



SOLOMON ISLANDS NATIONAL PARLIAMENT

BILLS AND LEGISLATION COMMITTEE

REPORT

ON

**THE INTERPRETATION AND GENERAL PROVISIONS
(VALIDATION AND INDEMNITY) BILL 2005**

National Parliament Paper No. 15 of 2005

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The Members of the Bills and Legislation Committee are:

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Hon. Edward J. Huniehu, MP
Chairman

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Hon. Manasseh Sogavare, MP
Member

.....
Hon. Clement Kengava, MP
Member

.....
Hon. Dr. Steve S. Aumanu, MP
Member

.....
Hon. Meshach M. Maetoloa, MP
Member

1. **TERMS OF REFERENCE**

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

“The Interpretation and General Provisions (Validation and Indemnity) Bill 2005”.

2. **FUNCTIONS**

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 of five members and the following have availed themselves for deliberations on the Bill on Friday 11 November 2005.

Hon. Edward J. Huniehu	-	Chairman
Hon. Clement Kengava	-	“
Hon. Meshach M. Maetoloa	-	“
Hon. Manasseh Sogavare	-	“

Apology was received from Hon. Dr. Steve Aumanu.

In attendance to the Committee was the Legal Draftsman, Attorney General's Department and the Cabinet Processes Adviser, Office of the Prime Minister, to help explain and clarify questions that may emanate from members, and the Interim Project Manager of the Parliament Strengthening Project.

4. **PURPOSE OF THE INTERPRETATION AND GENERAL PROVISIONS (VALIDATION AND INDEMNITY) BILL 2005.**

The objects and reasons as stated in the amending Bill are as follows:

The Interpretation and General Provisions Act (Cap. 85) makes provisions for the interpretation of laws and certain general provisions with regard to laws enacted by Parliament.

Part 10 which deals with subsidiary legislation requires that all subsidiary legislation be published in the Gazette and that such legislation be laid before Parliament.

This requirement has not been strictly complied with in the recent past due to various reasons. However, the non-compliance had been regularized by the publication of the revised edition which contains all subsidiary legislation made up to 1st March 1996. Since 1996 and more recently during the period 1998 to date there has been a marked increase in non-compliance, mainly due to financial constraints, and the state of the Solomon Islands Printers Ltd, the printer authorized to print on behalf of the Government.

The non-compliance may give rise to legal challenge at some point in time. It is, therefore, considered that measures be taken to rectify the situation.

This Bills, therefore, seeks to validate all subsidiary legislation that have not complied with sections 61 and 62 of the Act. (Emphasis added)

5. **THE INTERPRETATION AND GENERAL PROVISIONS ACT**

“Subsidiary legislation” means any legislative provision (including a delegation of powers or duties) made in exercise of any power in that behalf conferred by any Act, by way of by-law, notice, order, proclamation, regulation, rule, rule of court or other instrument.

Part 10 of *The Interpretation and General Provisions Act* states:

61. – (1) *Subsidiary legislation made after the commencement of this Act-*

(a) shall be published in the Gazette; and

(b) shall come into operation on the date of publication or, if it is provided that the subsidiary legislation is to come into operation on some other date, on that date.

(2) Subsidiary legislation is in operation as from the beginning of the day on which it comes into operation.

62. – (1) *Subject to subsection (3), subsidiary legislation made under an Act after the commencement of this Act shall be laid before Parliament.*

(2) If Parliament passes a resolution, within three months after any subsidiary legislation is laid before it, to the effect that the subsidiary legislation is annulled, the subsidiary legislation shall thereupon cease to have effect, but without prejudice to the validity of anything previously done under the subsidiary legislation.

(3) Subsection (1) does not apply to any subsidiary legislation a draft of which is laid before, and approved by resolution by, Parliament before the making of the subsidiary legislation.

6. **OBSERVATIONS**

In its deliberations on “**The Interpretation and General Provisions (Validation and Indemnity) Bill 2005**”, the Committee made the following observations:

Section 61 of *The Interpretation and General Provisions Act* requires that all subsidiary legislation made shall be published in the Gazette.

Section 62 of the said Act requires that all subsidiary legislation made under an Act shall be laid before Parliament.

The provisions of the Act have not been complied with. The Committee notes that the Government was provided a ‘clean slate’ in 1996 following the compilation and publication of the Revised Edition of the Laws of Solomon Islands, which contained all subsidiary legislation in force in Solomon Islands on the 1st day of March 1996.

Under the erroneous impression that the subsidiary legislation was validly made, certain persons in good faith exercised certain functions and power.

The Government desires to validate and confirm all acts done in good faith by certain persons in the purported exercise of certain functions and powers conferred upon them by the said subsidiary legislation.

7. **BACKGROUND**

The Law of the Solomon Islands consists not only of statutes passed by Parliament and assented to by the Governor-General, but of a host of regulations and other kinds of laws made by the executive government, by ministers and other executive office-holders, without parliamentary enactment.

The power to enact laws is a primary power of Parliament. Parliament, however, frequently enacts legislation containing provisions that empower the executive government, or specified bodies or office-holders, or the judiciary, to make regulations or other forms of instruments that, provided that they are properly made, have the effect of law. This form of law is frequently referred to as “delegated legislation”, “subordinate legislation”, “subsidiary legislation” or “legislative instruments”.¹

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

This type of law making has the appearance violating the principle of the separation of powers, the principle that laws should be made by the elected representatives of the people in Parliament and not by the executive government. The principle has been largely preserved, however, by the system of parliamentary control of executive law making. This system is founded on the ability of Parliament to disallow, that is, to veto, such laws made by executive office-holders.²

Delegated legislation is necessary and often justified by its facility for adjusting administrative detail without undue delay, its flexibility in matters likely to change regularly or frequently, and its adaptability for other matters such as those of technical detail. Once Parliament has by statute laid down on the principles of a new law, the Executive may by means of delegated legislation work out the application of the law in greater detail within, but not exceeding, those principles.³

The essential theory of delegated legislation is that while the Parliament deals directly with general principles, the executive, or other body empowered to make subordinate legislation, attends to matters of administration and detail.⁴ As the theory was expressed in 1930 by Professor K H Bailey: "It is for the executive in making regulations to declare what Parliament itself would have laid down had its mind been directed to the precise circumstances."⁵

This theory was further enunciated by O'Connor J. of the High Court of Australia who saw a power to make regulations as being a means to cope with contingencies:

Now the legislature would be an ineffective instrument for making laws if it only dealt with the circumstances existing at the date of the measure. The aim of all legislatures is to project their minds as far as possible into the future, and to provide in terms as general as possible for all contingencies likely to arise in the application of the law. But it is not possible to provide specifically for all cases, and, therefore, legislation from the very earliest times, and particularly in more modern times, has taken the form of conditional legislation, leaving it to some specified authority to determine the circumstances in which the law shall be applied, or to what its operation shall be extended, or the particular class of persons or goods to which it shall be applied.⁶

Statutory provisions contained in the Interpretation and General Provisions Act 1978 governs the making of regulations and other statutory instruments. The main provisions are that instruments must be notified in the Gazette and laid before Parliament. Parliament may within three months disallow the subsidiary legislation.

² *ibid*

³ House of Representatives Practice 3rd Ed. Pg. 449

⁴ Odger's Australian Senate Practice 9th Ed. Pg. 329

⁵ (Evidence to the Senate Select Committee on the Standing Committee System, PPS1/1929-31, p.20).

⁶ *Baxter v Ah Way*, 1910 8 CLR 626 at 637-8)

Parliamentary control in the Solomon Islands

As stated above subsidiary legislation is subject to parliamentary control, mainly through the power of Parliament to disallow it. This gives the Parliament basically the same power it has in relation to other proposed laws: the power of veto. It was through recognition by Parliaments of the need to preserve the principle of parliamentary control of law making that this system was established.

Regulations not laid before Parliament cease to have effect.

The Committee notes with concern and dismay that the relevant provisions of the *Interpretation and General Provisions Act* have not complied with by successive governments since 1996. The Bill under consideration places the Committee and the Parliament in the invidious position of retrospectively validating the instruments and indemnifying officers who acted in good faith according to the invalid instruments. Worse still the Committee was informed that despite the best efforts of officers within the relevant Departments there is currently no compilation of the instruments proposed to be validated.

The Committee acknowledges and commends the work of officers in the Office of the Prime Minister and the Attorney General's Department in drawing the Governments attention to the parlous state of affairs and taking all possible actions to remedy the problem. However it is the responsibility of the Committee to draw to members' attention the fact that much of the legislation and legislative action made in the last decade has been made or taken without the oversight and authority of Parliament and is currently invalid. Further, the Committee draws to Members attention that the proposed Bill will remove the rights of person affected by adverse decisions under the invalid instruments to seek redress by litigation. In that regard it was put to the Committee that the size and complexity of the current state of affairs requires and justifies such action by Parliament. The Committee was assured that the current rectification process by the Government would ensure that the Parliament never faces this problem again.

8. RECOMMENDATIONS

The Committee strongly recommends that such practice as the retrospective approval of subsidiary legislations should not be allowed in the future.

The Committee recommends (and seeks assurance from the Prime Minister) that every action be taken between the passing of this Bill and the new Parliament to ensure that a compilation of subsidiary legislation 1996 – 2006 is tabled on the first sitting day that government business takes precedence.

The Committee recommends that the Bills Committee of the new Parliament prepare a report for Members on the system of subsidiary legislation and disallowance to ensure that Members are fully aware of their rights and responsibilities in relation to the delegated authority that Parliament has provided to the Executive and certain other bodies and officers.

The Committee strongly recommends that the Government amend *The Interpretation and General Provisions Act* to stipulate the number of sitting days within which subsidiary legislation that has been gazetted must be tabled in Parliament.

The Committee expresses great concern that current under-resourcing severely impedes the Committee's capacity to undertake its important functions as stipulated in section 62 of the Constitution as read with Section 71 of the Standing Orders. The Committee recommends in the strongest possible terms that the Government allocate in the forthcoming budget sufficient funds (but not being less than one hundred thousand dollars (\$100,000.00)) to cater for the appointment of an appropriately qualified legal adviser and a clerical support person to the Committee. Without interfering with the operation and autonomy of the other Standing Committees of Parliament it is strongly recommended that those committees be provided with similar funding.

With these comments and recommendations the Committee **RECOMMENDED** that "**The Interpretation and General Provisions (Validation and Indemnity) Bill 2005**" be presented and debated on in Parliament.