

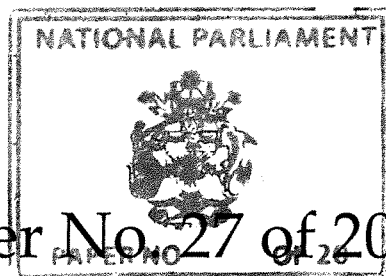


National Parliament of Solomon Islands

Bills and Legislation Committee

Committee Report

Report on the Adoption (Amendment) Bill
2016 (No. 12 of 2016)



NP-Paper No. 27 of 2016

Presented on 18 November 2016

National Parliament Office



COMMITTEE MEMBERS

The current members of the Bills and Legislation Committee (10th Parliament) are:

Hon. Connelly Sandakabatu, MP (Chairman)

Hon. Jeremiah Manele, MP

Hon. Dr Derek Sikua, MP

Hon. Rick Hou, MP

Hon. Matthew Wale, MP

Hon. Dr Culwick Togamana, MP

Hon. Steve Abana, MP

Hon. Commings Aston Mewa, MP

Hon. Peter Tom, MP

Hon. Namson Tran, MP

Secretariat:

Wilson Anii

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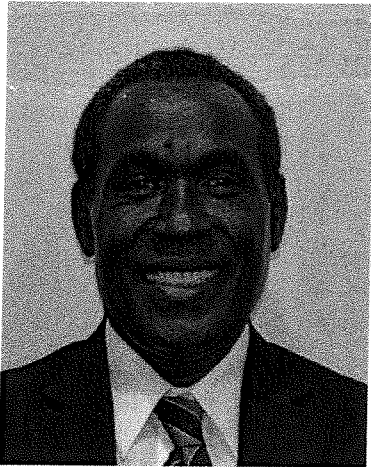
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CHAIR'S FOREWORD



Hon. Connelly Sandakabatu, MP
Chairman
Bills and Legislation Committee

REPORT OF THE BILLS AND LEGISLATION COMMITTEE

Mr. Speaker,

Pursuant to Standing Orders No. 71 (g) of the National Parliament of Solomon Islands, it is an honour and pleasure for me Sir, to present the Report of the Bills and Legislation Committee on the Inquiry into the Adoption (Amendment) Bill 2016 for laying before Parliament.

A handwritten signature in black ink, appearing to read 'Connelly', written over a large, loopy circular flourish.

Hon. Connelly Sandakabatu

Chairman

Bills and Legislation Committee

17th November, 2016

COMMITTEE FUNCTIONS

The Committee is established under *Standing Order 71*; an Order made pursuant to the *Constitution*¹ and 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.

¹ Section 62, *Constitution of Solomon Islands* 1978.

EXECUTIVE SUMMARY

The Adoption (Amendment) Bill 2016 is to protect children who are the subject of adoption by non-residents of Solomon Islands. The Bill does this by outlining the requirements for such an adoption and by prohibiting the removal of Solomon Island children for adoption outside of Solomon Islands without an order of the Court.

The Committee welcomes this amendment and expressed that this is an important Bill to protect and safeguard the movement of our children to other countries.

This Bill is a step forward to protect Solomon Island children who are being adopted by people residing overseas. The Committee commends it to the House.

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1.0 INTRODUCTION

This Report contains the findings and recommendations of the Bills and Legislation Committee (“Committee”) after reviewing the Adoption (Amendment) Bill 2016 (No.4 of 2016) (“the Bill”) as required under the Standing Orders of the National Parliament of Solomon Islands (“the Standing Orders”).

The Object of this Bill is to amend the *Adoption Act 2004* to protect children who are the subject of by non-residents of Solomon Islands. The Bill does this by outlining the requirements for such an adoption. The Bill also prohibits removal of Solomon Islands children for adoption outside of Solomon Islands without a Court Order.

The Bill was submitted on 12th October 2016 to the Speaker through the Clerk to Parliament as required under the *Standing Orders*². The Committee deliberated on 24th October, 2016 and resolved to conduct an inquiry into the Bill and invited relevant stakeholders³ to appear before the Committee and make presentations on the contents, policy matters, and intentions of the Bill.

Hearings into the Bill were held on the 27th of October 2016 at the National Parliament Building. The List of witnesses that appeared before the Committee and minutes of these proceedings are contained in Appendix 1 and 2 respectively.

² *Standing Order* 44 (1)

³ See Appendix 1

2.0 BACKGROUND INFORMATION

The Adoption (Amendment) Bill 2016 seeks to amend the adoption Act (the “Act”) to protect children who are the subject of adoption by non-residents of Solomon Islands.

The amendment is developed by the Ministry of Women, Youth, Children and Family Affairs when developing its national youth policy for 2010-2015. It is the lead policy agency in relation to children and youth policy. The amendment was seen as a significant step towards meeting Solomon Islands obligation under the Convention on the Rights of the Child to protect Solomon Islands children who are being adopted by non-residents of Solomon Islands.

The Solomon Islands Government ratified the United Nations Convention on the Rights of the Child in 1995. The Convention outlines the following:

- that the Government must ensure that all children have the protection and care necessary for their wellbeing;
- state parties must combat illicit transfer and non-return of children sent abroad;
- state parties must have an adoption system that ensures that the paramount concern is the **best interest of the child**. Competent authority should only permit adoption on the basis of pertinent and reliable information with the informed consent of all persons concerned. Adoption by person’s residing in another country can be considered only if the child cannot be suitably cared for in their country of origin. Finally, that safeguards and standards used within a country are equally applied to children who will be subjected to inter-country adoptions.

The Bill does this by outlining the requirement for such an adoption and by prohibiting the removal of Solomon Islands children for adoption outside of Solomon Islands without an order of the Court.

2.1 Proposed Amendment to the Act

The Bill seeks to amend the principle Act to allow non-residents to adopt from Solomon Islands. The three main areas of improvement from the principle Act include;

a) Replace the out-dated and misleading term 'infant with child'

The Bill replaces the term infant with the more inclusive term 'child'⁴ because not all adoptions are of babies or infants. The term 'child' is consistent with other Solomon Islands legislation and accepted by other international conventions.

b) Inter-Country adoption

The Bill also seeks to amend the principle Act to provide safeguards in relation to inter-country adoption for Solomon Islands children. The Bill imposes four requirements – that;

- non-resident adoptive parents must obtain report from the relevant adoption authority in their country of residence;⁵
- non-resident adoptive parents must obtain report of the social welfare officer in their country of residence;⁶
- the court must be satisfied that there are no other suitable arrangements available in Solomon Islands for the care, support and welfare of the child;⁷ and
- an inter-country adoption is in the child's best interests.⁸

c) Requirements for inter-country adoption

The Bill creates an offence for removing a child without an authority of the Court. The Bill increases the penalty for this offence. This provides greater protection for children as stipulated in Article 11 of the Convention.⁹

⁴ See Clause 4, *Adoption (Amendment) Bill 2016*, section 2 (1), *Adoption Act 2014*

⁵ See Clause 25 (4) (b), *Adoption (Amendment) Bill 2016*.

⁶ See Clause 25 (4) (c), *Adoption (Amendment) Bill 2016*

⁷ See Clause 25 (5) (a), *Adoption (Amendment) Bill 2016*

⁸ See Clause 25 (5) (b), *Adoption (Amendment) Bill 2016*

⁹ Convention on the Rights of the Child, Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

3.0 ISSUES DISCUSSED

The following are the Committee's observations regarding the Bill.

3.1 Non-residents and Inter-country adoptions

The Committee noted that the contents of the amendments to the principle Act are principally focussed on the inter-country adoption. The process and procedure for lodging an application under this amendment is provided for under clause 25 of this Bill.

The Committee raised the following when considering the Bill;

a) Qualification of the persons applying for adoption

The Committee appreciates the restriction placed in section 4¹⁰ of the principle Act regarding persons who may apply. The Committee reiterates that the restriction should remain. This is to avoid related problems like child abuse.

b) Form of adoption and Child consent

The Committee also appreciates the amendments made in the Bill to allow adoption for non-resident and ordinary resident couples. The committee also notes the requirements imposed on the adoptive parents before the Court grants the adoption order.

¹⁰ Age and sex of applicant

4. (1) Subject to subsection (2) of this section, an adoption order shall not be made in respect of an infant unless the applicant

(a) is the mother or father of the infant;
 (b) is a relative of the infant, and has attained the age of twenty-one years; or
 (c) has attained the age of twenty-five years.

(2) An adoption order may be made in respect of an infant on the joint application of two spouses -

(a) if either of the applicants is the mother or father of the infant; or
 (b) if the condition set out in paragraph (b) or paragraph (c) of subsection (1) of this section is satisfied in the case of one of the applicants, and the other of them has attained the age of twenty-one years.

(3) An Adoption order shall not be made in respect of an infant who is a female in favour of a sole applicant who is a male, unless the court is satisfied that there are special circumstances which justify as an exceptional measure the making of an adoption order.

c) The best interests of the child

The committee also appreciates the recognition of the 'child's best interests' and 'suitable arrangements' as necessary protections in the Bill. This legal recognition provides the court with guidance to ensure a child will be in a better environment.

d) Ordinary Residents

The Committee is concerned that there is no clear definition for 'ordinary residents' in either the principal Act or the amendments. The Committee notes that different countries have different ordinary residency requirements where couples may have multiple ordinary residents. Therefore, it is important to include the definition in the Bill to give clarity on the term 'ordinary residents'.

Recommendation 1

The Committee recommends that the term 'ordinary residents' be defined in the Bill.

3.2 Regulations

The Committee notes that the principal Act does not have regulations that prescribe the application form for adoption.

Recommendation 2

The Committee recommends that regulations prescribe appropriate application forms for both in-country and inter-country adoptions.

Recommendation 3

The Committee recommends that draft regulations must accompany the Bill when presented to Parliament before committee inquiry so that the Committee is afforded a comprehensive view of the Bill and its implications.

3.3 Consultation on the Amendment

In her evidence, the Legal Policy Advisor¹¹ to the Ministry of Justice and Legal Affairs stated that the Ministry of Women, Youth, Children and Family Affairs had inclusive consultations with

¹¹ Pamela Wilde, *Legal Policy Advisor*, Ministry of Justice and Legal Affairs, Oral Evidence, 27th October 2016.

relevant stakeholders including the government, non-government organisations, communities and faith based bodies. She also highlighted that the relevant stakeholders and NGOs are actually part of the process from the beginning when the policy was developed.

However, the Committee expressed concern during the hearings that the Solomon Islands Christian Association (SICA) and the Social Welfare Division were not consulted. The Committee views this as serious oversight of institutions that deal with these issues.

3.4 Costs for the New Amendment to all Stakeholders

The Legal Policy Adviser¹² to the Ministry of Justice and Legal Affairs informed the Committee that there will be minor costs involved in implementing the amendment Bill. These will include training court staff, the officers within the Social Welfare Division and the law enforcement and legal officers. She also added that all agencies can meet any cost of implementation within their current budget.

However, the Committee is concerned that there will be a lot of ongoing costs after the bill is passed due to the fact that more facilities and human resources will be needed. Furthermore, the Committee is of view that there will be no such thing as minor or minimal costs regarding the issue of implementation. The Bill has to be made accessible and understandable to the people of Solomon Islands through public awareness and training programs. This will further incur major additional costs.

¹² *ibid*

4.0 RECOMMENDATIONS

At the conclusion of the hearing and based on the evidences collected during the hearing, the Committee makes the following recommendations –

Recommendation 1

The Committee recommends that the term 'ordinary residents' be defined in the Bill.

Recommendation 2

The Committee recommends that regulations prescribe appropriate application forms for both in-country and inter-country adoptions.

Recommendation 3

The Committee recommends that draft regulations must accompany the Bill when presented to Parliament before committee inquiry so that the Committee is afforded a comprehensive view of the Bill and its implications.

Recommendation 4

The Committee commends the Bill to Parliament.

END OF REPORT

5.0 APPENDICES

Appendix 1: Witnesses

Date	Name	Position & Organisation
27/10/2016	Pamela Wilde	Legal Policy Advisor, Ministry of Justice & Legal Affairs
	Linda Tupe	Acting Director Social Welfare Division, Ministry of Health & Medical Services
	Catriona Steele	Legal Drafts person, Attorney Generals Chambers
	Casper Fa'asala	General Secretary(Ag), National Council of Women
	Rev.Willie Maezama	Solomon Islands Christian Association, Representative

Appendix 2: Minutes of Proceedings



NATIONAL PARLIAMENT OF SOLOMON ISLANDS

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BILLS AND LEGISLATION COMMITTEE

Minutes of Proceedings

Inquiry into the Adoption (Amendment) Bill 2016

Date: 27th October, 2016

Venue: Parliament Conference Room 2

Time: 10:55am – 4:30pm

1. Members Present

Hon. Connelly Sandakabatu (Chairman)

Hon. Jeremiah Manele

Hon. Rick Houenipwela

Hon. Matthew Wale

Hon. Dr Culwick Togamana

Hon. Commins Mewa Aston

Secretariat

Mr Wilson Anii, Committee Secretary

Mr Wilson Orisi, Committee Secretary

Ms Ivory Iruha'a

2. Welcome and Opening Prayer

The Chairman made opening remarks and welcomes the Permanent Secretary (PS) and other officials from the Ministry of Women, Youth, Children and Family Affairs, and the Attorney Generals Chamber. He then invites the PS to introduce his group and made his presentation.

3. Committee hearing into Adoption (Amendment) Bill 2016

The Hearing proper commenced and the following witnesses were admitted:

Hearing Witnesses

Pamela Wilde- Legal Policy Advisor, MJLA

Catriona Steele- Drafts Lady, Attorney Generals Chamber

Linda Tupe- Acting Director Social Welfare Division, MH&MS

Casper Fa'asala- National Council of Women

Rev. Willie Maezama- SICA

The Legal Policy Advisor for MJLA made presentation before the committee.

The Committee, question; the Drafts lady, Director (Ag) Social Welfare Division, National Council of Women and the Solomon Islands Christian Association.

The officials answered, made clarification and commented on the Bill.

Evidence concluded and the Chair thanked the witnesses for their attendance and contribution on the Bill.

4. Adjournment

The Chair made closing remarks.

Hearing ended at 4:30pm