



National Parliament of Solomon Islands

Bills and Legislation Committee

Committee Report

Report on the Anti-Corruption Bill 2017
(No. 11 of 2017)



NP-Paper No 17 of 2018

Presented on 17th July 2018

National Parliament Office

COMMITTEE MEMBERS

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

Hon. Matthew Cooper Wale, MP (Chairman)

Hon. Dr Derek Sikua, MP

Hon. Manasseh Maelanga, MP

Hon. Peter Tom, MP

Hon. Douglas Ete, MP

Hon. Christopher Laore, MP

Hon. Alfred Ghiro

Secretariat:

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CHAIR'S FOREWORD



Hon. Matthew Cooper Wale, MP, Chairman

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 **Anti-Corruption Bill 2017** for laying before Parliament.

A handwritten signature in blue ink, appearing to be 'M. Wale', with a long horizontal line extending to the right.

Hon. Matthew C. Wale

Chairman

Bills and Legislation Committee

17 July, 2018

COMMITTEE FUNCTIONS

Refer to Standing Order 71 of the National Parliament of Solomon Islands.

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1.0 INTRODUCTION

This Report contains the findings and recommendations of the Bills and Legislation Committee ('the Committee') after having reviewed the **Anti-Corruption Bill 2017** ('the Bill') as required under the Standing Orders of the National Parliament of Solomon Islands ('the Standing Orders').

The government withdrew the Anti-corruption Bill 2016, purportedly with a view to include the recommendations of the Committee on that Bill. Members are advised to read the Anti-corruption Bill 2016 and the Committee's report on that bill to understand the choices that the government has made which has resulted in the Anti-corruption Bill 2017.

The Committee resolved to conduct an inquiry into the Bill and invited relevant stakeholders¹ to appear before the Committee and make presentations on the contents, policy matters, and intentions of the Bill.

Hearings into the Bill were held from the 20th to the 23rd of April 2016 at the National Parliament Building. The List of witnesses that appeared before the Committee and minutes of these proceedings are contained in Appendices 1 and 2 respectively.

Written submissions were also received from some witnesses who appeared before the Committee and those that responded to the call for submission by the Committee advertised in the media. A list of Written Submissions can be found in Appendix 3.

1.1 Government Responses to BLC recommendations on the Anti-Corruption Bill 2016

In evidence, the Special Secretary to the Prime Minister, Mr. Fred Rohorua informed the Committee of the Government's responses to, and choices on, the Committee's recommendations, contained in its report on the Anti-Corruption Bill 2016.

1. **Recommendation 1** - The Prime Minister's Office confirmed that this recommendation was implemented and the anti-corruption strategy was tabled in Parliament in March 2017.
2. **Recommendation 2** - The Committee was informed that the Provinces were consulted on the anti-corruption strategy.

¹See Appendix 1

3. **Recommendation 3** - The Committee was informed that the PMO considers the tribunal model used in NSW as neither practicable nor affordable for Solomon Islands. However, the SPM confirmed that no comparative work was done to substantiate this position. This recommendation was rejected.
4. **Recommendation 4** - This recommendation is for post-establishment of the SIICAC.
5. **Recommendation 5** - The government rejects this recommendation on the basis that they are of the view Clause 45 adequately provides for this matter.
6. **Recommendation 6** - This recommendation was accepted and included in the 2017 bill.
7. **Recommendation 7** - This recommendation was accepted, although provision is made for individuals who may have been convicted of minor offences to be eligible for appointment.
8. **Recommendation 8** - This recommendation was rejected.
9. **Recommendation 9** - The PMO is of the view that this recommendation is unreasonable, unrealistic and therefore rejected it.
10. **Recommendation 10** - This recommendation was accepted, but the Speaker is not empowered to table the report of the Commission, that responsibility is retained for the Minister.
11. **Recommendation 11** - This recommendation was rejected, in view of the position taken on recommendation 10 above.
12. **Recommendation 12** - This recommendation was rejected.
13. **Recommendation 13** - This recommendation was rejected. The PMO is of the view that the definition already adequately provides for the concerns raised by the Committee.
14. **Recommendation 14** - This recommendation was rejected.
15. **Recommendation 15** - This recommendation was accepted.
16. **Recommendation 16** - This recommendation awaits passage of the bill.

1.2 Objectives of the Bill

The objectives of the Bill are outlined in clause 5. The clause states that the Bill is intended to combat corruption in Solomon Islands in *all* its forms by;

- (a) establishing the Solomon Islands Independent Commission Against Corruption to prevent, investigate and prosecute corruption offences,
- (b) establishing a system for receiving and managing complaints about potential corruption engaged in by persons in the public or private sector, and

- (c) introducing measures to prevent corruption, including raising public awareness about the effects and prevention of corruption.

1.3 Scope of the Bill

Under this part, a brief outline of the structure of the Bill is presented and the concerns and issues raised on the contents of the Bill is discussed.

Bill Structure

Structurally the Bill is divided into seven parts.

Part 1 deals with preliminary matters such as its short title, the commencement date, definitions of terms used, provision binding the Crown and the objects of the Bill as outlined above and *limits the application of the Act to conduct occurring after its commencement*.

Part 2 establishes the Solomon Islands Independent Commission against Corruption (“the Commission”) as a body corporate with perpetual succession. It also provides for the specific powers and functions of the Commission, it outlines its composition and membership, the procedures of the Commission, its staff and authorised officers and its finance and administrative matters.

Part 3 outlines the ways in which the Government, the Minister and the Commission can prevent corruption through a range of measures. Part 4 outlines the Commissions’ investigation and prosecution procedures, making and receiving of corruption complaints.

Part 5 contains the general offences in the Bill and Part 6 provides for miscellaneous matters.

Finally, Part 7 deals with consequential amendments to the Penal Code, the Companies Act 2009 and the Telecommunications Act 2009, and includes the schedule prescribing the Oath or affirmation that each Commission member, staff member, authorised officer and the Director General must make before assuming office.

2.0 ISSUES

2.1 Financial Independence

The Bill proposes similar budget and financial arrangements as in the Ombudsman Act. However, in evidence, the Ombudsman expressed concern that the independence of his office continues to be undermined by the Treasury and Public Service having control over finances and human resources decisions. The Ombudsman pointed out that the provisions do not guarantee financial independence. The Committee concurs with the Ombudsman on this point.

Recommendation 1

The government is urged to explore how to further enhance the financial/resource independence of the Commission.

2.2 Clause 6 - Retrospectivity

Clause 6 of the Bill attracted a lot of debate during the hearing. This clause was not contained in the 2016 Bill nor was it recommended by the Committee in its report on that Bill.

The Committee is of the considered view that Clause 6 of the Bill is unnecessary in light of section 10(4) of the Constitution. Further, Clause 6 cannot prohibit past conduct from being investigated and prosecuted by the Police. Therefore it serves no meaningful purpose, other than preclude the Commission from establishing schematic/systematic past offending as basis for determining the gravity of the offences being investigated and or prosecuted. The government has not adequately explained the justification for including Clause 6 in the Bill.

Recommendation 2

That Clause 6 be removed from the Bill.

2.3 Scheme of service for professional staff

The DPP expressed his frustration at the lack of depth in the capacity in his office due to not being able to retain experienced lawyers. This situation also affects the Public Solicitor's Office, as does other agencies throughout the public service. This situation is now urgent and desperate, as it undermines the effectiveness of judicial offices to discharge their constitutional mandate. The

government cannot continue to postpone action on this very important matter. The Commission will be faced with this constraint.

Recommendation 3

That the government pursue reforms to attract and retain qualified professionals in the public service. Conditions of service are a current constraint limiting the capacity of judicial offices, and if not structurally addressed will affect the Commission.

2.4 Qualification of chairperson

The Committee is concerned that the age limit imposed by the Constitution on judges will preclude the Commission from benefiting from the experience of senior former judges and lawyers who are eligible for appointment as Chairperson. As it is, the Bill prohibits a person from being appointed or reappointed if they have reached the age limit.

Recommendation 4

That the Constitution be amended to increase the age limit for judges from 70 years to 75 years.

2.5 Seconded police officers

Clause 26 subclauses (2) (b) and (3) are inconsistent with section 6 of the Police Act in so far as who has authority to direct a police officer. The committee prefers that police officers remain under the sole direction of the Commissioner of Police, as required under the Police Act. The Committee, therefore, recommends that this clause be amended to clarify this matter.

Recommendation 5

That Clause 26 subclauses 2(b) and (3) be amended to give priority to Section 6 of the Police Act 2013 in terms of direction of police officers.

2.6 Refusal to sign examination report

The Committee notes that it is not an offence under the Act if someone refuses to sign an examination report by officers of the Commission.

The legal drafts person stated that:

“...there is no offence for failing to give a reason for not signing it. So a person would be quite within their rights to say “I do not want to sign that and I do not want to tell you why”. But the person conducting the examination does have an obligation to at least record that, which to me goes to the benefit of the person being examined because it gives them an opportunity to record any objections that they may have to the process.”²

2.7 Unexplained or illicit wealth/ unjust enrichment

The Committee welcomes Clause 45 of the Bill which is intended to allow the Director General to request a statutory declaration from anyone suspected of having committed a corruption offence. Clause 45 provides a mechanism by which a person’s assets can be disclosed so that further investigation can be made into the source of wealth. Clause 45 lays the burden of proof on the Commission to prove beyond reasonable doubt that the person has actually committed the offence. The Committee is of the considered view that provisions to deal with this matter should shift the burden of proof to the person suspected of having committed a corruption offence and/or their relative and/or their associate.

Recommendation 6

That the Bill be amended to strengthen Clause 45 and place the burden of proof on a suspect.

2.8 Custom as defence

The Bill seeks to amend Sections 92 and 93 of the Penal Code to allow custom as a defence in corruption offences. The Committee is of the view that the Bill takes a zero-tolerance approach to corruption and precludes custom as a defence in the prosecution of corruption offences.

If the defence of custom is retained, the Committee recommends that further provisions be enacted to ensure that such gifts/transactions are declared and recorded in a public register. And in the case of public officials being recipients, such gifts are forfeited to the state.

Witnesses expressed concern that the defence of custom runs the risk of allowing custom to be exploited in corrupt activity and transactions.

² Ms. Catriona Steel, Evidence, 3rd May 2018.

Recommendation 7

That the Bill be amended to remove custom as defence.

2.9 No comparative studies undertaken on various anti-corruption models

The Committee is disappointed that the PMO did not conduct any comparative work on the various anti-corruption models being used in other jurisdictions, as was recommended in the Committee's report on the 2016 Bill. The Bill is deprived of this important information, and the Committee is deprived of the benefit of determining whether the choices contained in this Bill are the best to achieve the policy objectives outlined in the Bill. Consequently, the Committee notes that the statement by officials from the PMO that the "NSW tribunal model is not practicable nor viable for Solomon Islands" as baseless assumption. In an important policy matter, this deliberate omission is highly regrettable.

Recommendation 8

That the government explore the more effective tribunal model used in New South Wales, Australia and present a comparative to the oversight model to determine whether further amendments may be needed in the near future. This recommendation remains the same as that contained in the Committee's report on the Anti-Corruption Bill 2016.

2.10 Lack of non-state sector coverage

The Bill does not effectively rope in the non-state sector, which is the supply side of corruption. This is a serious omission of a significant source of corruption activity. A zero-tolerance policy would require legislation to widen the net to adequately deal with this matter.

Recommendation 9

That the government explore how to broaden the anti-corruption strategy, and importantly, the law to adequately combat corruption in the non-state sector.

Recommendation 10

That the regulations to the Bill be laid before Parliament at the earliest opportunity.

3.0 RECOMMENDATIONS

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

Recommendation 1

The government is urged to explore how to further enhance the financial/resource independence of the Commission.

Recommendation 2

That Clause 6 be removed from the Bill.

Recommendation 3

That the government pursue reforms to attract and retain qualified professionals in the public service. Conditions of service are a current constraint limiting the capacity of judicial offices, and if not structurally addressed will affect the Commission.

Recommendation 4

That the Constitution be amended to increase the age limit for judges from 70 years to 75 years.

Recommendation 5

That Clause 26 subclauses 2(b) and (3) be amended to give priority to Section 6 of the Police Act 2013 in terms of direction of police officers.

Recommendation 6

That the Bill be amended to strengthen Clause 45 and place the burden of proof on a suspect.

Recommendation 7

That the Bill be amended to remove custom as defence.

Recommendation 8

That the government explore the more effective tribunal model used in New South Wales, Australia and present a comparative to the oversight model to determine whether further amendments may be needed in the near future. This recommendation remains the same as that contained in the Committee's report on the Anti-Corruption Bill 2016.

Recommendation 9

That the government explore how to broaden the anti-corruption strategy, and importantly, the law to adequately combat corruption in the non-state sector.

Recommendation 10

That the regulations to the Bill be laid before Parliament at the earliest opportunity.

END OF REPORT

4.0 APPENDICES

Appendix 1: Witnesses

Date	Name	Position & Organisation
Thur 3 rd May 2018 10:01am	Mr. Fred Rohorua	SPM, Office of the Prime Minister & Cabinet
	Mrs. Ethel T. Frances	PSF, Office of the Prime Minister & Cabinet
	Mr. John Kouni	NC, Office of the Prime Minister & Cabinet
	Ms. Catriona Steele	Legal Drafts person, AG Chambers
2:22pm – 4:19pm	Mr. Fred Rohorua	SPM, Office of the Prime Minister & Cabinet
	Mrs. Ethel T. Frances	PSF, Office of the Prime Minister & Cabinet
	Mr. John Kouni	NC, Office of the Prime Minister & Cabinet
	Ms. Catriona Steele	Legal Drafts person, AG Chambers
4:23pm – 5:30pm	Ms. Ruth Liloqula	CEO, Transparency Solomon Islands
	Ms. Joy Abia	Legal Officer, Transparency Solomon Islands
Fri 4 th May 2018 11:32am – 11:49am	Mr. Fred Fakari	Ombudsman, Office of the Ombudsman
	Mr. Nelson Dhita	Legal Officer, Office of the Ombudsman
	Mr. Frank Paulsen	Chairman, Land Reform Commission
	Mr. Ronald Bei Talasasa	Director, MLA/ODPP
	Mrs. Decima Regutule	Secretary, Leadership Code Commission
2:23pm – 4:02pm	Mr. Bradley Lenga	Director, Internal Audit, MoFT
	Mr. Peter Lokay	Auditor General, Office of the Auditor General
	Mr. Mathew Varley	Police Commissioner, RSIPF
	Mrs. Jennifer Wate	General Secretary, DSE
	Mr. Casper Fa'asala	General Secretary (Ag), SINCW
	Mr. Patrick Tema	Police Investigator, RSIPF
	Mr. David Wate	Crime, Supervising (Ag), RSIPF
	Ms Jacquelyn Takubala	Principal Internal Audit, Internal Audit, MoFT
	Mr. Hilton Koti	Audit Manager, Internal Audit, MoFT

Appendix 2: Minutes of Proceedings



NATIONAL PARLIAMENT OF SOLOMON ISLANDS

BILLS AND LEGISLATION COMMITTEE

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Minutes of Proceeding
Committee Hearing into the Anti-Corruption Bill 2017

Day 1/Thursday 3rd May 2018, CR II, Parliament House @ 10:01am.

1. Members Present

Hon. Matthew Wale, MP (Chair)
Hon. Manasseh Maelanga, MP
Hon. Christopher Laore, MP
Hon. Peter Tom, MP
Hon. Derek Sikua, MP

Secretariat

Mr. Wilson Orisi – Committee Secretary
Ms Salome Pilumate - Committee Secretary
Mr. Philemon Loe – Media Officer
Mr. Alfred Dola – Cameraman
Ms Hazel Fafale – Principal Hansard Officer
Ms Theresa Nori - Principal Hansard Officer

Chairman call the meeting to order.

2. Welcome and Opening Remarks

The Chairman made opening remarks by acknowledging and welcoming the SPM and officials from the Office of the Prime Minister and Cabinet and the Legal drafts person from the Attorney General Chamber, Ministry of Justice and Legal Affairs. He reminded the witnesses on parliament privileges and introduces members of the Committee. He then invites the SPM to deliver his presentation. The SPM introduces himself and his team and commenced his presentation.

Members of the Committee then question and seek clarification from the SPM, and team and officers of the Ministry on his presentations and on the clauses of the Bill.

Evidence concluded and the Chair thanked the SPM and his officers for their attendance and presentations on the Bill.

3. Committee hearing into the Anti-Corruption Bill 2017

The Hearing proper commenced and the following witnesses were admitted.

Hearing 1 Witnesses

Ms. Catriona Steele Legal Drafts person, AG Chambers

4. Suspended

The Chairman thanked the witnesses for their attendance and conclude the proceedings.

The Chairman made opening remarks and invite the witnesses to introduce themselves and make their presentations.

Members of the Committee then question and seek clarification from the witnesses on their presentations and on the clauses of the Bill.

5. Committee hearing into the Anti-Corruption Bill 2017

The Hearing proper commenced and the following witnesses were admitted.

Hearing 2 Witnesses

Mr. Fred Rohorua, SPM, Office of the Prime Minister & Cabinet
Mrs. Ethel T. Frances PSF, Office of the Prime Minister & Cabinet
Mr. John Kouni NC, Office of the Prime Minister & Cabinet
Ms. Catriona Steele Legal Drafts person, AG Chambers

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

The Committee hearing ended at 4:19pm

The Hearing resumed at 4:23pm and the following witnesses were admitted.

Hearing 3 Witnesses

Ms Ruth Liloqula – CEO, Transparency Solomon Islands
Ms Joy Abia - Legal Officer, Transparency Solomon Islands

Day 2 /Friday 4th May 2018, CR II, Parliament House at 11:32am.

1. Members Present

Hon. Hon. Matthew Wale, MP (Chair)
Hon. Manasseh Maelanga, MP
Hon. Christopher Laore, MP

Secretariat

Ms. Ivory Iruha'a – Committee Secretary
Mr. Philemon Loe – Principal Media Officer
Mr. Marlon Keni – Principal Hansard Officer

2. Chairman called meeting to order.

3. Welcome and Opening Remarks

The Chairman made opening remarks. He acknowledged and welcomed the witnesses to appear before the Committee. He reminded the witnesses on parliament privileges and introduces members of the Committee.

4. Committee hearing into the Anti- Corruption Bill 2017

The Hearing proper commenced and the following witnesses were admitted:

Hearing 4 Witnesses

Mr. Fred Fakari	Ombudsman, Office of the Ombudsman
Mr. Nelson Dhita	Legal Officer, Office of the Ombudsman
Mr. Frank Paulsen	Chairman, Land Reform Commission
Mr. Ronald Bei Talasasa	Director, MLA/ODPP
Mrs. Decima Regutule	Secretary, Leadership Code Commission

Members of the Committee then question and seek clarification from the witnesses on their presentations and on the clauses of the Bill.

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

Evidence concluded. 11:49am

The Hearing resumed at 2:23pm and the following witnesses were admitted.

The Chairman made opening remarks and invite the witnesses to introduce themselves and make their presentations

Hearing 5 Witnesses

Mr. Bradley Lenga	Director, Internal Audit, MoFT
Mr. Peter Lokay	Auditor General, Office of the Auditor General
Mr. Mathew Varley	Police Commissioner, RSIPF
Mrs. Jennifer Wate	General Secretary, DSE
Mr. Casper Fa'asala	General Secretary (Ag), SINCW
Mr. Patrick Tema	Police Investigator, RSIPF

Mr. David Wate Crime, Supervising (Ag), RSIPF

Ms Jacquelyn Takubala Principal Internal Audit, Internal Audit, MoFT

Mr. Hilton Koti Audit Manager, Internal Audit, MoFT

Members of the Committee then question and seek clarification from the witnesses on their presentations and on the clauses of the Bill.

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

5. Adjournment

The Committee hearing closed at 4:02pm.

Hon. Matthew Wale, MP
Chairman – Bills and Legislation Committee

Appendix 3: Submissions

No.	Title	Author/Org	Date Received
1	Submission	Office of the Prime Minister & Cabinet	3/05/2018
2	Submission	Office of the Prime Minister & Cabinet	3/05/2018
3	Submission	Office of the Ombudsman	4/05/2018
4	Submission	Land Reform Commission	4/05/2018
5	Submission	Office of the Director Public Prosecution	4/05/2018
6	Submission	Leadership Code Commission	4/05/2018
7	Submission	JANUS	4/05/2018

