



SOLOMON ISLANDS NATIONAL PARLIAMENT

BILLS AND LEGISLATION COMMITTEE

REPORT

ON

SUBSIDIARY LEGISLATION

National Parliament Paper No. 25 of 2007

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1. **TERMS OF REFERENCE**

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

“Any Subsidiary Legislation made under any Act so as to ensure compliance with the Acts under which they were made”.

2. **FUNCTIONS**

According 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 the following four members:

Hon. Edward J. Huniehu, MP	-	Chairman
Hon. Peter Boyers, MP	-	Member
Hon. Seth Gukuna, MP	-	“
Hon. Laurie Chan, MP	-	“

4. **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 that Parliament has legislated may be 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

This type of law making has the appearance of 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, or annul such laws made by executive office-holders²

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

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

² *ibid*

means of delegated legislation work out the application of the law in greater detail within, but not exceeding, those principles.

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.³ 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."⁴

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.

5. **IMPORTANCE OF SUBORDINATE LEGISLATION**

Subordinate or delegated legislation is an important mechanism by which Parliament and the Executive may undertake their respective work more efficiently and effectively without impacting adversely on the Separation of powers.

Subordinate legislation is a collective term for statutory rules, regulations, ordinances, by-laws and rules and includes legislation made by Ministers under powers granted to them in Acts of Parliament, usually by means of a Statutory Instrument. This prevents the need for an Act of Parliament every time a detail needs to be updated or added to. The Act can give the Government the power to do this at a later stage.

The powers themselves are called Statutory Instruments and have the full force of law. The laws made through these powers are also known as Secondary Legislation or Delegated Legislation. The parent Act of Parliament is also known as Primary Legislation.

For example a Statutory Instrument can be used for the fixing of fees or charges or can allow fees and charges to be updated without the need for a new Bill. About 200 Statutory Instruments are issued each year and are just as much a part of the law as the parent Act of Parliament.

³ *ibid*

⁴ (Evidence to the Senate Select Committee on the Standing Committee System, PPS1/1929-31, p.20).

As indicated, the practice of delegating legislative power to the executive is vital as it;

- relieves Parliament from having to deal with subordinate matters but allows Parliament instead to devote more to the consideration of essential principle legislation,
- allows the Executive to deal with matters too technical for effective handling in Parliament, and
- provides for a power of constant adaptation to unseen future conditions without the necessity of amending bills.

6. **Subsidiary Legislation in Solomon Islands**

THE INTERPRETATION AND GENERAL PROVISIONS ACT

Definitions:

"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.

"Gazette notice" means any announcement not of a legal character nor subsidiary legislation made by or with the authority of the Government in the Gazette;

"the Gazette" means the Solomon Islands Gazette published by order of the Government and includes any supplements thereto and any Gazette Extraordinary so published;

"legal notice" means any announcement of a legal character made by or with the authority of the Government in the Gazette;

"regulations" includes rules, by-laws, proclamations, orders, schemes, notifications, directions, notices, and forms;

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.

Parliament has given this Committee the responsibility to review all Subsidiary legislation, current or proposed legislation and report to it the committee's findings. The Committee is pleased that administrative procedures have improved to the extent that it can undertake its important work. To assist Members this report contains an index and summary of all subsidiary legislation gazetted between 28th September to 22nd December.

7. Operation of section 61 & 62 of the Interpretation and General Provisions Act

The administrative processes to ensure Parliamentary oversight of delegated or subsidiary legislation have been grossly inadequate for many years. As Members are aware the failure of those responsible for the proper administration of subsidiary legislation resulted in all regulations from 1996 to 2005 being invalid as they did not comply with section 62 (1) of the Act.

To rectify this dilemma the Committee in 2005 supported a Bill to validate all subsidiary legislation made during that time. Despite the rectification, the Committee notes with great concern that discrepancies still exist in the process thus affecting Parliament's oversight capacity.

The Committee is of the view that since it is Parliament that delegates legislative power to the Executive, it is therefore very important that Parliament must also

ensure that these powers do not in any manner contradict the principle or primary act in the which powers were granted. Not only does this comply with section 62, but also it strengthens the capacity of Parliament in terms of oversight and scrutiny of the government.

On the other hand, an aspect which the Committee sees as a threat to the operation of section 61 and 62, is the time provided under the Interpretation and General Provisions Act for Parliament to consider subsidiary legislation. The committee notes that the act provides for Parliament to consider subsidiary legislation with in three months after it is tabled. This, the Committee believes adversely affects the notion of separation of powers. For instance, the executive tabled several gazettes in Parliament late last year but since there were no Parliamentary sittings (to meet the three month requirement), Parliament or members did not have the proper capacity to review the subsidiary legislation that been made in 2006.

The Committee therefore recommends that the Interpretation and General Provisions Act be amended to allow Parliament to carry out its work effectively. More specifically, allowing Parliament to review Subsidiary Legislation in terms of sitting days rather than calendar days.

Hon. Edward J. Huniehu

Chairman

Bills & Legislation Committee

22 February 2007