

Thursday 7 August 2008

The Speaker, Rt Hon Peter Kenilorea took the chair at 10:15 am.

Prayers.

ATTENDANCE

At prayers, all were present with the exception of member for West Guadalcanal, South Malaita, East 'Are Are, Gizo Kolombangara, Temotu VATTU, North Guadalcanal and Malaita Outer Islands and the MP for Central Honiara.

QUESTIONS AND ANSWERS

Provincial Project Proposals – Malaita Province

6. Mr SOGAVARE to the Prime Minister: Can the Prime Minister inform Parliament of the government's position on the \$26million provincial project proposals submitted to the Prime Minister by Malaita Province?

Hon SIKUA: Mr Speaker, I wish to thank the Leader of Opposition and MP for East Choiseul for his question.

Mr Speaker, upon receipt of the project proposals, I have given the Malaita project proposals submissions to a sub-committee headed by the Deputy Prime Minister comprising of all Malaitan MPs in the CNURA Government and also the Special Secretary to the Prime Minister to look at the project proposals to identify which projects can be funded by the government under its recurrent budget or the development budget, and indeed what projects can be given to donors for donor funding. The committee I understand, Mr Speaker has met with the Malaita Premier and some members of his executive and the committee has not yet reported back to my office after its consultations with the Premier of Malaita and members of his executive about just over a week ago, Mr Speaker.

Mr Sogavare: I thank the Hon. Prime Minister for answering the question.

Question No.7 withdrawn

CNURA'S position on tithing

70. **Mr WAIPORA** to the Minister for Home Affairs: What is the CNURA Government's position on tithing to the SICA member churches as initiated by the former Grand Coalition for Change government?

Hon TORA: Mr Speaker, I would like to thank my wantok Member for West Makira for wanting to know the position of the CNURA Government on tithing to SICA member churches.

Mr Speaker, the CNURA Government sees tithing as very important. My Ministry is yet to take up a paper to Cabinet to make a decision on this before any payments are made.

Mr Sogavare: Supplementary question. Mr Speaker. What exactly will the Ministry of Home Affairs advise the cabinet on?

Hon Tora: Mr Speaker, the last government has made a commitment on tithing but this is the CNURA Government, and therefore it all depends on Cabinet's decision. But tithing is normally made at the end of the year, as far as I am concerned because it cannot be made at the beginning.

Hon ABANA: Mr Speaker, if I may also add to that information. Basically the government is waiting on the Ministry of Finance to come up with the surplus takings of last year. I think that is what we are waiting for, so that we could put a 10% tithe on the surplus.

Hon SIKUA: Mr Speaker, in addition to what my other two Ministers have mentioned, the other issue the government would be looking at is the manner in which this money is going to be disbursed. In the last government it was given to Members of Parliament to disburse according to how they want to do it. I think that is another issue the Ministry of Home Affairs would have to think through and recommend options - any other options that are there to Cabinet to make a decision on. Thank you, Mr Speaker.

Hon Waipora: Mr Speaker, what difficulty did you find with the last arrangement? I want to tell this Honorable House that my constituency has 65 local churches, and I divided the \$78,600 for the 65 local churches. That is how I distributed it. What is the difficulty here so that you have to go to Cabinet?

Hon Tora: Mr Speaker, it has to be made in line with the CNURA Government's policy. What was done in the last government is what you have heard the Honorable Prime Minister has explained. We have to find out how best we this money can be disbursed rather than going through Members of Parliament.

Hon Abana: Mr Speaker, if I can also add on to that. I think the colleague MP for West Makira can well remember that during our time we have to find out a surplus of \$39million and then from there we tithed put the tithed of \$3.9million. This is exactly the kind of information we are waiting for. There is no difficulty in paying the tithed. We will definitely pay it. Thank you.

Mr ZAMA: Mr Speaker, according to reliable sources from within the Cabinet and also backbenchers, one of the reasons why the government is delaying paying of tithed is because there is a lot of mixed feelings, views and opinions by Ministers and backbenchers on this issue of tithing. Can the Minister confirm whether this is the position?

Hon Abana: Mr Speaker, that one is the assertion of the Member for Rendova/Tetepare, and does not come from this side of the House. Thank you.

Mr Speaker: Honorable Members, I think the question has been answered. That is an assertion which caused part of the delay.

Mr Sogavare: Mr Speaker, can I just get the Minister of Finance to assure the House when government accounts would be ready.

Hon RINI: The Ministry of Finance is still working on finalization of the accounts. We are yet to finalize the accounts, and as soon as the accounts are finalized we would be able to know how much tithed we will pay on the surplus of the 2007 accounts. Thank you.

Mr Waipora: Mr Speaker, I just want to conclude by thanking my Honorable wantok Minister for Home Affairs for answering the other questions. The question is mainly about the policy of CNURA and I know that the CNURA Government is still upholding the policy of tithing.

Investigation - RAMSI fatal accident

71. Mr WAIPORA to the Minister for Police, National Security and Prison Services: What is the current status of the investigations into the fatal accident caused by a RAMSI Police Officer recently?

Hon MANETOLI: Mr Speaker, I wish to thank the Deputy Leader of Opposition and my good friend, the MP for West Makira. The enquiry is progressing very well and over 65 witnesses have now been interviewed. The investigation file was forwarded to the Director of Public Prosecutions (the DPP) during the later part of July. The DPP then requested the Solomon Islands Police to examine further facts surrounding the circumstances of the fatal motor accident before a final determination in relation to the laying of charges or otherwise is made by his office. Most of those additional points have been attended to or are in the process of being finalized. For instance, an overseas expert arrived in Honiara on 5th August to carry out a highly specialized and technical survey of the crash scene. He will be liaising closely with the DPP on its findings this week. The Solomon Islands Police Force will await further advice from the DPP. Thank you.

Mr Agovaka: Mr Speaker, this incident aside let us just look at traffic accidents in general. If you care to look at the statistics at the Kukum Traffic Centre, you will notice a gradual increase of traffic accidents in Honiara.

Since the creation of the four highway lane in Honiara, our laws have not been changed; the Highway Traffic Code has not been changed. It was made specifically for a two-way lane, and now we have a four-way lane.

The question is, what is the plan to reduce or to amend the laws to review the Traffic Highway Code to cater for this new highway four lane to make our roads much safer for our people?

Hon KEMAKEZA: Mr Speaker, the Leader of the Independent is muddled-up with two different issues. One is road and the other is the law, and so let me answer him. Road comes under the responsibility of the Highway Authority, under the Ministry of Infrastructure. The duty of this Authority is to see where traffic signs can be put up, showing where to stop or turn, where to drive slowly or where to drive at high speed and so forth. That is a responsibility of the Highway Authority under the Ministry of Infrastructure.

The Traffic Act is for the Ministry to oversee and that is an issue that is already under review. Its enforcement will depend entirely on when that is completed, taking into account the point raised by the questioner, and that is the situation of the two lane road. The Traffic Act, I believe has already been

reviewed and is yet to come before Parliament. That is the answer to the question of the hard-working Leader of the Independent.

Mr OTI: Mr Speaker, just a point of order. Perhaps you should stick to the Standing Orders. The supplementary question in the first place was out of order in the context of the original question and so it should not have been asked. And it is also out of order for the Minister of Forest to answer a question that is out of order in itself. Mr Speaker, can you put us in order. Thank you.

Hon Kemakeza: Mr Speaker, point of order. The MP for Temotu Nende - this is a supplementary question. If it is according to Standing Orders then it should be resubmitted. However, I am also the Minister of this government and I am entitled to answer any questions. Thank you, Mr Speaker.

Mr Speaker: I think the point is taken. The question made by the Leader of Independent is fairly a new one but I did not raise any objection to it because I understand you all know the Standing Orders and you should abide by it.

Mr Zama: Mr Speaker, I agree with the point raised by the MP for Temotu Nende that should caution the MP for Savo/Russells to read his Standing Orders. Mr Speaker, this question deals with the investigation into this fatal accident. The operation of RAMSI is governed by the Facilitation Act. Can the Minister confirm that the three arms of the constitution: the Parliament, the Executive and Judiciary have no power to deal with this case? I want the Minister to confirm this.

Hon Manetoali: The Parliament does not have any power to deal with this case not even the executive. It is the Police that have to deal with it. That is the arm that is responsible.

Mr Sogavare: Mr Speaker, where is the concerned RAMSI officer now? That is the first question. The second question is whether the Samoan Government exercised its right to waive the immunity of the officer to subject him for investigation?

Hon Manetoali: I thank the Leader of the Opposition for the questions. First of all Mr Speaker, the Samoan Police officer who was alleged to be the driver of the vehicle involved in the accident is currently at the RAMSI GBR Base undertaking duties within that environment. In relation to the other question on the Samoan Government, if the Samoan Police officer is charged with an offense the courts

will determine whether he is to be remanded in custody or given bail. If he is given bail the Prime Minister of Samoa and the Commissioner of Police for Samoa have pledged full cooperation with the investigation and will make the Police officer available to answer court proceedings. Thank you, Mr Speaker.

Mr Sogavare: Mr Speaker, I take it that that means the Samoan Government has exercised its right to waive its immunity right under the Act. Is that the case, Mr Speaker?

Hon Sikua: Mr Speaker, in my meetings with the Prime Minister of Samoa when he was here for the 30th Anniversary Independence celebrations, there is no question of immunity and so the Samoan Government has no intention of wavering any of its rights or privileges on the question of immunity. On the issue of immunity, Mr Speaker, I would like, with your permission, to ask the Acting Attorney-General to render Parliament further advice on the issue of immunity. Thank you, Mr Speaker.

Attorney General: Mr Speaker, if the investigation by Police shows that the accident occurred outside of official hours and has no connection or relation to official duty, the question of immunity does not arise. He has no immunity. Immunity under the Facilitation Act is available only for situations where an accident occurs when one performs official duty. And so it depends very much on the investigation by the Police. However, the other relevant issue is the question of jurisdiction.

The Facilitation Act makes provision that if we start a process with a foreign government, which is the visiting contingent and if that foreign government asserts jurisdiction. Remember jurisdiction is different from immunity. The Solomon Islands Courts or any tribunal will not be able to deal with that particular case because a foreign government has asserted jurisdiction. Therefore, what the Government of Solomon Islands and the Government of Samoa have discussed is for the government of Samoa to relinquish jurisdiction. And I have rendered advice based on their discussions for the Government of Samoa to relinquish such jurisdiction so that trial could be conducted here. Thank you very much, Mr Speaker.

Mr Oti: Mr Speaker, I thank the Attorney General for the explanation in making distinction between the two in the Facilitation Act. Of course, there is no liability on any officer if any Act, including accidents such as what the questioner is directed at is on official duty then of course the immunity is covered under the Law.

Now in this instance, Mr Speaker, can the Minister or the Attorney General and also the Prime Minister in their discussions with the Prime Minister of Samoa, would this particular case not open the way for precedence to be set on other cases in future, and also whether or not this matter is considered by the region because it will affect each individual. Because there is a the tendency that if Samoa forwards this case to our courts to deal with now and in the future a similar case happens to Australian officials here, they may argue that it is of a different nature.

I am just wondering, Mr Speaker, and the supplementary question is whether the issue of collective understanding is taken by all contributing members or the visiting contingent on this particular issue. This concern is raised because it would not be fair if precedence is set by Samoa and everyone will not go by it or abide to it the next time a similar incident occurs.

Hon Sikua: Mr Speaker, I think the question points to a policy matter that we need as a government to be looking into as this is the first case of this nature that we are confronted with. The government would be considering this issue as a matter of policy and we will be taking it up with our other leaders in the region and especially those are involved or contribute towards RAMSI. Thank you, Mr Speaker.

Mr Waipora: Mr Speaker, if Police investigation finds that this case has to be dealt with by the Solomon Islands Government and the courts here, does that mean that the question of immunity would be left out since it is going to be dealt with under our own jurisdiction? Thank you.

Hon Sikua: Mr Speaker, these are the very questions which further information is required and therefore the need for a specialist, a person from New Zealand who has arrived on the 5th. What the specialist will come and confirm is the timing of the accident, to calibrate the condition of the road, the speed of vehicle and how many times the vehicle has rolled, and all these very specific questions leading towards answering the question of whether it occurred within working hours or in the course of duty or outside. Supposing it is outside of duty then the question of immunity will no longer be an issue. If it is in the course of their official duty then immunity could be a case to be argued. I think those are specific questions that will be answered by the courts when the case is brought before the courts.

Hon Manetoali: Mr Speaker, the MP for West Makira was asking a question based on immunity issue. This is what I have to say, Mr Speaker. The decision

as to whether the Samoan Police Officer who drove the vehicle would be accorded immunity under the Facilitation Act is a decision for the DPP in conjunction with the Attorney General. Having said that, Mr Speaker, immunity is only available to RAMSI personnel who are acting in the course of their official duties, as I stated earlier on.

What is important, Mr Speaker, is that there is no blanket immunity for all RAMSI personnel and each situation has to be considered in the context of a particular circumstance. Thank you Mr Speaker.

Mr Sogavare: For us lay people; I think it would be proper for the Attorney-General to make further clarifications on the issue. This is because the wording of immunity at “accidents caused in the course of official duty” but also covered incidental. May be the Attorney-General could make further clarifications on the issue for us lay people.

Attorney-General: Mr Speaker, the word ‘incidental’ means to relate to; connected to. It is a kind of embracing word so long as it relates to his duty. Obviously, if someone is on a social trip, you would not call that incidental; it must be relevant to one’s official duty. Thank you Mr Speaker.

Mr Speaker: Honorable Members, I think the question is well covered and answered. We are talking mainly on the issue of immunity rather than the current status of the investigation.

Mr Waipora: Mr Speaker. I would like to say that I am satisfied with the answers to my question. Not only that but of the fact that I have brought up a very important question that our people who are listening would like to know what is happening to that incident. Thank you Mr Speaker.

Mr Speaker: Honorable Members that brings our questions time to an end. We will now proceed to our next item of business.

Statement by the Chairman of the Parliamentary House Committee

Mr SITAI: Mr Speaker, in accordance with Standing Order 15(3) and on behalf of the Parliamentary House Committee, I am to inform Parliament that the Parliamentary House Committee met on Wednesday and resolved as well as setting down that the business for Parliament tomorrow, that is Friday 8 August 2008, will be the Motion of No Confidence on the Prime Minister, to be moved by the MP for West Honiara. That is the business for tomorrow.

The committee hopes that parliament will be at liberty to debate the Motion of No Confidence and to dispose of it accordingly. Thank you.

Bills - Committee Stage

The Secured Transactions Bill 2008

Mr Speaker: Hon members, in accordance with the adjournment passed by the House yesterday on this particular item, the House will now resolve into the Committee of the Whole House.

Parliament resolved into the Committee of the Whole House

Mr Chairman: Hon Members I proposed we go through the Bill clause by clause. However, I have advice from the Minister that there are a number of tidy-up amendments necessary in the arrangement of clauses on pages 4 and 5 of the Bill and others required at the marginal notes in the Bill. The arrangement of clauses and the marginal notes must reflect the Bill. Where they do not, corrections should be made by the Parliamentary drafters to ensure that they are accurate.

However Standing Order 58(2) provides that: "Amendments for the correction of errors or oversight may, with the Speaker's permission be made to the bill before the question for the third reading of the Bill is put by the Speaker, but no amendments of a material character shall be proposed." Therefore, in an effort to ensure the Bill leaves the House with all corrections noted, I propose to allow the Minister at the Third Reading to notify the House of the corrections being made with the arrangement of clauses and the marginal notes. Copies of these corrections have been circulated to members.

There are also some spellings and typographical errors that appear in certain clauses of the Bill. Again, I propose to deal with this under Standing Order 58(2). This should also appear in the list circulated to Members.

In terms of substantive amendments to the Bill, I believe by now all Members have seen the Notice Paper which lists all the amendments that the Minister for Finance and Treasury proposes to move during these proceedings. We will deal with each of these amendments at their appropriate place. However, at this stage I wish to inform all Members that on the request of the Minister I have given permission for him to move the amendments on this Bill appearing on the Notice Paper notwithstanding the fact that they do not comply with the one clear day requirement of Standing Order 51(2).

I will now go through the Bill clause by clause.

Clause 1

Mr Sogavare: Clause 1, sub-clause 2 states that this section will be brought into force before the Filing Office becomes operative. Can the Minister inform the House how soon will the Filing Office be established and who will fund it?

Hon Rini: Mr. Chairman, after the passing of this Bill the Filing Office will be established.

Mr Sogavare: The second part of the question, Mr Chairman is who will fund this office?

Hon Rini: The filing office will be determined by the Minister of Finance. The funding of this office will come under the Ministry of Finance. It is provided in this Supplementary Appropriation but it will be funded under CW. Thank you.

Mr Sogavare: Mr Chairman, this is a very important Bill that if enacted will help to advance government programs. This is because the operation of this Bill is subject to two things: one is the coming into force of the regulation and the other hangs on the establishment of this office. These two things are very important, and I was wondering what importance the government is placing on implementation of this Bill.

Hon Rini: Mr Chairman, that is a very valid point and the government is putting more emphasis and will be putting more funds as required in order to implement this office. Thank you.

Clause 1 agreed to

Clause 2

Mr Chairman: There are two amendments proposed to this clause. Will the Hon Minister for Finance and Treasury move the first amendment?

Hon Rini: Mr Chairman, I move that the definition of 'deposit account' in clause 2 be amended by omitting the word 'time', on line one and inserting instead the words 'term deposits'.

The amendment agreed to

Hon Rini: Mr Chairman, I move that the definition of 'payment tangible' on clause 2 be amended by omitting the word 'tangible' on line one of page 8 and inserting instead the word 'intangible'.

The amendment agreed to

Clause 2 of the Bill as amended agreed to

Clause 3

Mr Sogavare: May be the Attorney General would like to clarify certain issues for us, Mr Chairman. We understand that the Act applies in three scenarios. One is loan, and whether the agreement to lend and borrow is verbal or written? Secondly, secured and unsecured sales contract, and thirdly, the lease of goods for more than one year.

The question is for the Attorney General to explain how this provision works with the government, Mr Chairman? The government is a legal entity that can also borrow money. How does the whole provisions of this Act works with the government?

Attorney General: Mr Chairman, it depends very much on whether the government wants to use the provisions of this Act and wants also to be called a debtor under this proposed legislation. And if so, the government can put forward its collaterals. It very much depends on government policy whether it opts to utilize the provisions of the legislation and regards itself as the ordinary citizens. It also depends very much on the policy of banks or any secured party and financial institutions. Thank you, Mr Chairman.

Mr Sogavare: Mr Chairman, my concern is that the Act as it stands also covers government and may be the AG can also explain further on this. That is the reason why I am asking.

Sir, when the officials were asking us questions, it seemed that the coverage of Act also included the government, and the concerns that were put forward to them were that you cannot do that with the Solomon Islands Government because the Government is the supreme authority and basically any

loan that the government has entered into is based on trust that financial institutions have on the government and how it manages the economy.

Now supposing there is a loan and we lien over government vehicles or properties, Mr Chairman, if that is what is going to happen then we are actually placing the government at an awkward position. That is, if the government fails to pay some of its loans then the fleet of government vehicles will be taken away and that will be a very embarrassing situation for the government. Can that concern be clarified to confirm that such a situation does not apply so that we are comfortable, Mr Chairman. I don't think the government should be placed in that situation.

Attorney General: Mr Chairman, if I can explain it further. There are many ways of securing finance for government. The government can put up a guarantee or other different arrangements from any ordinary situation with the financial institutions. But the moment the government wants to utilize the provisions of this Act, it has to consider these options. That is why I am saying it is a policy matter of the government of the day whether it wants to utilize the provisions of the Act or deal with the government in other ways pursuant to the Public Finance & Audit Act and other legislation. This law is not obligatory as one has to make a decision whether he wants to utilize the provisions available under this proposed legislation or not. It depends very much on the government's decision.

Hon Sikua: Mr Chairman, I just want to mention that the government as it is at the moment has no policies to utilize the provisions under this Act. So if there is anything like that then it is a matter of policy which the government can look at in the future but not at the moment. Thank you, Mr Chairman.

Mr Sogavare: Mr Chairman, thank you. If this government opts to use the provisions of this Act, how will it work? How exactly will this Act apply?

Attorney General: Mr Chairman, with your indulgence, step by step, if the government wants to utilize the provisions of this proposed Act or Bill it has to enter into an agreement with any lender or any financial institution. What goes into that agreement is not dictated by this Bill but depends upon negotiation between the government and the financial institution. That is one of the differences of this Bill - it does not dictate what goes into the agreement, unlike the Bills of Sales. It depends on what the agreement between the government and the bank.

If the government says, that to secure any loan, it would use its fleet of vehicles as collateral then it is a decision of the government. But it has to be incorporated into an agreement. What they would have to do is to file the notice that a financial institution has collateral or secured interest over the vehicles or fleet. It starts with an agreement. Thank you, Mr Speaker.

Hon Lilo: Mr Chairman, if I can just add to that. I think the manner by which the government raises its finance is very clear under law. It does not impose lien over its assets. It is the law that guarantees any financing that government secures as it stands right now. It does not put lien over its properties for a very good reason because you cannot put lien over public properties of the government. Say, for instance, if you put lien over a hospital and tomorrow every people in Solomon Islands gets sick and then somebody holds charge over that asset, where will the people go to receive the health services. The government does not impose lien over its public properties. It is the law that government uses to achieve that. And as it stands right now, the Government Loans Securities Act applies and all the provisions of the Central Bank also apply.

The objective of this Act is very simple, Mr Chairman, if you read it. It is for small business people of Solomon Islands and the government cannot interfere with that. Even though the options apply for government to use, how can government utilize that when there are avenues that the government can use to raise better financing for its public services than to utilize this small provision? It is just a simple logic for us to understand. Thank you, Mr Chairman.

Mr Sogavare: Mr Chairman, I appreciate the explanations and that is our concern. When officials come to make consultations on the Bill it must be made clear that the government is an entity that has its own applications. Our concern is that you cannot tie down government because government is a supreme authority. It deals with people so once you tie it down you will restrict government's function as a supreme authority that has responsibility to the people of this country, Mr Speaker. We are satisfied with the explanations.

Mr Waipora: Mr Chairman, I want to raise some questions. The first one is to do with mortgage. I can see here, Mr Chairman that this Act does not cover vessels/ships that are acquired through loans. Is that true or not? My second question is, can we lien our forest lands as security to acquire loan, Mr Chairman?

Attorney General: Mr Chairman, on the first part of the question, Clause 3(c) states very clearly that the law is applicable only to boats and not ships. The reason is that there is already existing legislation that deals specifically with ships. This is only limited to boats. And also because of the scheme under this law as it only focuses on small things that other laws do not provide for.

In that same clause I refer to, you may also notice that it deals with flying objects but it does not deal with aeroplanes or jets. That is covered under the Civil Aviation Act. This only covers any flying objects that has value and can be recognized as collateral by financial institutions.

For the second part of the question which covers forests- you must consider this law in conjunction with the Forest law to see which is applicable. Determination of rights under the Forest Act will also apply. However, as we read further down the present Bill, we will come across the term 'attach'. And one of the conditions of 'attach' is 'right'. You have to have a right to that particular good. So before you determine who has the right when it comes to forests, you have to follow the process of Forest Law. And so, it is not all closed. That can still be done except that it is quite cumbersome as you would also be required to abide by the Forest Law before your right can be determined. That is the answer to the second part of your question, Mr Chairman.

If your right over the forests and logs is clear, the next task is to consult the Banks. But again the outcome will depend entirely on bank policies. Some Banks are quite conscious about environmental issues and may be reluctant to fund such proposals while other banks are very willing to fund harvesting of forests. Thank you Mr Chairman.

Mr Sogavare: Mr Chairman, still on sub-clause 3 for the Minister to hear our doubts. If there is a conflict between a provision of this Act and the provision of any other written law, the provision of this Act shall prevail and then it goes on. My question, Mr Chairman is whether the provision also applies to the Constitution.

Attorney General: I will start on the second part of the question. Obviously any legislation cannot override our Constitution. Our Constitution always prevails because it is our supreme law.

Sub clause 3 of clause 3 referred to by the Leader of Opposition is written in the context where any other laws that deal with collateral will be subjected to this law so that there is one clear law dealing with collateral, otherwise we will have a situation where all the laws are spread over every different kinds of law.

But if there are laws that have no conflict with it then we can apply the other laws. But if there is a conflict then for certainty making sure we apply or

enforce the law properly, this is where that clause comes that it is this proposed bill that prevails.

Clause 3 – agreed to

Clause 4

Mr Sogavare: Clause 4 says “for the purposes of facilitating access to credit in the market, the objects of this Act are: (a) to establish the priority of various security interests in collateral as against all other persons”.

I just want clarification whether the term “persons” also includes “persons in law”. It is yes, then obviously it would include the government as ‘persons in law’. This means that anything due to the government or the government has claim over it, can the AG please explain the taking order of right of recovery of the amount owing? Where does the government rank?

Attorney General: The word “persons” can be seen in many of our laws, and when it is used in any of our legislations it also includes use of legal personalities and so the government can also use this provision. But you would see this clearly later on the consequential amendments that deal with the Income Tax and the Goods Tax. You can see the interest of the government clearly spelled out later when we come to clauses that gives priority to the government.

This clause deals with priorities or who has first priority, second priority, third priority and so on. And this is one of the activities that is regulated - the priorities of different interests.

Mr Sogavare: Is it the case that amount owing to the state ranks high in taking order. Can the AG explain?

Attorney General: Mr Chairman, what the government needs to do is that if it has secured interest in any collateral, the government has to file a notice so that they become its secured interest. But in some situations or in some laws this is already expressly cleared and so there may not be a need to file those notices. But this is whereby we have to look at specific laws and see whether there is any conflict with that law or this law. And as I said when we come to the consequential amendments the picture will become much clearer when we look at other laws.

Mr Sogavare: If the government has tax owing to it and the government registers its interest and another person too has claim over that same person,

who will be ranked higher? Is it the government or the other person? Who ranks higher?

Attorney General: This law deals with the filing of notices and not so much on registration like the Bills of Sales. Who comes first is the principle used here. "First come, first serve" is the principle of the filing system. But as I mentioned today we have other laws that gives a much clear higher priority on the government. Other laws like the Income Tax Act, but for collateral, if you are just thinking about a vehicle, obviously we need to file an interest notice with the filing office to secure the interest.

Mr Agovaka: In the event that a borrower uses his collateral as his other sons or daughters, in the event that the borrower passed away, who comes first in interest in the collateral in the case of (a) in here. It is almost a similar question to the one raised by the Leader of the Opposition but mine is in a different field.

Attorney General: Mr Chairman, if a person dies and leaves a will, the law under the Wills and Probate Act and the Public Trustee Act applies here. What happens is that the person nominated in the will as a trustee or representative has to apply to the High Court to probate that will. Probate means to prove the will and the Court will give the power. The person who has a probate must also file the notice. The will itself does not give an automatic right or priority right. The administrator of the estate must also file a notice over a claim. If they do not file a notice but someone else files a notice over that collateral, the rule of "who comes first" will apply. The will itself does not give an automatic right because you have to go through the process of proving it in court first and then administer.

Clause 4 agreed to

Clause 5

Mr Waipora: Mr Chairman, just a short and simple question on the sentence which says "be described specifically or generally". These are legal terms and so I want the Attorney General to explain.

Attorney General: Really, they are just ordinary words but we have used it and apply it in our own ways, in law. What it says is that if a lender or a secured party wants to register a secured interest over a particular property or collateral, he can either just describe the specific property. For example, a vehicle where I

file a notice over this particular vehicle but you can be more general than being specific to say, "any vehicle" owned by the debtor. When you become specific you can say, "this vehicle, plate number so and so, serial number so and so". But if you say, general you can state it and say, "any other vehicle". Can you see the distinction? That is important because when it comes to priority the notice will be examined to see what is actually secured. Is it a specific collateral or a general collateral?

Clause 5 agreed to

Clauses 6 & 7 agreed to

Clause 8

Mr Sogavare: The debtor has rights in the collateral. What example of some rights does the debtor has in the collateral. It is plural, plural and plural.

Attorney General: In order for secured interest in collateral to be complete, these three conditions must exist. If you are seeking a funding or loan from a bank, you have to show to the bank that you have right in the particular collateral because the bank would not accept collateral that you do not have any right in it.

The use of the word "rights" in plural term can mean that we have two or three rights and some may be one collateral in a specific description, but as I explained today you may be describing the property in a general way. Just a general description and such a general description, there is the possibility that you may be dealing with several rights in that particular property. The word 'rights' anticipates that there will be other rights and not only single right to that collateral. But if it is only a single right then there is no harm and the banks should be able, depending on their policy to accept whatever rights you show.

Mr Sogavare: Would it be true to say that a person owns one right, it belongs to him and he has right over it and another one is leased, and so he has right over it subject to the conditions of the lease. Is that how this is going to be seen?

Attorney General: Let us use vehicle as an example as it is a movable property. You may have the right of ownership and although you may be giving it to say, a brother to use, you still have the right of possession or control. So it is right of ownership, possession and control. These are all different rights. You may have given the vehicle to your brother to use it, and so the right to use is given to the brother. That is an example of the various rights that can arise on one collateral.

Clause 8 agreed on

Clause 9

Mr Sogavare: Just to clear the minds of some lay people. The clause as it stands is a bit worrying and so can the AG explain “if collateral consists of present and future accounts, secured sales contracts or payment of intangibles, notice to the account debtors is not required as a condition of attachment or perfection of the security interest.”

The way the clause is worded makes me to question fairness, justice. Does this mean that the account debtor would have no choice as to the collateral he agrees to attach to whatever he owes as security? Does that remove any right of choice?

Attorney General: Clause 9 does not take away the right of a debtor. It talks about attachment process and perfection process. Attachment is in clause 8, which means those conditions must exist. If I could explain attachment – in order to satisfy the conditions in clause 8, which we have looked at, the secured party does not have to give a notice to the account debtor.

Let us look at clause 8(a), which says each debtor has signed a security agreement. This means people have already signed the agreement and so there is no need to give the notice to him to complete the attachment.

Clause 9(b) says “value has been given by the secured party”. If the bank has given money then there is no need to give notice to the debtor in order to complete the attachment process.

Clause 9(c) says “the debtor has rights in the collateral”. If the debtor has given evidence of his right in that collateral there is no need for the banks to give notice. Logic comes into play here.

The same is with the process of perfection to perfect the collateral. But we will be looking at perfection later.

Mr Sogavare: Just a practical situation. If a person also has transactions with several people and has several assets, and wants choice of assets to attach to that particular transaction, does the law says there is no need to notice. Because the clause here says that he has to attach all his assets as collateral. He might come up and say that seeing he as transactions with another person and so the assets are already attached to that particular transaction. Just a practical situation and how do you get over it.

Attorney General: That is why the agreement entered into between each debtor and a secured party must properly spell out what collateral is being dealt with here so that the notice filed at the filing office is specific in regards to that. If it is a specific description then it is specific but if it is general then it is general. Thank you.

Mr Sogavare: In what situation he would not know about it and does not need to give notice on it because if they sign an agreement then they would have known the assets. What situation is clause 9 trying to bring out here?

Attorney General: Section 9 specifically says that in order to complete the attachment process or the perfection process there is no need to give notice. That is simply what it is.

Clause 9 agreed to

Clause 10

Mr Sogavare: Mr Chairman, if there are no rights and as security interest continues in collateral, notwithstanding the following situations:

- (1) collateral is sold
- (2) is leased,
- (3) under a license situation
- (4) exchanged, or
- (5) other disposition of the collateral except as otherwise provided in this Act or agreed by the parties are added therewith.

The concern now is that once collateral is sold, its ownership is changed. Now the Acts says that even if collateral is sold, the lender still has every right over that particular property. What situation is this section attempting to cover?

This concern also covers the position on lease arrangements as there are also certain conditions attached to property lease arrangements. Can the AG explain?

Attorney General: Mr Chairman, when we come to the next part dealing with enforcement then this concern will become clearer. But this is a safety provision. Using an example that is if a bank has a security interest in a vehicle even as collateral and the vehicle is then sold to another party.

What clause 10 says is that the bank's secured interest remains with the vehicle or the proceeds of it. If the vehicle is damaged then probably the

proceeds of it will be used as collateral to repay the banks. It gives assurance to the financial institutions on their lending. That is, even if a vehicle is being used as collateral and is sold without the owner's consent, the financial institution can still follow its proceeds. That clause is designed for such situations. Thank you.

Clause 10 agreed to

Clause 11

Mr Sogavare: Mr Chairman, I would like more clarity on sub-clause 2, which says: "If a security agreement is effective between the parties"... and then the word 'and' is used against purchasers and creditors"... putting them as another part, then it ends with ..."except as otherwise proved in this Act."

Can the Minister or the AG make clarification on this? I would like to understand the parties who are directly involved on any transactions would be the debtor and the creditor. That is in purchasers and creditors. I thought that the security is effective between the party that already covered debtors and creditors. Clarity is required on the use of the phrase "and against purchasers and creditors"... so that we can be clear of what this clause implies.

Attorney General: Mr Chairman, this clause specifically implies that any security agreement that is entered into between parties is as good as far as the parties concerned. If it is a banker and a borrower, the agreement only applies to them. If any outsider, whether a purchaser or creditor would like to claim any benefit under this agreement they cannot do that because that agreement is good between the two parties alone. So, that clause goes on to say that ..."except as otherwise provided in this Act." That phrase implies that there will be subsequent provisions that will deal specifically with the interests of purchasers and creditors.

We are anticipating that later down the Bill we will see provisions that deal with the interests of purchasers and creditors. But as far as this clause is concerned, it protects the sanctity of the agreement between those parties. Thank you Mr Chairman.

Clause 11 agreed to

Clauses 12, 13, 14, 15 & 16 agreed to

Clause 17

Mr Chairman: There is one amendment proposed in this clause.

Hon Rini: Mr Chairman, I move that clause 17 sub clause 1 line two, be amended by inserting the word 'have' after the word 'collateral'.

The amendment agreed to

Clause 17 as amended agreed to

Clauses 18 & 19 agreed to

Clause 20

Mr Sogavare: Can you explain the consistency of the Act. The way we understand it and the way it is put forward is that this clause is trying to protect people who are lending something of value, such as money to another person. There transactions between two people. Clause 20, I can understand sub-clause 4, 6, 7 but sub-clause 3 says "a buyer or a lessee of a motor vehicle or serial numbered equipment takes it free of a security interest"; that is a third party and not the two parties that came up with this transaction, here it talks about the third party. It would be interest if the buyer or lessee does not know of the security interest and if the serial number is not included on a filed notice of security interest. This is like loosening it up again, it is not restrictive.

The question is, how can this happen as the vendor of the motor vehicle who is the creditor here should have a duty to declare his/her interest in the vehicle or serially numbered equipment. This looks like we are loosening it up again.

If you look at sub-clauses 4, 6 & 7 they make sense because, "A buyer takes free of a perfected security interest in goods if the secured party consents to the sale by the debtor". Sub-clause 6 says "A lien holder who takes control of collateral or causes collateral to be seized before a security interest is perfected takes free of the security interest" and sub-clause 7 – "A court or a liquidator of an insolvent company that takes physical custody or control of assets before a security interest is perfected in such assets takes free of the security interest".

Those three scenarios make sense but the other one which says if the person does not know that there is a lien over a particular asset, in relation to a transaction by different individuals, as long as the person does not know, it is alright.

Attorney General: If a transferee receives collateral and paid for it or gives value and took delivery but does not know or has no knowledge of the security

interest, he will take that collateral free of any security interest. But that only happens when a notice has not been filed in the Filing Office.

If this transferee, although has given the value and takes possession or delivery of that collateral, but a notice has already been filed, but he himself does not check for it in the Filing Office, he does not take the collateral free.

If you look at the intention or the spirit behind that clause, it obliges a transferee to do the right thing, and that is to go and check the Filing Office whether he is acquiring collateral that is free or not. That is on sub-clause 1.

Sub-clause 2 talks about a buyer or lessee of goods in the ordinary course of business. Remember that sub-clause 1 deals with transferee, a title that is passed. Sub-clauses 2 and 3 deal with a buyer. We must know the difference between transferees and a buyer.

Let us treat ourselves as the buyer and we go to a supermarket and that supermarket obtains a loan from a bank. That bank will obviously have security interest over the inventory or the goods in the supermarket. The bank will have that inventory. If we as the buyer go to that supermarket and buy a good, I want to buy a good that is free at the supermarket. I do not want the bank to follow me and say that before I buy this apple I have to get clearance from the bank. No. You have to buy it free. It is the business of the bank to follow up the proceeds of the apple that I bought with that supermarket. That is where the difference is – the transferee and the buyer. This is protecting the interest of the buyer or lessee of the goods. Otherwise we buy goods and the banks will follow us claiming that they have collateral security interest on the tape that we bought. No. It should be only confined to proceeds because we have already given the cash.

Mr Sogavare: Thank you for that explanation. So how do we relate that to the clause we have already passed, Clause 10 where even though it is already sold the “security interest continues in collateral notwithstanding sales”. It clearly states that even though you may sell it they will follow you. That’s what it says in clause 10.

Just to clear our minds what this means. A buyer, and this relates to sale, buys a motor vehicle, a serial numbered equipment, takes it free of security and does not know it. That is what I mean. I just want to see the consistency because Clause 10 says that it will be followed even though it is sold, as long as the person does not know, then it is quite alright.

Attorney General: Sub-clause 3 is quite similar to sub-clause 1. I will go back to sub-clause 2 just to explain this. I said that the secured interest in the collateral flows on and follows proceeds. In a situation of the supermarket example that I

have given, the bank is still protected, and so rather than running after the apple that I bought, it runs after the proceeds. This means its interest is still protected. Clause 20(2) also protects the interest of the buyer and the lessee.

If you look at the two clauses together, it protects the interest of the secured party or the bank and it also protects the interest of the buyer, and the contract of the borrower and the lender is still maintained. The duty of the lender is to follow the proceeds.

In sub-clause 3, the same example given in sub-clause 1 still applies, as it is the same situation – like he does not have knowledge of the notice.

Mr Chairman: I wonder whether the Attorney General can make it much simpler; when he said ‘proceeds’. Is it the sale of the cash that the banks will go after or what is it?

Attorney General: The word ‘proceeds’ as used in the Act can be the cash. If a tape is bought, proceeds can be in cash or it could be an exchange. Probably the Waku would want a wrist watch, and so I give him a wrist watch that is very expensive and he gives me a tape, now that wrist watch is also a ‘proceed’.

Mr Chairman: So ‘proceed’ means that it does not matter you buy and you go off and may be the bank will come and get what you have

Attorney General: Yes, that is correct.

Mr Sogavare: I think we are a little bit thick head in here. Clause 10 also talks about vehicle, if that also applies to vehicle. It is talking about an asset.

Clause 10 says, “A security interest continues in collateral (which is a vehicle), notwithstanding sale”. This means that person does not have any obligation. No one will go after him. Or is Clause 10 saying that we can follow him? That is what it says: “security interest continues” – he can be followed. Or if it has already been sold, then may be go after the person who sold it. May be the person is now free, takes the vehicle but the person that sells it has the obligation as a third party, he will be the one who will be followed up. That is how the situation is in Clause 10.

But Clause 20(3) seems to suggest that a buyer, the one giving the lessee, of a motor vehicle, serial numbered equipment, but may be restrict it to vehicle, takes it free of a security interest if the buyer or lessee does not know of the security interest in that asset, and so he has no obligation.

Can you clarify how these two are consistent with each other? One is to be followed up and the other one not followed up because of the reason that he does not have any knowledge of it.

Attorney General: I think we need to understand the word 'security interest'. That is what Clause 10 talks about. It says "the security interest continues". If that security interest in the collateral is not registered, then it is not secured. That interest in the collateral has to be secured, and the way it is secured is a notice of that interest has to be filed at the Filing Office. Let us understand those basic principles. We are talking about security interest, and that interest in the collateral must be secured and the way it is secured is by doing attachment, perfection and then filing. One means of perfection is filing.

If we come back to Clause 20(3) which the Member is asking, it is saying that if you buy or you lease a vehicle or serial numbered equipment, you take that for free. If there is no notice of that motor vehicle or that serial numbered equipment, you take it for free because whoever had an interest did not file the notice of it.

Let us start with the word "secured interest" which continues. But if a notice is not filed for it, it is not a secured interest; it is an interest in collateral but which is not secured.

Mr Sogavare: I take it that the asset here is talking about assets that are registered. How do we make these two clauses to work?

Attorney General: If all interests are secured and a notice is filed, the rules of priority will come into play on who has the senior right. Rules of priority will apply.

This Clause 20(3) talks very much about a situation where no notice is being filed, and so it allows a transaction to take place between buyers and owners of motor vehicles. If anyone says he has a secured interest in that collateral, his obligation is to file a notice. If he files a notice then he can enjoy the privilege under Clause 10, which the Member referred to where it says "a secured interest continues".

If a lender does not secure his interest then that party cannot rely on Clause 10, which says "a security interest continues in the collateral" because he never filed a notice.

Mr Sogavare: The only issue raised in Clause 20 is the reason why the third party took that particular vehicle or serially numbered equipment is on the

reason that he does not know, he is without knowledge of the security effect. That is all - he does not know and so for that reason he borrowed. That is how I see it.

Attorney General: Mr Chairman, it does not stop there, however, the Clause continues to say "and if the serial number is not included on a file notice of security interest". Thank you Mr Chairman.

Mr Sogavare: We leave it there. I think it is for the courts to clear.

Clause 20 agreed to

Clause 21 agreed to

Clause 22

Mr Sogavare: This is for the Minister and the Attorney General to confirm. It says "A perfected security interest in livestock giving for value to enable the debtor to obtain food or medicine for the livestock has priority over any other security interest". Does this include the security interest of the state if it opts to?

Attorney General: Mr Chairman, as I have said earlier on today, the interest of the state has to be protected under the relevant laws otherwise the law here has to be applied as in Clause 22.

Clause 22 agreed to

Clause 23

Mr Sogavare: Just a practical question. It says "A security interest may continue in goods that become fixtures". That means it attaches to and is no longer movable. What it says here is that the interest on collateral continues. A practical question is that if anything goes wrong, can we go and get things out of the house and sell them?

Attorney General: Mr Chairman, that is why the words 'movable' and 'immovable' are used to differentiate and make sure that that kind of situation described by the Member does not arise. If a fixture is removed and the house is destroyed then it no longer becomes a fixture permanently, and become immovable.

Mr Sogavare: My question is that the security interest of a particular good to become fixtures continues. And so effectively if somebody wants to recover his money or whatever he lends, he can go and remove the goods even though they become fixtures.

Attorney General: Sorry, could the Member repeat the question, I did not get the last part.

Mr Sogavare: It is a concern on the practical aspect of it if something becomes fixture. I take it here that it is attached to whatever it is, may be building or things like that. Furniture is movable and fixture is something more attached to the house.

The scenario here is that the security interest of that particular collateral that may be is movable before and now is attached and it continues in that good even though it becomes fixture. That is what it says, and so effectively in practical terms, what I mean is that if I have claim over you, I can go get a hammer and remove the building.

Attorney General: The sub-Clause 2 will apply that security interest in the fixture is subordinate to rights in the immovable property.

Mr Sogavare: I do not know how the laws are read in here but these clauses should be read together. They are not stand alone provision because it does not seem to use terms like 'subject to'. It does not use terms like that.

Attorney General: Mr Chairman, I did not get that question clearly.

Mr Sogavare: Mr Chairman, how the AG explained to us is that sub-clause 1, is subject to the latter sub-clauses, those provisions. Is that how we read this section or sub-clause 1 can be read as a stand alone provision?

Attorney General: Mr Chairman, the whole clause must be read together. Although magical words like 'subject to' is not used, this is another other style of drafting and it still applies because they belong to the same clause and so they relate to each other.

Clause 23 agreed to.

Clause 24

Mr Sogavare: May be the Minister or the AG can explain how this clause will really work. Crops are things that are not permanent. They are things that grow, get ripe, are harvested and sold and then cease to exist after they are sold.

How is this going to work as acceptable collateral to the banks if they would like to lay hold on something if the loan is not repaid? How exactly is this going to work?

Let us take it that may be when they negotiate and the banks or whoever lends the money agrees to turnover his crops after they got ripe to be sold. But the only concern here is that those crops cease to exist after they are sold. How is this going to work to satisfy the crops as collateral tool to the amount borrowed?

Attorney General: Mr Chairman, the Minister said that the banks were consulted on this bill, and so when they were consulted they must have given their views on how these provisions can be implemented. But in my view it depends very much on bank policies or the policies of any lending financial institution.

We must also understand that this Bill is not only for banks and financial institutions. It can be applied between two individual persons at the rural level or the credit unions, societies and cooperatives.

But coming to the financial institutions or the banks and coming back to the point that it depends very much on their banking policies, they will have to decide what kinds of crops are acceptable to them as collateral. Whether the same treatment given to copra could be given to tomato as collateral or a different treatment?

What this Bill creates is that it is creating a credit and security system. The working of it depends on bank policies, loan agreements, regulations and all that. Thank you Mr Chairman.

Mr Sogavare: I think it is important that our people need to be cleared on this. This is a concern raised during the second reading that there should be more awareness for people to understand this bill because as it is presented now, our people hear it that their crops can be used as collateral for borrowing. I think it is incumbent upon the government to explain it properly to our people so that we do not unnecessarily raise the high expectations of our people. That is the comment.

Clause 24 agreed to.

Clauses 25 & 26 agreed to.

Clause 27

Mr Chairman: Honorable Members the Minister wishes to propose an amendment to this clause.

Hon Rini: Mr Chairman, I move that clause 27 sub clause 1 line two be amended by omitting the word 'physical' and inserting instead the word 'physically'.

Clause 27 as amended agreed to

Mr Sogavare: Mr Chairman, just a practical question. However, this may be clarified by the regulations, Section 27 defines the word 'commingle goods' to mean "goods that are physically united with other goods in a way that their identity is lost in a product or mass". How does this fit with the collateral issue, Mr Chairman? This is because it seems to be identified separately as movable goods?

Attorney General: Mr Chairman, the best example I can give on commingle goods is perhaps on farming and bakery where you have flour having its own property. That is you can identify flour as flour, and a bale of sugar can be identified as sugar. When you mix these two products together they become united and it is no longer flour because it is mixed with sugar and perhaps yeast is also mixed in it. So you cannot say it is yeast as it is already a commingle good.

Sub clause 2 states that "A security interest may not be created in commingled goods unless the collateral to which a security interest has attached becomes commingled". If a lender has security interest in certain bags of flour, but the person who owns the bags of flours sold the bags of flour to a bakery, the baker quickly mixes it with sugar and the flour is lost in the blend, and so it is no longer flour as the flour is no longer in the bag of flour. So if security interest has already been taken in the bags of flour then the mixture which the product goes into is attached as security interest. So the principle of following the security continues, and that is its proceeding.

Some farming products can also be mixed to result in a similar situation. The same principle also applies here. Thank you, Mr Chairman.

Mr Sogavare: Mr Chairman, thank you for the explanation. I think the regulations will provide more clarity on how this clause will work.

Clause 27 agreed to

Clauses 28, 29, 30, 31, 32, 33, 34, 35 & 36 agreed to

Clause 37

Mr Chairman: There is an amended proposed in this clause. Honorable Minister for Finance and Treasury can you make the amendment?

Hon Rini: Mr Chairman, I move that Clause 37 sub clause 3, line one be amended by inserting the words 'to the secured party filing the notice' after the word 'return'.

The amendment agreed to

Clause 37 as amended agreed to

Clauses 38, 39, 40, 41, 42 agreed to

Clause 43

Mr Chairman: Could the Honorable Minister move the proposed amendment to this Clause.

Hon Rini: Mr Chairman, I move that Clause 43 sub clause 3, line one be amended by omitting the word 'reasonably' and inserting instead the word 'reasonable'.

The amendment agreed to

Clause 43 as amended agreed to

Clauses 44, 45, 46, 47, 48, 49 & 50, agreed to

Clause 51

Mr Chairman: Honorable Members there are two amendments proposed in this Clause. Could the Honorable Minister move the first amendment.

Hon. Rini: Mr Chairman, I move that Clause 51 sub clause 4, paragraph (a) line two, be amended by omitting the words 'for a notice' and inserting instead the words 'for filing a notice'.

The amendment agreed to

Hon Rini: Mr Chairman, I move that clause 51 sub clause 5, line one be amended by omitting the word 'fill' and inserting instead the word 'file'.

The amendment agreed to

Clause 51 as amended agreed to.

Clause 52

Mr Chairman: I understand that this is the final clause of this Bill. I understand the Minister also wishes to move two substantive amendments to this clause. We will proceed with those amendments.

Hon Rini: Mr Chairman, I move that Clause 52 sub clause 1, paragraph (b) line 1, be amended by omitting the word 'substitutional' and inserting instead the word 'substitute'.

The amendment agreed to.

Mr Chairman: Will the Minister move the second amendment?

Hon Rini: Mr Chairman, I move that Clause 52 sub clause 2, second paragraph line 3, be amended by omitting the word 'tax' and inserting instead the word 'contribution'.

The amendment agreed to

Mr Sogavare: Mr Chairman, sub clause 4 repeals section 8. I wish to make reference to going to court to recover tax and then two more sub clauses are added.

The Commissioner, Mr Chairman, has many powers already. One is the power of restrain which is almost the same. What happens is that when you owe tax and not pay he could claim your goods and properties and then give you 10 days to pay and if you do not comply he will acquire your property and sell them. Can we have confirmation on this from the government? This is to add to it and improve more revenue collection powers of the Commissioner of Inland Revenue that he can opt for this to register the moveable properties of this person and set a established priority date and time for the lien to take effect or he can opt for the restrain or he can opt to go to Court to recover his due, Mr Chairman.

I think the next question is: What time would the lien take effect? Is it when you have given notice of assessment and the person has liability to pay, or when it reaches the due date and did not pay? And is it that this clause has effect only when the government has legal claim over the tax due or when a notice of assessment is raised or issued, Mr Chairman?

Attorney General: Mr Chairman, we will see in that Clause that it says that this amendment will come after the words 'before the due date'. So the right of Commissioner or the Crown to place a lien over a person's goods will arise before the due date. That is so that the Commissioner can file a notice at the filing office, pursuant to this, to protect the interest of the Crown.

The Member earlier on talked about the restrain process under the Income Tax Act. The process, however, can be very time consuming as you need to get the Commissioner to make an assessment and that there maybe objections to that assessment then this restrain process may take time and you need to get Court orders. So the lien provision will in fact make secure even more the position of power.

Thank you Mr Chairman.

Mr Sogavare: I need to be very clear, AG, because in fact the process restrain occurs after all efforts by the Crown to take it to Court and one refuses to pay and then the Commissioner has the power under the Act to claim restrain over the property. Ten days are given and if no payment eventuates then the Commissioner can actually sell the properties or goods of the taxpayer.

But we appreciate this, Mr Chairman to give additional power to the Commissioner to earn revenue for the government. So we take it that as soon the assessment is made, the person has liability to pay, even though it is not yet due, the government, effectively has claim over the tax, it opts to register in the office of the Registry the properties it wants to take lien over. And then when no payment is made and the priority date is due - that is the due date of the tax- he can opt to sell the properties of the taxpayer to recover the revenue of the government. We have no problem with that Mr Chairman, only that the Commissioner has become a very powerful man in Solomon Islands.

Clause 52 as amended agreed to

Mr Chairman: Hon MPs that concludes the consideration of the Committee of the Whole House on this Bill and the Minister in charge of the Bill will report to the House when Parliament resumes.

Parliament resumes

Hon. Rini: Mr Speaker, I beg to report that the 'Secured Transactions Bill 2008' has passed through the Committee of the whole House with amendments.

BILLS

Bills – Third Reading

The Secured Transaction Bill 2008'

Hon Rini: Mr Speaker, I move that the Secured Transactions Bill 2008 be now read the third time and do pass.

Mr Speaker: Honorable Members, before I put the question, there are some errors and oversights in the Bill that were identified yesterday but which are more appropriately dealt with under Standing Order 58(2) as they could not be moved as amendments during the Committee Stage.

As explained earlier, Standing Order 58(2) allows corrections of errors or oversights provided that the Speaker gives his permission. I have been notified of these changes and I believe all Members have with them a copy of the list of errors and oversight I am referring to.

I have given my permission for the necessary corrections, and I now call on the honorable for Finance and Treasury to formally inform the House of the changes.

Hon Rini: Mr Speaker, as indicated in the list circulated to all Members, the following errors and oversights will be corrected according to the list of corrections provided to all Members.

Sir, I table that list for the Parliament's record.

Mr Speaker: Thank you Minister. Honourable Members the House has been duly informed of the corrections that will be made to the Bill under Standing Order 58(2). As such we expect that on the passage of the Bill these corrections will be incorporated before the Bill is sent to His Excellency, the Government General for assent.

The Secured Transactions Bill 2008 passed its Third Reading.

MOTIONS

Hon Rini: Mr Speaker, I move that Parliament resolves itself into a Committee of the whole House to consider National Parliament Paper No. 6 of 2008, “the Solomon Islands National Provident Fund Annual Report 2007”.

I believe the House will benefit in having some more time to prepare for the consideration of this Report, and therefore, I move that the debate be adjourn until the next government business day.

Debate on the motion adjourned until the next government's business day.

Hon Sikua: Mr Speaker, I move that this House do now adjourn.

The House adjourned at 12.15pm.