



**NATIONAL PARLIAMENT OF SOLOMON ISLANDS  
BILLS AND LEGISLATION COMMITTEE**

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**Report on the Penalties  
Miscellaneous Amendment Bill  
2009**

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**NP-Paper No. 25/2009**

Presented on 16 July 2009

National Parliament Office

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# 1 Introduction

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The Bills and Legislation Committee (Committee) has concluded its review and report on the *Penalties Miscellaneous Amendment Bill 2009* (Bill), introduced in the House by the Ministry of Justice and Legal Affairs. The Bill was submitted to the Speaker through the Clerk to Parliament as required under the *Standing Orders*<sup>1</sup>. The Speaker examined the Bill,<sup>2</sup> endorsed it and the Bill was duly deemed to have been presented to Parliament according to Standing Order 46.

According to government business for the current (10<sup>th</sup>) meeting of Parliament, the Bill was read the first time on 13 July 2009. The Ministers second reading speech occurred on Wednesday 15 July 2009, with general debate on the Bill set down for Thursday 16 July 2009. On 14 July 2009, the Bills and Legislation Committee considered the Bill and heard evidence from a range of stakeholders. Following its review, the Committee makes this report to Parliament, with recommendations, for the information of Members and for Parliament's consideration.

## Terms of Reference

Pursuant to its mandate under the *Standing Orders* the terms of reference of the Committee in this instance is to examine the **Penalties Miscellaneous Amendment Bill 2009** and to report its observations and recommendations on the Bill to Parliament.

## Functions of the Committee

The Bills and Legislation Committee is established under *Standing Order 71*, an Order made pursuant to the *Constitution*<sup>3</sup> and has the functions, together with the necessary powers to discharge such, to:

- (a) examine such matters as may be referred to it by Parliament or the Government;
- (b) review all draft legislation prepared for introduction into Parliament;
- (c) examine all subsidiary legislation made under any Act so as to ensure compliance with the Acts under which they are made;
- (d) monitor all motions adopted by Parliament which require legislative action;

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<sup>1</sup> *Standing Order 44* (1).

<sup>2</sup> As required by *Standing Order 45* (1).

<sup>3</sup> Section 62, *Constitution of Solomon Islands* 1978.

- (e) review current or proposed legislative measures to the extent it deems necessary;
- (f) examine such other matters in relation to legislation that, in the opinion of the Committee require examination; and
- (g) make a written report to each Meeting of Parliament containing the observations and recommendations arising from the Committee's deliberations.

## **Membership**

The current members of the Bills and Legislation Committee (8<sup>th</sup> Parliament) are:

Hon. Severino Nuaiasi, MP (Chair)

Hon. Manasseh Sogavare, MP

Hon. Siriako Usa, MP

Hon. Isaac Inoke Tosika, MP

Hon. Augustine Taneko, MP

Hon. Nelson Ne'e, MP

Hon. Japhet Waipora, MP

## 2 Policy Background

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### Purpose of the Bill

The objects of this Bill are;

- (a) to convert all monetary penalties in all written laws to penalty units to facilitate future increases taking into account CPI increases;
- (b) to increase the terms of imprisonment for default in payment of fines under the Penal Code;
- (c) to increase penalties in Acts taking into account the current value of penalties in comparison when they were enacted; and
- (d) to fix the value of one penalty unit

### Background

The fine systems embedded in Solomon Islands laws has been very problematic for many years. Acts of parliament enacted years ago prescribe penalty provisions in monetary terms. These monetary values were relevant and in accordance with the Consumer Price Index (CPI) at that time the various legislation was passed. Over the years, with inflation, the ministries responsible for administering the Acts have not reviewed or updated the applicable penalties. Consequently the fines prescribed by those acts have become inappropriate to current conditions. For example *the Penal Code Act of 1963*, Section 181 states that:

*Any person who pollutes or obstructs any aqueduct, dam, sluice, pipe, pump, watercourse or fountain, is guilty of a misdemeanour, and shall be liable to a fine of forty dollars or to imprisonment for two months.*

The monetary penalty value for what may be the very serious crime of polluting a dam is \$40. Example such as this are littered across the laws of Solomon Islands. As the amount of legislation increases so do the difficulty of updating and validating monetary values to match the current Consumer Price Index. The difficulty arises when it comes to updating and validating enacted legislation. Each Ministry responsible for each piece of legislation would have to bring before parliament regular amending acts to update the legislation to current values. Such a painstaking process which unnecessarily consumes the time of Parliament was recognised in the state of New South Wales some years ago. New South Wales was

one of the first states in Australia to employ the Penalty Unit System. In this, a penalty point or unit is defined in monetary value for example of \$1. The default in payment of a particular offence committed is rated in Penalty Units, for instance a person convicted of lying by oath would have to pay say 20 penalty units and the offender would have to pay  $\$1 \times 20 = \$20$ . If on the following years the value have to change to match with Consumer Price Index (CPI), the change affect the Penalty point \$1 by increase to say \$2 but not the 20 penalty units. Therefore the new Penalty value for the same offence becomes increase up to  $\$2 \times 20 = \$40$ .

There were two different ways in which the monetary penalty values were expressed in the Acts. Other Acts express the monetary value in mathematical figures while in others, the values were written in words. An example is the *Liquor Act 1996*, Section 5 (2) which spells out the monetary value in words (i.e. three hundred dollars).

### 3 Review

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In its review of the Penalties Miscellaneous Amendment 2009, the Committee heard from certain key witnesses from the Ministry of Justice and the Attorney General's Chambers

#### Public Hearing

On Tuesday 14 July 2009 the Committee held public hearings with view to hear from relevant officials of the Ministry concerned and key stakeholders. witnesses invited to participated in the public hearings, include representatives/officers from the following offices/institutions:

- Ministry of Justice and Legal Affairs;
- Attorney General's Chambers
- Office of Public Prosecution;
- Public Solicitor's Office;

A complete list of the witnesses who appeared at the two hearings may be found at **Appendix 2**.

## 4 Issues Arising

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The Committee identified issues that emerged from the evidence gathered from the witnesses during the hearing. This section focuses on these issues, together with responses from witnesses and, where necessary, recommendations of the Committee on a specific issue are included.

### Rationale and Approach

The first issue that the Committee had during the hearings was with the rationale for introducing the bill. Apparently the bill sought to amend a large number of Acts regulated by different Ministries whilst the initiative to make amendments seems to be coming from by one particular Ministry.

The Committee noted, from the clarifications made by the Permanent Secretary that the rationale of the bill is to validate the fines in a wide range of legislation in order to develop a fair, consistent and just penalty regime, which keep fines at realistic levels. Additionally the bill “empowers the Minister of Justice to increase and convert monetary penalties in regulations”.

In terms of the approach taken to formulate the Bill, all ministries appreciated the initiative taken by the Ministry of Justice and had agreed to empower the Minister of Justice to validate the fines in legislations under their regulatory powers to be up to date with the current CPI.

### Consultation and Public Awareness

In general the Bill directly affects a total of 31 different Acts as well as providing a mechanism for updating all other legislation. Hence the Committee sought to know the extent of consultation between the responsible Ministry, other Ministries and public. The Witnesses revealed that consultation occurred prior to formulation of the bill, but it was on the ministerial level only. Permanent secretaries from various ministries had been duly consulted. The Economic Reform Unit of the Ministry of Finance was also being consulted to ensure amendments and implementation concurs with current financial measures. The Committee heard that Permanent Secretaries, conscientiously agreed to amendments on

legislations under their Ministries. This ensures penalty values are updated and fall in line with the current Consumer Price Index.

In that regard, the Committee noted that there was a short fall in extending the consultation process public-wide. Therefore any amendment that would increase the penalty value would go without the awareness of the public. It was recommended that each Ministry takes the initiative to educate the Public about the level of increase in penalty units. Particularly with increase in penalty units in legislations that falls under each individual Ministry.

## Effect on certain segments of the Community

The Committee also raised the issue of fairness especially in regards to those who were unemployed. The Committee notes that there are substantial increases in penalty units in some of the Acts. For instance, in the section 23<sup>4</sup> of the Stamp duties Act there is an increase from \$1,000 to 20,000 units for frauds relating to stamps as well as in the Quarantine Act where there is a substantial increase in section 34<sup>5</sup> from \$1000 to 50,000 units for fines on communicable diseases.

The Bill will apply to every citizen in the country and therefore the Committee was concerned that the intentions of the bill may be unfair to certain segments of the community particularly the unemployed.

In response to the Committee's concerns the Ministry assured the Committee that the Penalties are fair. The Ministry further mentioned that as result of the review and the use of current Consumer Price Index figures the Bill is fair and just, and so the substantial increases noted by the Committee are there for a purpose. More over the principle aim of having penalties is twofold and this bill aims to encapsulate that, and that is that penalties are there

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<sup>4</sup> 23. Any person who shall fraudulently remove or cause to be removed from any document, required to be stamped by this Act, any stamp, or shall use any such stamp, or shall do or be concerned in the doing of any fraudulent act with the intent to defraud the Solomon Islands Government of any duty chargeable under this Act, shall be liable on conviction to a fine of **one thousand dollars** or to imprisonment for two years. Stamp Duties Act (Cap.126)

<sup>5</sup>(3) No persons suffering from or suspected to be suffering from a communicable or infectious disease shall quit the vessel without the written permission of a quarantine officer.

(4) No person who is in charge of any person suffering from, or suspected to be suffering from, any communicable or infectious disease shall permit such person to quit the vessel without the written permission of a quarantine officer.

(5) When a quarantine officer has given a certificate in pursuance of subsection (1) the master of the vessel shall not knowingly or negligently allow any person suffering from or suspected to be suffering from the disease or who has been exposed to infection from the disease, to quit the vessel.

(6) Any person guilty of a breach of subsections (3), (4) or (5) shall be liable on summary conviction to a penalty of **one thousand dollars**.



to punish and to deter. The Country is faced with a situation where by the fines are so small and out of date which result in it being unfair and not just. As a result the Courts do not have much discretion to make a certain penalties outlined in the bill fit the crime.

What is rather prevalent in the Country is the situation whereby crime pays; for instance it is cheaper to pay a fine in customs than to pay the customs duty or it is cheaper to pay the fine in making Kwaso. Thus with the proposed Bill Penalties will be more appropriate in terms of a punishment which is appropriate and a deterrent that will stop citizens committing crimes.

### **Advantages of the Penalty Units system**

The Committee dwelled on the issues related to possible benefits that would be obtained from such a system. A question was directed to the witnesses regarding other jurisdiction that impose the penalty system and benefits derived thereof. According to Ms Wilde, the Penalty Unit system is practised in all of the States of Australia. The immediate benefit experienced by these states is, *“that instead of every ministry having to go back to parliament every year to update all the fines in their separate legislations, one little amendment to one act means a CPI increase can happen. For example if penalty unit is \$1, and by the next 2 years inflation goes up 5%, the ministry for finance can advise the ministry for Justice that the penalty value has increase to \$1.05, and will automatically increase all the other 31 Acts, without those ministries having to go to parliament to amend all these legislations”*.

### **Powers vested in the Minister**

It was noted by the Committee that one of the purpose of the Bill is to empower the Minister of Justice to make regulations as stated in Clause 8(3). The Committee wanted to know the extent of the powers vested on the minister to make increase in penalty values and validating penalty units. The Committee was concerned about the possibility of having inconsistent penalty values from one minister to another as changes occur. The witnesses mentioned that the Minister would work closely with Ministers from other Ministries and can act on the suggestions and initiations from Ministries concern.

The committee recommends that powers to make increase in penalty values not be vested upon one particular Minister, but becomes a cooperate function of Parliament. This is to ensure that the penalties values are consistent and that the whole house is informed of the penalty units. This change is particularly important while the system of regulation, gazettal

and consideration by Parliament according to the provisions of the *Interpretation Act* remains inconsistent and ineffectual. The Committee has raised its concerns with the system and administrative arrangements relating to subordinate legislation in Solomon Islands many times and notes it again here in terms of the capacity for Parliament to monitor the system proposed in this Bill.

## 5. Recommendations

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Upon completion of the hearing on Penalties Miscellaneous Amendment 2009, the Committee recommends that:

- Ministries develop Public Awareness strategies to inform and educate the public about the increase in Penalty Levels in all legislations.
- The powers vested on the Minister of Justice to make regulations and increase penalty values be limited, and parliament be the body that decides the penalty unit and any increase in penalty values. This is to allow any increase in penalty value to be gazetted and be made available to the public. Furthermore to avoid inconsistencies that could arise in individual making their own decisions.



**Hon. Severino Nuaiasi**

Chairman

Bills and Legislation Committee

16 July 2009

# Appendix 1: Minutes

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## BILLS AND LEGISLATION COMMITTEE

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### NATIONAL PARLIAMENT OF SOLOMON ISLANDS

#### Minutes of Proceedings

#### Hearing No. 1

Tuesday 14 July 2009  
Conference Room 2, Parliament House, 2:35pm

#### 1. Members Present

Hon. Hon. Severino Nuaiasi, MP (Chair)  
Hon. Manasseh Sogavare, MP  
Hon. Augustine Taneko, MP  
Hon. Japhet Waipora, MP

#### Witnesses

Ms Pamela Wilde. Principal Legal Policy Officer, Ministry of Justice and Legal Affairs  
Mr James Remobatu. Permanent Secretary Ministry of justice and Legal Affairs  
Mr Steven Woods. Deputy Solicitor General  
Mr. Rupeni Nawaqakuta. Legal Draftsman

#### Secretariat:

Ian Rakafia, Committee Secretariat

#### 2. Opening Prayer

**The Meeting commenced with a word of prayer offered by Hon Japhet Waipora**

#### 3. Welcome an Opening Statement By the Chair

**The Chair welcomed the Committee Members, witnesses, the media, and the secretariat. He thanked the witnesses for agreeing to appear before the Committee.**

#### 4. Hearing into the Penalties Miscellaneous Amendment Bill 2009

Witnesses presented their Evidence before the Committee

#### 5. Close

The Chair thanked the witnesses for appearing before the Committee and the meeting ended with a word of Prayer by Hon Augustine Taneko.

Meeting ended 3:35 pm.

## Appendix 2: Witness List

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Witnesses who appeared before the Bills and Legislation Committee on 25 June 2009 and 1 July 2009 were:

1. **Mr. James Remobatu**, Permanent Secretary, Ministry of Justice and Legal Affairs.
2. **Ms. Pamela Wilde**, Principal Legal Advisor, Ministry of Justice and Legal Affairs.
3. **Mr. Rubeni Nawaqakuta**, Legal Draftsman, Attorney General's Chambers.
4. **Mr. Steven Woods**, Deputy Solicitor General, Attorney General's Chambers.