

Comments on Facilitation of International Assistance Act 2003

Confidential

1. s 6 Powers and privileges may be limited or varied

- (i) Subsidiary legislation, such as regulations, are not considered to be able to be inconsistent with, or in conflict with, legislation, unless expressly authorised. Section 6 authorises regulations to be made to limit or vary the powers set out in the Act, except certain sections. This is not good legislative practice. The terms of legislation made by Parliament should only be varied or amended by subsequent legislation made by Parliament, not by subsequent subsidiary legislation. The words allowing regulations to limit, vary or add to the words of the Act should therefore be deleted.
- (ii) As a matter of drafting the reference to “The regulations” seems to be unsuitable, and the entire section would be better to be moved and incorporated with the later section about regulations - section 22.

2. s17 Immunity from legal proceedings There are several comments that could be made about this section:

- (i) The immunity granted by ss1 is very wide, and would seem to include immunity for actions taken in the course of official duties, even if they are negligent, or reckless or intentional. Such actions by members of the visiting contingent should be excepted from the immunity provided in ss1.
- (ii) The meaning of the following words in ss1 is unclear: “Members of the visiting contingent, *the assisting country and any other country...*” What do the italicised words refer to? Any members of any of the contributing countries, in which case they would surely be too wide, or, if not then what?
- (iii) Does ss (2) refer to actions which are not taken in the course of, or are incidental to, official duties? If so, it would be better to say so. If not, there seems to be an inconsistency with ss (1).
- (iv) The meaning of ss(5) is unclear. It seems to assume that action can be taken by the DPP against actions in ss 1. But ss1 provides that there is complete immunity in respect of those actions.

3. s23 (2)Review date

The review date is stated in very precise terms as referring to a specific day. Sometimes that day will fall on a Saturday or a Sunday, or perhaps a public holiday, and there will be uncertainty as to which day is to be substituted for it. It would be simpler to provide that the Notice be reviewed on or before a certain date, or within a certain period, eg week, month. The tabling period in ss(3) would then need to be amended accordingly.

4. s24 (1) Regulations to override any law of Solomon Islands

As mentioned earlier subsidiary legislation is not regarded as able to override legislation, but is void to the extent that it is inconsistent with it. Therefore the words in ss1 that purport to allow regulations made under the Act to override legislation should be deleted.

5. s 24(2) FIA Act not to be amended or repealed by any subsequent Act.

. The power of the Parliament of Solomon Islands to make laws for the peace order and good governance of Solomon Islands granted by the Constitution can only be restricted by the Constitution, not by legislation. This subsection would seem to be unconstitutional, and therefore should be removed.

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**SOME FURTHER COMMENTS ABOUT FACILITATION OF
INTERNATIONAL ASSISTANCE ACT 2003
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Introduction

In July 2003 the Townsville Agreement was signed between the Solomon Islands and Australia, New Zealand, Fiji, Papua New Guinea, Samoa and Tonga. This agreement is stated to be an Agreement “Concerning the operations and status of the police and armed forces and other persons deployed to Solomon Islands to assist in the restoration of law and order and security”. The Agreement provides for the deployment to Solomon Islands of “the Visiting Contingent,” which article 1 states “consists of the Participating Police Force and the Participating Armed Forces and such other personnel of the Assisting Countries or of other countries where those personnel are notified to the ministry of...foreign affairs.”

The preamble to the Townsville Agreement notes that “deteriorating law and order and security in Solomon Islands poses a threat to good governance and economic prosperity in Solomon Islands” and notes further “ requests for assistance in restoring law and order and security dated 4th July 2003 from the Governor General of Solomon Islands acting on the advice of the Cabinet of Solomon Islands.” The Townsville Agreement is stated in article 24 to expire “on the complete withdrawal of the Visiting Contingent from the Area of Operation [which is defined by article 1 as Solomon Islands].”

The Townsville Agreement like all international agreements made by the government of Solomon Islands does not affect the law of Solomon Islands unless it has been so provided by legislation enacted by the Parliament of Solomon Islands.

The Facilitation of International Assistance Act 2003 was enacted by the Parliament of Solomon Islands later in 2003. This Act makes no express reference to the Townsville Agreement, but it must be presumed to have been intended by Parliament to give effect to the Townsville Agreement, since no other legislation has been enacted to give effect to that Agreement.

The Facilitation of International Assistance Act 2003 authorises the Governor-General to issue a notice “that the Government has requested assistance of the government of another country for a public purpose” and “that the assistance will be provided by a contingent of persons (‘the visiting contingent’) from the assisting country or any other country.” The Act then contains a number of provisions

conferring powers and exemptions. Sometimes these are provided in respect of “the visiting contingent”, eg section 10; sometimes they are provided in respect of “members of the visiting contingent”, eg section 11.

Two questions of a fundamental nature seem to arise from these provisions:

1. How many visiting contingents?

The Townsville Agreement obviously was designed to deal with deteriorating circumstances in Solomon Islands in 2003, and was targeted to deal with the circumstances then prevailing in Solomon Islands

The Facilitation of International Assistance Act 2003 is expressed in more general terms and is not limited to the circumstances that gave rise to the requests in 2003. It enables other requests for assistance to be made by the Governor-General of Solomon Islands acting on the advice of Cabinet. That the Act is seen by the government of Australia as intended to provide a general authorisation for the government of Solomon Islands to seek the intervention of other visiting contingents is confirmed in the letter of the Special Coordinator to the Governor-General, dated 15 September 2008.

This seems to go beyond what was envisaged by the parties to the Townsville Agreement 2003, and requires, I would respectfully suggest, some careful thought.

If the government of Solomon Islands intends that the Act should operate as a general authorisation to seek assistance from other countries, whenever the need arises, then nothing need be done.

But if the government of Solomon Islands intends that the Act shall just authorise assistance from other countries to deal with the circumstances of 2003, then the terms of the Act should be amended to make that intention clear.

2. Legal status of the visiting contingent.

In most sections, the Facilitation of International Assistance Act 2003 refers to “the members of the visiting contingent”, eg sections 7, 8,9,11,12,13,14,15, 16, 17. In some sections, however, the Act refers to “the visiting contingent”, eg sections 2, 3, 10, 18, 19.

This difference of terminology provides some uncertainty as to whether there is an intention on the part of the Act to give legal status to the visiting contingent as a corporate body in its own right. Presumably that was not the intention, and again that is confirmed in the letter of the special coordinator of the regional assistance mission to the Governor-General, dated 15 September 2008, but it would be better if the Act was amended to remove any cause for ambiguity. This can quite easily be done by adding the words “the members of “ in front of the words “the visiting contingent” in sections 2, 3, 10, 18 and 19.

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