people who are not qualified and who may not share the vision and passion of those behind this Bill and therefore sabotage the Fund. While in the ideal world the Minister would always act in the best interest of the Fund and choose the best people, the political history of Solomon Islands is littered with examples where political pressure and expediency, cronyism and nepotism have come into play.

The Committee was advised that although the Bill delegates to the Minister the power to make regulations relating to the proposed Board, the Minister will only act on the advice of the Ministry and its partners when it comes to the Board. However, the Bill does not say that. The Committee was further assured that work is already underway on draft regulations for the Board based on concepts and structures that all stakeholders have agreed to in principle.

The Committee was informed that the Board will comprise officials from three Ministries – Infrastructure, Civil Aviation and Planning – and will also have representatives of donors. The representative of the Ministry of Finance will be the Chair of the Board. It is also proposed that every major donor who

contributes to the Fund will also be allowed to have a representative on the Board. Having donor reps on the Board will ensure that donors can have a say on the types of projects that their funds will be used on and also to monitor the management of the Fund. These reps however will not control the affairs of the Fund. That role will be left to the SIG component of the Board.

While the Committee welcomes the plans being put in place regarding the proposed Board, the Committee recalls that other recently introduced bills, including the Valuers Bill 2009 and the Companies Bill 2009, expressly outline the requirements for membership of statutory bodies created in those bills. Thus, the Committee recommends that to be safe, clear rules relating to membership of the Board should be included in the Bill at Committee Stage.

In terms of regulations, the Committee was further advised that the team working on these are now at an advanced stage in formulating ideas not only in terms of the Board, but also the appropriate use of the Fund. It is anticipated that the regulations will require that monies in the Fund be kept in Solomon Islands based banks and in the local currency. The regulations should also provide the guidelines to the Board and relevant Ministries for determining the appropriate areas to address and in so doing avoid risky initiatives.

The Committee is pleased with the proactive approach taken in respect of regulations and recommends that the Ministry ensures that appropriate regulations are ready to come into operation as soon as the Fund is established. The Committee further recommends that the Minister tables these regulations as soon as they are published in the Gazette so that Parliament is given an opportunity to review them and take further action if necessary.

(b) Cost of operating the Board and Fund

Another concern of the Committee is the cost of operating the Board. The Committee fears that the Board could potentially become another heavily funded body that might prove too expensive to operate.

The Committee was however advised that the Board will, on establishment, be supported administratively by an already existing Secretariat comprising public officers within the three key Ministries involved. The Secretariat is a short term and inexpensive measure. It was however noted that whilst this option is appropriate at the preliminary stage of setting up the Fund, this might prove inadequate in the future, especially if the Fund appeals to a wider range of donors and thus increasing the Fund as well as expanding the scope of the

Fund's application. In such a scenario, the backup plan would be to engage the services of professionals to assist the Board with projects and its work. Donors are happy with the use of professional, even now in areas such as shipping services projects, so long as this does not involve investing in risky areas that could backfire in terms of cost.

(c) *Creating another bureaucracy*

The Committee is also concerned that the Bill might end up creating another bureaucracy within the Public Service. This fear stems from the fact that at least three Ministries are now working together with donors to set up the Fund and the Board. There were some reservations that the involvement of other Ministries might simply create another layer of administration that has the potential to stall implementation of the Fund, particularly in view of similar attempts in the past which did not work.

In response, officials of the Ministry informed the Committee that other Ministries were included in the initiative because of an earlier decision to take on work programs already designed. These programs require the assistants of other stakeholders and thus cannot be implemented by the Ministry of Infrastructure Development. Thus, these stakeholders were included because of the contributions they could make to the implementation of the National Transport Plan: Civil Aviation contributes in terms of airports; Finance provide guidance on implementation and also contribute financially on the SIG's behalf; and Planning brings to the table expertise in coordinating responsibilities.

The Committee understands the need to involve all relevant stakeholders in the process of which the Fund is an integral part, but strongly recommends that a transport management strategy be urgently developed to ensure that stakeholders involved know their respective places in the scheme and that there are no overlaps or jurisdictional issues within the Board and Fund.

6.4 **Tender Processes and its Risks**

The Committee notes that the Fund will clearly involve large amounts of money and therefore a huge demand for contractors. This raises the question of the processes that are to be used to award contracts. The Committee notes further that in Solomon Islands, the tender processes used by SIG can sometimes be subjected to the *wantok system* and favouritism in that only contractors with inside friends tend to be awarded contracts for major projects. The Committee

wishes to know how those behind the Fund proposes to manage this risk or whether there is a risk management strategy already in place.

Advisors of the Ministry explained to the Committee that the Board will not be responsible for the tender process. While the Board will manage the Fund, awarding contracts and tenders will remain the responsibility of the SIG, through its Ministries. It is expected that the Ministries will discharge this responsibility in compliance with Financial Instructions and existing tender authorities. As an added measure, however, one of the functions of the Board could be to ensure that processes used to apply the Fund are adequate and to the satisfaction of those who provide funding (donors). Another safety measure is also the use of pre-qualifying criteria when assessing areas that the Fund could be used for. Such assessments, if carried out properly with the assistance of technical assistants, could provide a clearer picture of capacity of potential contractors or operators to undertake what is expected of them. This measure however requires further legislative reform, for instance in the area of shipping services, and a coordinated approach. Linking the various authorities and rules concerned with transport services and infrastructure in Solomon Islands would ensure that the proposed projects are implemented properly and by contractors with the necessary capacity.

The Committee notes the proposals to manage the risks involved with tender processes while respecting the rights of the SIG and recommends that the SIG speeds up the necessary legislative reforms so that the Board will have the necessary network and support when the Fund is established. The Committee further recommends that a management strategy involving the relevant Ministries and the other key stakeholders be developed in conjunction with a detailed risk management strategy and that both these documents are tabled in Parliament by the Minister and made publicly available.

7. RECOMMENDATIONS

The Committee has reviewed the Bill 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. Urgent completion of the Plan and that the Minister table the new Plan in Parliament and make it publicly available;
2. That the Ministry consults the Ministry of Finance and donors involved to be clear on the limitations, if any, to the potential sources of the proposed Fund, including loans;
3. That clear rules relating to membership of the Board be included in the Bill at Committee Stage;
4. That the Ministry ensures that appropriate regulations are ready to come into operation as soon as the Fund is established and that the Minister tables these regulations as soon as they are published in the Gazette so that Parliament is given an opportunity to review them and take further action if necessary;
5. That a transport management strategy be urgently developed to ensure that stakeholders involved know their respective places in the scheme and that there are no overlaps or jurisdictional issues within the Board and Fund;
6. That the SIG speeds up the necessary legislative reforms so that the Board will have the necessary network and support when the Fund is established; and
7. That a management strategy involving the relevant Ministries and the other key stakeholders be developed in conjunction with a detailed risk management strategy and that both these documents are tabled in Parliament by the Minister and made publicly available.



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.

Minutes of Proceedings

Hearing on the Interpretation and General Provisions (Validity & Indemnity) Bill 2009.

Friday 13th March 2009, Parliament House, 4:35pm

1. Members Present

Hon. Severino Nuaiasi, MP (Chair)

Hon. Manasseh Sogavare MP

Hon. Isaach Inoke Tosika, MP

Hon. Japhet Waipora, MP

Witnesses

Mr. Chris Hunubaeriu, Deputy Secretary to Prime Minister & Cabinet

Mr. Rupeni Nawaqakuta, Legal Draftsman, Attorney Generals Chambers

Secretariat

Mr. David Kusilifu, Committee Secretariat

2. Interpretation and General Provisions (Validity & Indemnity) Bill 2009.

The Deputy Secretary and Legal Draftsman appeared before the Committee.

The Chair welcomed the Deputy Secretary and Draftsman and invited the Deputy Secretary brief the committee on the said bill.

The Committee questioned the Deputy Secretary and Legal draftsman.

Evidence concluded.

The Committee deliberated.

3. Close

Committee adjourned at 5:10 5pm until 5:15 pm.

Minutes of Proceedings

Hearing on the National Transport Fund Bill 2009.

Friday 13th March 2009, Parliament House, 5:15pm

1. Members Present

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

Witnesses

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. Rupeni Nawaqakuta, Legal Draftsman, Attorney Generals Chambers

Secretariat

Mr. David Kusilifu, Committee Secretariat

2. The National Transport Fund Bill 2009.

The Permanent Secretary and officials from the Ministries of Infrastructure Development appeared before the Committee.

The Chair welcomed the Permanent Secretary and invited the Permanent Secretary from Infrastructure to brief the committee.

The Committee questioned the Permanent Secretary and Officials.

Evidence concluded.

The Committee deliberated.

3. Close

Committee adjourned at 5:40 pm until 5:45 pm.

Minutes of Proceedings

Hearing on the Valuers Fund Bill 2009.

Friday 13th March 2009, Parliament House, 5:45pm

1. Members Present

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

Witnesses

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

Secretariat

Mr. David Kusilifu, Committee Secretariat

2. The Valuers Bill 2009.

The Permanent Secretary and officials from the Ministries of Infrastructure Development appeared before the Committee.

The Chair welcomed the Permanent Secretary and invited the Permanent Secretary from Infrastructure to brief the committee.

The Committee questioned the Permanent Secretary and Officials.

Evidence concluded.

The Committee deliberated.

3. Close

Committee adjourned at 5:45 pm until 6:20 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