

## Notes for ODPP appearance at Foreign Relations Committee – Oct 2008

I appear today before this Committee in my capacity as the Director of Public Prosecutions.

The Office of the Director of Public Prosecutions is afforded authority as an independent Office in relation to criminal proceedings in Solomon Islands in the Constitution. The focus of my submission is to remind the Committee of the importance of the preservation of independence to this Office to ensure the Rule of Law is maintained in Solomon Islands.

The RAMSI intervention came in 2003 with an aim that included the restoration of law and order. It can be said that law and order has been restored, but that the maintenance of this is an ongoing goal. The RAMSI intervention has also brought with it questions as to the maintenance of sovereignty in the Solomon Islands.

Sovereignty is of course a fundamental need for any country. Any international assistance must ensure that assistance and institutional strengthening occurs in a framework such that sovereignty is not eroded. The assistance of RAMSI advisors in the Office of the Director of Public Prosecutions has demonstrated that on a practical level, institutional strengthening can occur without improper influence of the assisting countries and is conducted in such a manner that the independence of the Office is maintained.

However, the 'Immunity' provided in s. 17 of the *Facilitation of International Assistance Act* is a particular example where the authority of the Director of Public Prosecutions, and potentially the sovereign jurisdiction of the Solomon Islands, is improperly restricted. Such usurping of the authority of the Director of Public Prosecutions is arguably contrary to the independence of the Office.

Any review of the 'Immunity' Provisions in the *Facilitation of International Assistance Act* would need to include consideration of the basis of this Act, which includes the 'RAMSI' Treaty ie. The Agreement between Solomon Islands, Australia, New Zealand, Fiji, Papua New Guinea, Samoa and Tonga, that was entered into force on 24 July 2003.

This Agreement was transformed into domestic law in the *Facilitation of International Assistance Act* to give effect to the terms of the Agreement. Article 10 of the Treaty is reflected in s. 17 of the *Facilitation of International Assistance Act*. Section 17(5) of the Act provides the mechanism for how the Immunity Provision is to be applied, such that:

'the Minister responsible for justice shall be deemed to have directed the Director for Public Prosecutions that he is to initiate no action with respect to members of the visiting contingent for actions referred to in subsections (1) and (2), unless the assisting country has expressly consented to the exercise of such jurisdiction'.

This subsection may be open to the interpretation that it fetters the authority of the Director of Public Prosecutions.

Section 91 of the Constitution provides that the Office of the Director of Public Prosecutions is, amongst other powers, afforded the authority to institute and undertake criminal proceedings against any person before any court in respect of any offence alleged to have been committed by that person.

At first glance, the Immunity provisions of the *Facilitation of International Assistance Act* would seemingly place a restriction on the independence of the Office of the Director of Public Prosecutions as provided for in the Constitution of this country.

It is noted that subsection (7) of s. 91 of the Constitution provides that:

‘In the exercise of the powers conferred on him by this section the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority:

Provided that, where any case in any way concerns the defence, security or international relations of Solomon Islands, the Director of Public Prosecutions shall bring the matter to the attention of the Minister responsible for justice and shall, in the exercise of his powers in relation to that case, act in accordance with any directions that Minister may give to him’.

The relationship between this subsection of the Constitution and the *Facilitation of International Assistance Act* are seemingly relevant and can potentially co-exist in relation to members of the police forces or armed forces. There is also a strong argument for the necessity for this immunity to be in place to ensure these members of the visiting contingent are able to properly perform their responsibilities and duties under RAMSI.

However, the Act is somewhat ambiguous whether it was meant to contemplate a situation involving a civilian member of the visiting contingent or what is meant by actions that are ‘incidental’ to official duties. It is submitted that it may be contrary to the interests of justice that the Director of Public Prosecutions is subject to a direction from the Minister for Justice in such a situation. How can it be proper that the Director of Public Prosecutions, to initiate a prosecution where a member of the visiting contingent is alleged to have committed a criminal offence when they are a civilian member of the contingent and/ or have allegedly committed the offence outside of official duties, requires a direction from the Minister of Justice? Is this not encroaching on the independence of the Office?

From a practical position, there is yet to be a situation where an assisting country asserts jurisdiction. However, the converse to this has arisen. While of course each case must be assessed on a ‘case by case’ basis, clarification in the *Facilitation of International Assistance Act* as to when subsection (7) of s. 91 of the Constitution is empowered such that the Office of the Director of Public Prosecutions is subject to directions of the Minister of Justice is suggested as being necessary.

It is ultimately submitted that a fundamental consideration in reviewing the 'Immunity' provisions of the *Facilitation of International Assistance* Act must give consideration to the potential conflict between s. 17 of the Act and the Independence of the Director of Public Prosecutions that is preserved in s. 91 of the Constitution of the Solomon Islands.

The RAMSI intervention has brought to Solomon Islands peace and the rule of law. As we move into the future, we must ensure that this good groundwork is continued without fetters on the independence of an Office that is a cornerstone to the continued Rule of Law in Solomon Islands.