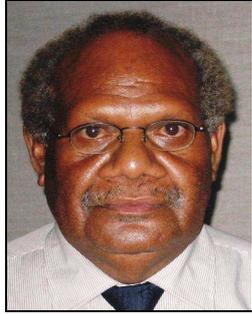


Committee Members



Hon Pattersen Oti
Chair
MP for Temotu Nende



Hon Peter Shannel Agovaka
Member
MP for Central Guadalcanal



Hon Walter Folotalu
Member
MP for Lau/Mbaelelea



Hon Trevor Olavae
Member
MP for South Vella Lavella



Hon Martin Sopaghe
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MP for North Guadalcanal



Hon Augustine Taneko
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MP for Shortlands



Hon. Patrick Vahoe
Member
MP for Malaita Outer Islands

Committee Secretariat

Secretariat

Ms Alice Willy

Contacts

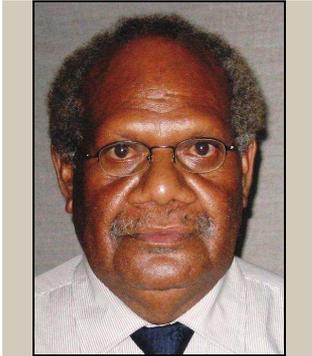
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Chair's Foreword



Hon Pattleson Oti
Chair

This inquiry into the \$50,000 terminal grant to spouses of Members of Parliament was referred to the Parliamentary House Committee by the National Parliament on 17 July 2009.

On 6 October 2009, the Committee deferred the inquiry just before it commenced public hearings following the initiation of proceedings by the Attorney General in the High Court against the Members of Parliament (Entitlements) Commission challenging the validity of the Members of Parliament (Entitlements) (Amendment) Regulation 2009, which included amongst other things the \$50,000 grant.

Subsequently, on 20 October 2009, the High Court found that the Members of Parliament (Entitlement) Commission had acted *ultra vires* in awarding the \$50,000 Terminal Grant to Spouses of Parliamentarians and in making the regulation retrospective from 1 April 2009. The Court also made further orders quashing the Parliamentary Entitlements Regulation 2009 forthwith.

With the \$50,000 terminal grant to spouses of Members of Parliament found *ultra vires* in the High Court, this inquiry is no longer necessary.

However, in this report, the Committee recommends that the House refer new terms of reference to the Parliamentary House Committee for a broader inquiry into the operation, membership and performance of the Members of Parliament (Entitlements) Commission. The Committee believes that there are broader issues concerning the processes and proceedings of the Commission that were outside the scope of the High Court process, but which should now be examined. The new terms of reference for a broader inquiry are still within the jurisdiction of the Committee as provided standing order 70(a). Clearly, the processes of the Commission that led to the Gazettal of the 2009 regulation were at fault.

The Committee anticipates the commencement of this broader inquiry before the end of the year and will aim to complete its inquiry and put forward recommendations to the Government before the House is dissolved for the next general election in 2010.

I wish to thank my fellow members of the Committee for their contributions made to this inquiry. I would also like to thank Mrs Taeasi Sanga, the Clerk of the Parliament, Mr Stephen Frappell, Technical Advisor to the UNDP Parliamentary Strengthening Project, Mr John Taupongi and Ms Alice Willy for their invaluable efforts, advice and guidance in drafting this Report.

I am pleased to present to Parliament the report of the Parliamentary House Committee inquiry into the \$50,000 terminal grants to the spouses of Members of Parliament.

A handwritten signature in black ink, appearing to be 'P. Oti'.

Hon Pattleson Oti
Chairman

Terms of Reference

On 17 July 2009, on the motion of the Hon Patten Oti, the House resolved:

That the Parliamentary House Committee inquires into and reports on matters raised by the Member of North West Choiseul under Standing Order 25 relating to the Parliamentary Entitlement Commission's Regulation legal Notice No. 45, which provides for a \$50,000.00 terminal grant to the spouse of a Member of Parliament.

Table of Content

Committee Members.....	ii
Committee Secretariat.....	iii
Chair’s Foreword	iv
Terms of Reference	v
Table of Content.....	vi
Recommendation	vii
Chapter 1: The inquiry and the High Court processes	1
1.1. The Parliamentary House Committee.....	1
1.2. The commencement of the inquiry	1
Advertising.....	2
Submissions	2
1.3. The commencement of proceedings in the High Court	2
1.4. The Committee’s decision to defer the conduct of the inquiry.....	2
1.5. The outcome of proceedings in the High Court	3
Appendix 1: List of submissions	5
Appendix 2: The Attorney General’s Claim	6
Appendix 3: The sub judice convention and the proceedings in the High Court	9
Appendix 4: The High Court judgement.....	10

Recommendation

The Committee recommends as follows:

Recommendation 1

The Committee recommends that the Parliament refer the following new terms of reference to the Parliamentary House Committee for an inquiry into the operation, membership and performance of the Members of Parliament (Entitlements) Commission:

- 1) *That the Parliamentary House Committee inquire into and report on the operation, membership and performance of the Members of Parliament (Entitlements) Commission, with particular reference to:*
 - a) *The membership of the Commission under section 69A of the Constitution;*
 - b) *The procedures followed by the Commission when carrying out yearly reviews to amend the entitlements of Members of Parliament under section 69B of the Constitution;*
 - c) *The appropriateness or otherwise of entitlements provided to Members of Parliament under the Members of Parliament (Entitlements) Regulation; and*
 - d) *Any other matter relevant to the procedures and operation of the Members of Parliament (Entitlements) Commission.*
- 2) *That all submissions, papers and documents received by the Parliamentary House Committee as part of its inquiry into the \$50,000 terminal grant to the spouse of a Member of Parliament be referred to the Committee.*
- 3) *That the Committee report by the final sitting day of the Eighth Parliament.*

Chapter 1: The inquiry and the High Court processes

1.1. The Parliamentary House Committee

The Parliamentary House Committee is established under Standing Order 70 of the *Standing Orders of the National Parliament of Solomon Islands 1982*:

There shall be a Standing Select Committee designated the Parliamentary House Committee whose functions shall be -

- (a) to consider and advise appropriate authorities on such matters that are connected with Members' terms and conditions of service;
- (b) to oversee and supervise matters connected with the management and administration of the facilities and property of the National Parliament which are not provided for in any other specific rules or regulations;
- (c) to consider, decide and advise Parliament on all matters that are connected with Parliamentary business for its meetings and sittings;
- (d) to examine and make recommendations on any matters which are connected with the provisions of Sections 62 and 69 of the Constitution;
- (e) to make rules and guidelines governing the Member's use of Parliament facilities;
- (f) to report regularly to Parliament of any action taken pursuant to these regulations.

The terms of reference of this inquiry were referred to the Committee in accordance with standing order 70(a) above.

1.2. The commencement of the inquiry

Under section 69 of the *Constitution*, the Members of Parliament (Entitlements) Commission (the Commission) has the power to determine the entitlements of Members of Parliament and to amend them by yearly review.

On Monday, 6 July 2009, the Members of Parliament (Entitlements) (Amendment) Regulation 2009, Legal Notice No. 45 (the PER 2009) was gazetted in accordance with section 69 A, B and C of the *Constitution*. The regulation made various amendments retrospectively from 1 April 2009 to the Members of Parliament (Entitlements) Regulation, the principal regulation governing Members' entitlements. Some of those amendments were controversial, notably the provision of a \$50,000 terminal grant to the spouse of a Member of Parliament.

As indicated at page v, on Friday, 17 July 2009, the Parliament adopted a resolution that the Parliamentary House Committee inquire into and report on matters raised by the Member of North West Choiseul under Standing Order 25 relating on the Parliamentary Entitlement Commission's Regulation legal Notice No. 45, which provided for the \$50,000.00 terminal grant to the spouse of a Member of Parliament.

Advertising

On Wednesday, 5 August 2009, the Committee resolved to advertise for submissions.

The inquiry was advertised in two newspapers and on the official website of the National Parliament for a period of three weeks commencing 14 August until 2 September 2009.

Submissions

The Committee received six submissions in total from a range of individuals and organisations, including notably Transparency Solomon Islands.¹ A list of submission is at Appendix 1.

1.3. The commencement of proceedings in the High Court

On Friday, 24 August 2009, after the commencement of the Committee's inquiry, the Attorney General, on behalf of the Solomon Islands Government, filed a Claim in the High Court against the Commission seeking amongst other things a declaration that some or all of the entitlements outlined in the PER 2009 were unconstitutional or *ultra vires*, including the \$50,000 terminal grant to the spouse of a Member of Parliament. The case was as follows:

- That the Commission did not follow the correct procedures in determining the provisions contained in the PER 2009 as provided under sections 69, 69A, 69B and 69C of the *Constitution*.
- That the Commission acted *ultra vires* its constitutional powers by providing for entitlements, including but not limited to a terminal grant to spouses contrary to the express provisions that such entitlements were for the purpose of enabling Members of Parliament to discharge their functions as Parliamentarians.
- That the power to enforce regulations retrospectively is confined only to the requirements of section 69(3)(b) of the *Constitution* which provides that salaries and entitlements of Parliamentarians may increase at no less that the rates of increase in any of the salaries and entitlements (taken as a whole) of public officers and that it failed to take that fact into account.²

The Attorney General's claim filed on the 24 August 2009 is reproduced at Appendix 2.

The matter came before the High Court on 16 September 2009 and again on 30 September 2009. The Court having heard from both parties on preliminary matters listed the matter for a pre-trial conference for 19th October 2009.

1.4. The Committee's decision to defer the conduct of the inquiry

On Tuesday, 6 October 2009, the Committee resolved to defer its inquiry into the \$50,000 terminal grant to the spouse of a Members of Parliament in the light of the High Court

¹ Transparency Solomon Islands is a local NGO, registered as a charitable trust in 2002. It is affiliated to Transparency International, the international anti-corruption NGO which has chapters in over 90 countries around the world. The general objective of TSI is to encourage and facilitate activities to reduce corruption and promote good governance.

² *The Attorney-General v Members of Parliament (Entitlements Commission)* 2009, para 4.

proceedings then in progress between the Attorney General and the Commission. The basis for this decision was two fold:

1. The High Court was in a better position to determine issues of legality in relation to the provisions of the PER 2009. From a procedural point of view, it was better to allow the High Court to finalise this process, given that it was likely to lead to a resolution of many of the matters concerning the PER 2009 of concern to the Parliament, such as the constitutionality of the \$50,000 terminal grant to the spouse of a Member of Parliament.
2. The *sub judice* convention would normally prevent the Committee from conducting an inquiry into such a matter. In the circumstances, it was considered that there was a significant risk that proceeding with the Committee's inquiry would prejudice the proceedings in the High Court. The *sub judice* convention is discussed further in Appendix 3.

The Committee notes that there are several precedents from other Parliaments for deferring an inquiry pending legal proceedings in the courts.

At the same time, the Committee resolved that it should seek new terms of reference from the House for a broader inquiry into the operation, membership and performance of the Commission. The draft terms of reference recommended by the Committee were:

- 1) *That the Parliamentary House Committee inquire into and report on the operation, membership and performance of the Members of Parliament (Entitlements) Commission, with particular reference to:*
 - a) *The membership of the Commission under section 69A of the Constitution;*
 - b) *The procedures followed by the Commission when carrying out yearly reviews to amend the entitlements of Members of Parliament under section 69B of the Constitution;*
 - c) *The appropriateness or otherwise of entitlements provided to Members of Parliament under the Members of Parliament (Entitlements) Regulation; and*
 - d) *Any other matter relevant to the procedures and operation of the Members of Parliament (Entitlements) Commission.*
- 2) *That all submissions, papers and documents received by the Parliamentary House Committee as part of its inquiry into the \$50,000 terminal grant to the spouse of a Member of Parliament be referred to the Committee.*
- 3) *That the Committee report by the final sitting day of the Eighth Parliament..*

1.5. The outcome of proceedings in the High Court

At the pre-trial conference on 19 October 2009, the Attorney General made an application under Rule 15.3.4 of the Solomon Islands Courts (Civil Procedure) Rules 2007 for the Court to make orders in relation to two main issues, namely the \$50,000 terminal grant to the spouse of a Member of Parliament and the retrospectivity of the PER 2009.

On 20 October 2009, Chief Justice Palmer in the High Court, having heard from both parties, made its orders in favour of the Attorney General. He found:

1. that the Commission acted *ultra vires* in making an award for a terminal grant of \$50,000 to the spouse of a Member of Parliament;
2. that the Commission acted *ultra vires* in making the PER 2009 commence retrospective basis from 1st April 2009.

Accordingly, the High Court quashed the PER 2009.

A copy of the judgement of Chief Justice Palmer is at Appendix 4.

In the light of this outcome in the High Court, the Committee has chosen to immediately table this report and seek new terms of reference from the House for a broader inquiry into the operation, membership and performance of the Commission, as foreshadowed earlier in this report. It is clear that the Commission processes were at fault in the development and Gazettal of the PER 2009.

Recommendation 1

The Committee recommends that the Parliament refer the following new terms of reference to the Parliamentary House Committee for an inquiry into the operation, membership and performance of the Members of Parliament (Entitlements) Commission:

- 1) *That the Parliamentary House Committee inquire into and report on the operation, membership and performance of the Members of Parliament (Entitlements) Commission, with particular reference to:*
 - a) *The membership of the Commission under section 69A of the Constitution;*
 - b) *The procedures followed by the Commission when carrying out yearly reviews to amend the entitlements of Members of Parliament under section 69B of the Constitution;*
 - c) *The appropriateness or otherwise of entitlements provided to Members of Parliament under the Members of Parliament (Entitlements) Regulation; and*
 - d) *Any other matter relevant to the procedures and operation of the Members of Parliament (Entitlements) Commission.*
- 2) *That all submissions, papers and documents received by the Parliamentary House Committee as part of its inquiry into the \$50,000 terminal grant to the spouse of a Member of Parliament be referred to the Committee.*
- 3) *That the Committee report by the final sitting day of the Eighth Parliament.*

Appendix 1: List of submissions

1. Mr Derrick Manuarii, Masters Student, School of Government, Victoria University of Wellington, New Zealand.
2. Rt Hon Sir Peter Kenilorea KBE PC, Speaker, National Parliament of Solomon Islands.
3. Mr Emmanuel Kouhota, Chairman, Office of the Leadership Commission.
4. Mr David Tuhonuku, Solomon Islands Chamber of Commerce and Industry.
5. Mr Eddie Nasi, Member of the Public, Kukum West.
6. Mr Bob Pollard, Chairman, Transparency Solomon Islands.

Appendix 2: The Attorney General's Claim

The Claim filed by the Attorney General on the 24 August 2009 was as follows;

1. Whether section 69 B (2) of the *Constitution* and or the rules regulating administrative action and the exercise of executive or legislative powers impose mandatory obligations upon the Members of Parliament (Entitlements) Commission [henceforth: "Commission"], when carrying out yearly review to amend the entitlements of the Parliamentarians, to do the following:
 - (a) notify the public, Government, Parliament or any other organisation of the proposed timing of any intended review pursuant to section 69B(1) of the *Constitution*;
 - (b) invite and consider representations from "persons or body or persons", including members of the public;
 - (c) invite and have regard to any information supplied by the executive Government, Parliament or any other organisation in relation to the matters stated in paragraphs (b)(i),(ii) and (iii) of section 69B(2) of the *Constitution*; or
 - (d) consider the matters stated in section 69B (2), paragraphs (a) and (b), of the *Constitution*, although no representation or information is or has been provided to the Commission pursuant to the said section.

2. Whether any of the following entitlements as prescribed in the Members of Parliament (Entitlements) (Amendment) Regulations 2009 [hence forth: "PER 2009"] is an entitlement that is necessary for enabling Parliamentarians to "maintain the dignity of their Office" as defined or intended by section 69C (2)?
 - (a) micro projects and charities financial allocation in regulation 11A;
 - (b) levels of salaries and allowances, relocation allowances and meal allowances in regulation 10;
 - (c) spouse terminal grant in regulation 11A;
 - (d) parliamentarians' pension scheme in regulation 11 C;
 - (e) prime minister's pension scheme in regulation 11E;
 - (f) death ex gratia payment in regulation 13(1);
 - (g) swear-in ex gratia payment in regulation 18(1);
 - (h) subsistence allowance and rental supplementation payable to ordinary Members of Parliament appointed as members of Parliament Standing Select Committees and Special Select Committees in regulation 35;
 - (i) option to purchase government vehicle in regulation 42(4);
 - (j) transport allowance in regulation 42(7);

- (k) fuel allowance in regulation 42(8);
3. Whether any of the following entitlements as prescribed in the PER 2009 is an entitlement pursuant to section 69B (2) (c) (i) or (ii) of the Constitution and if not whether any of the entitlements is necessary to facilitate the discharge of the functions of Parliamentarians pursuant to sections 69B (2) (c) (iv) and (3) (a) of the Constitution?
- (a) micro projects and charities financial allocation in regulation 11A;
- (b) levels of salaries and allowances, relocation allowances and meal allowances in regulation 10;
- (c) spouse terminal grant in regulation 11A;
- (d) parliamentarians' pension scheme in regulation 11 C;
- (e) prime minister's pension scheme in regulation 11E;
- (f) death ex gratia payment in regulation 13(1);
- (g) swear-in ex gratia payment in regulation 18(1);
- (h) subsistence allowance and rental supplementation payable to ordinary Members of Parliament appointed as members of Parliament Standing Select Committees and Special Select Committees in regulation 35;
- (i) option to purchase government vehicle in regulation 42(4);
- (j) transport allowance in regulation 42(7);
- (k) fuel allowance in regulation 42(8);
4. Whether, if the entitlements pleaded paragraph 3 are not entitlements pursuant to section 69(B) (2) (c) (i) and (ii) but are nevertheless permitted allowances within section 69(B) (2) (c) (iv) of the Constitution, it is permissible to provide for an exemption from tax and other liability in respect of such allowances.
5. Whether the PER 2009 can be enforced retrospectively (to 1st April 2009) pursuant to section 69B (4) of the Constitution even if no entitlement enumerated under the preceding question 3, or only a few of them, qualifies as an entitlements of Parliamentarians increase at no less a rate than the rate of increase, if any, of salaries and entitlements (taken as a whole) of the public officers.

Further to that the Attorney General seeks the following declarations:

6. a declaration that the procedure followed by the Commission in making the PER 2009 was unconstitutional and or ultra vires;
7. if none of a few or some only of the entitlements enumerated in question 2 is or are necessary for enabling Parliamentarians maintain dignity of their office, a declaration that such entitlement as is or are prescribed in the PER 2009 is or are unconstitutional and or ultra vires, and or ultra vires, and so is or are null and void ab inito;

8. if none of a few or some only of the entitlements enumerated in question 3 is or are necessary to facilitate the discharge of the functions of Parliamentarians pursuant to Section 69B2(c) (iv) and (3)(a) of the Constitutional and or ultra vires, and so is are null and void ab inito;
9. If the answer to question 5 is in the negative, a declaration that the Commission has no power to enforce a regulation retrospectively or prospectively unless such enforcement is necessary to secure that salaries and entitlements of public officers.
10. Further or in the alternative, an order quashing the decision that the Commission made resulting in the formulation of the PER 2009.
11. Further or in alternative, an order quashing the PER 2009.

Appendix 3: The sub judice convention and the proceedings in the High Court

The *sub judice* convention is the convention that Parliament and its committees should avoid discussing matters that are currently being considered by the Courts where this could prejudice proceedings. The convention is a restriction that the House voluntarily imposes upon itself through practice; it is not written in the standing orders. The rule covers debates, motions, questions, including supplementary questions and matters awaiting or under adjudication by the Courts. The convention extends to committees of the House.

In general terms, in civil matters, the convention is applied from the time that proceedings are set down until a judgment or decision is handed down. The convention is applied strictly only to prevent discussion of the precise issue before the courts and not to prevent general discussion of collateral or related issues, particularly issues that are being canvassed in the media.

It should be emphasized that the *sub judice* convention in no way obligates a committee to forgo its right to inquire into a matter. However, committees are generally sensitive in dealing with matters that are *sub judice*. The convention requires that a committee assess the risk that a particular inquiry or line of questioning will prejudice proceedings before a court. If inquiring into a matter has the potential to prejudice the public interest, the committee should consider foregoing its right to inquire.

Appendix 4: The High Court judgement