



NATIONAL PARLIAMENT OF SOLOMON ISLANDS

BILLS AND LEGISLATION COMMITTEE

REPORT

ON

THE VALUERS BILL 2009

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1. TERMS OF REFERENCE

To examine and report to Parliament the Committee's observations and recommendations on:-

"The Valuers Bill 2009"

2. FUNCTIONS OF THE COMMITTEE

In accordance with Section 62 of the Constitution, as read with Section 71 of the Standing Orders, the Bills and Legislation Committee's functions in addition to the provisions in Standing Orders 50 and 55, shall be 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;
- 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.

3. MEMBERSHIP

The Membership of the Bills & Legislation Committee comprises:

Hon. Severino Nuaiasi, MP (Chairman)

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

4. PURPOSE OF THE BILL

The objects and reasons as stated at the end of the Bill are as follows:

“This Bill seeks to establish a Valuers Board to regulate and control the practice of valuers. The Board will be given the following responsibilities:

- (a) to administer the Act, including formulation and monitoring of policies in relation to the practice of valuation;
- (b) to register persons who are qualified as valuers;
- (c) to impose disciplinary measures;
- (d) to provide professional standards.

The Bill also seeks to establish an association for the valuers”.

5. BACKGROUND – ENHANCING THE PROFESSION OF LAND VALUATION

The Bill proposes to establish the Valuers Board, provide for its functions and powers to register, discipline and regulate valuers in accordance with professional standards and practices. The Bill also seeks to establish the Valuers Association of Solomon Islands and to provide for its objects and functions in respect of its members and the valuation profession.

Over the years, certain people who portray themselves as qualified valuers took advantage of the lack of regulation of the profession and offered services they were not qualified to render. For over 20 years this has continued essentially because the Ministry of Lands has been powerless to address the issue due to the lack of appropriate laws. During these years the practice of land valuation continued to grow as the demand for it expanded, particularly in urban centres. This led to increasing concern within the government and the community that such an essential profession remained unregulated and monopolised by individuals who were neither qualified nor operating on internationally accepted standards. There were also concerns that without regulation the profession was susceptible to foreign opportunists who might not necessarily have the interests of the country at heart. These issues thus pose a risk to the public and private

sector; a risk that the government has been and will continue to be expected to manage.

In a bid to deal with the problem and proactively manage the associated risks, the Ministry of Lands formulated this Bill. It is expected that if passed, the Bill will protect the profession by ensuring that the right people provide valuation services. Mandatory registration would further ensure that there is client confidence in valuers. The Bill is ultimately aimed at protecting the integrity of the land valuation system and thus the public.

6. OBSERVATIONS ON THE VALUERS BILL 2009

The Committee held a public hearing on Friday 13 March 2009 to receive evidence from the relevant government ministry and key stakeholders on the “**Valuers Bill 2009**”. The following witnesses appeared before the Committee:

- Permanent Secretary, Ministry of Lands [etc];
- Under-Secretary, Ministry of Lands [etc]; and
- Legal Draftsman, Attorney-General’s Chamber.

A list of witnesses is annexed as “**Appendix 2**”.

The following section highlights the issues noted by the Committee in relation to the Bill.

6.1 Appointment of Board Members

Clause 4 (1) establishes the Valuers Board and lists members of that Board, which include the Valuer General (a public officer), 3 private practising valuers, a legal practitioner, a civil engineer, a chartered accountant and an architect. By sub-clause (2), the Minister is empowered to appoint the valuers and the lawyer. This clause is however silent on how the other Board members are to be appointed and on who holds the power to appoint these professionals.

The Committee sought clarity on the above issue and was advised that Clause 4 (2) contains an error and should read “1 (b) to (f)” so that the power to appoint all Board members, except the Valuer General, vests in the Minister. The error came about because the original version of the Bill that went to Cabinet had only three categories of membership. Cabinet however decided to expand

membership to include other professions but due to an oversight the sub-clause was not redrafted to reflect that particular change. Notice of a proposed amendment to rectify the error has already been tabled with the Clerk and will be moved by the Minister at Committee Stage.

The Committee commends the decision to expand of membership of the Board to include other professions. Making the Board more representative of a wider cross-section of the private sector not only strengthens the Board's potential to be independent from influence within the profession and political interference, but it also draws on the experiences of other professions.

The Committee however believes that the power of the Minister to appoint Board members should be qualified. Nominations for positions on the Board assigned to other professions should be made by those professions. For instance, the Bar Association should nominate the legal practitioner instead of giving the Minister complete discretion to appoint any lawyer he or she prefers.

Recommendation 1:

In order to further strengthen the independence of the Board, the Committee recommends that the regulations of the Bill or the rules of the Board include detailed provisions for nominating positions in the Board listed in Clause 4 (1) (c) to (f).

6.2 Transition of current practising Valuers

For many years now, certain people portraying themselves to be valuers have been practising land valuation, providing valuation and related services to private individuals and businesses. While some, if not most, of these people may not have had the necessary qualification that are required under the provisions of the Bill, these people have contributed to the development of the profession, built their own clientele and possess considerable experience in the industry in the Solomon Islands context. With the passage of the Bill, such businesses will find themselves subject to rigid requirements and associated fees. The Committee therefore wishes to know how, in practical terms, this class of valuers will be dealt with when the Bill is passed.

The Committee's attention was drawn to provisions of the Bill dealing with registration and transitional clauses. The Bill makes registration mandatory and in order to be registered, a person must be qualified to be a valuer in accordance

with internationally recognised valuation standards. The Bill does not propose to ignore those who have been practising as valuers. Rather, if these people adhere to the Bill, it would serve not only to recognise their competence, but also to enhance their experience and skills. Transition from the current situation to the environment that the Bill seeks to create is also provided for in Clause 39. Those already in practice will be given 12 months within which to apply for registration under the Bill and on being registered, these people will thereafter be subject to the new requirements. During the formulation of the Bill, people who fall under this category were consulted and are aware of the proposed change.

In spite of the assurance about due consultation, the Committee still wishes to be informed of the whole consultation process. The Bill clearly seeks to change the status quo after 30 years and may well put some individuals out of business and jobs. Further, it is likely that some individuals will not meet the standards that the Bill will introduce even if they are given 12 months because this period is too short to get the required formal qualifications. As such, it is possible that on passage of the Bill there will be a shortage of suitably qualified (and registered) valuers. This could in turn affect businesses and private individuals who require valuation services in the period immediately following passage of the Bill and for some time to come.

Recommendation 2:

In light the likely effects of the Bill on the livelihood and businesses of certain Solomon Islanders, the Committee recommends that the Ministry explains further to Parliament the full extent of consultation that preceded introduction of this Bill.

6.3 Financial Implications

The Committee notes that since the Bill will introduce a whole new system for land valuation this will no doubt involve considerable costs relating to those regulating the profession and practising valuers. The Committee is interested to know what kind of costs practising valuers will incur in the new system and how expensive it will be to operate the Board.

Officials of the Ministry acknowledged that for practising valuers, it will be more costly to practise under the new system since their practise will be regulated and subject to a higher authority and its rules. At present, valuers are graduates of the University of the South Pacific and University of Technology, PNG, now

carrying out valuation services for banks, chartered accountants and some business houses. While increased costs are inevitable under the proposed system and are necessary to ensure that there is transparency and accountability within the profession. The Bill seeks to ensure that services provided by the profession meet acceptable standards and satisfy the public at large so increased cost and it is argued a small price to pay for achieving a broader policy goal.

In terms of the Board, it was pointed out that the Board will meet at least once every 2 months, depending on the number of applications for registration and the number of disciplinary orders that the Board need to make determinations on. Thus, the Board will only meet as the need arises and it is anticipated that after an initial busy schedule owing to an influx of application for registration, the Board will not need to meet as regularly. Allowances and other costs related to Board meeting should therefore be minimal. The substantive cost of operation will lie with the Association which will be resourced from its own budget and not public finance.

The Committee maintains that introducing a new system altogether is still likely to incur extensive costs that the government will meet because it is spearheading the initiative. The Committee therefore would like to hear directly from the Minister on the likely financial implications that implementation of this Bill is expected to have on public funds or donor money if there is external assistance.

Recommendation 3:

That the Minister explains further to Parliament, at Committee Stage, the likely financial implications that implementation of this Bill is expected to have on public funds or donor money if there is external assistance.

6.4 Restriction on Related Branches of Practice

The Committee notes that Clause 8 (1) prohibits any person from practising land valuation or “any other branch of such practice”. Given that there are many other fields of business that are impacted by land valuation, the Committee is concerned that certain other professions may be unfairly restricted in their practice by this prohibition.

In response to this concern, the Committee was informed that there are many people who hold tertiary qualifications in areas directly related to land valuation,

including real estate planning and management. Although these people do not undertake valuation per se they have the background to offer advice on land management. There are also certain professions with aspects of their practices that involve valuation. Examples include architects who apply a method for calculating the value of property based on costs (replacement cost to put value on a property); chartered accountants; civil engineers; and quantity surveyors. Clause 8 (1) is designed to ensure that none of these people or professions offer valuation services but instead go to registered valuers for such work. Allowing hybrid alternatives to true land valuation has the potential to reflect badly on the profession and render the whole rationale of the Bill pointless. As such, while any person or business may engage other professions for second opinion on the value of property from other perspectives, actual valuation should be left exclusively to registered valuers.

While the Committee accepts the rationale behind Clause 8, it is of the view that since that clause imposes a prohibition on those whose professions involve tasks akin to valuation, backed by a criminal offence, the Bill or regulations made under it must outline clearly services that are considered as “land valuation”, or “other branch of valuation”. Such clarification would avoid other professions from inadvertently committing offences and also guide them in readjusting the way they undertake their work if necessary.

Recommendation 4:

That, by amendment to Clause 8 or further regulations, services considered as “land valuation”, or “other branch of valuation” be defined.

6.5 Disqualification for Registration

The Committee also raised questions about the grounds for disqualifying a person from registration under Clause 12. One such is where the person is of “unsound mind”. Whether or not this is a matter of opinion for the Board is unclear.

The Committee was assured that determining whether or not an applicant is “of unsound mind” is not a matter for the Board. A person will only be disqualified on this ground if he or she is certified by a recognized medical or mental institute as medically insane. The Board therefore has no discretion to form its own

opinion on this ground. The Committee is satisfied with this answer but recommends that for clarity, Clause 12 should make reference to the *Mental Treatment Act* (Cap. 103), which appears to make a distinction between a person medically certified to be of unsound mind and a person adjudged by a Magistrate to be of unsound mind.

Recommendation 5:

That Clause 12 make reference to the *Mental Treatment Act* (Cap. 103) for the definition of “a person of unsound mind”, and if necessary distinguish between a person medically certified to be of unsound mind and a person adjudged by a Magistrate to be of unsound mind.

6.6 Publication of the Roll of Valuers

The Committee notes that by Clause 15 (3), the names of valuers with valid registration must be published in a newspaper in February each year. Since other professions do not have the same requirement the Committee is interested in the policy reason for this particular rule.

On this issue, the Committee was advised that the requirement relates to two other aspects of the Bill. First, registration is valid only for a year so every registered valuer must apply for renewal each year by February. Second, the Bill provides for de-registration and suspension of registration. The purpose of Clause 15 (3) is thus to ensure the public is kept updated annually of persons who are registered and those whose registration have been cancelled or suspended. This requirement therefore protects both the profession and the public.

The Committee commends this aspect of the Bill and expects that all other aspects of implementing the Bill will positively promote freedom of open information.

6.7 Temporary Registration

The Committee also questions why Clause 13 allows non-citizens to apply for temporary registration and practise in Solomon Islands. One of the aims of the Bill is to protect the valuation profession from other professions and unfair competition. The Committee therefore does not understand why the Bill seeks,

on the one hand, to establish an Association for valuers and protect them from competition by other professions, but allow foreign valuers to come in and take away potential business from local valuers on the other hand.

The Committee was informed that the Bill also seeks to deal with the situation where foreign valuers enter and practise in the country without proper regulation. There is nothing in the Bill to prevent a foreign valuer from applying for full registration in Solomon Islands in accordance with the same rules which also apply to local valuers. Clause 13 however only applies to foreign valuers who are required to undertake specific and short term valuation in the Solomon Islands but who do not intend to practice permanently in the country. An example would be where a Solomon Islands based branch of a multinational corporation requires the expertise of the corporation's in-house valuers who are registered in another country.

While Clause 13 may be seen as allowing foreign competition, it recognises cross-boarder and reciprocal valuation as an inevitable necessity in an increasingly globalized commercial world. Thus, by making provision for such a scenario, the Bill acknowledges that reality but ensures that all foreign valuers undertaking work in Solomon Islands are made subject to local regulations of the profession (as opposed to their own rules). In any event, Clause 13 is such that only highly qualified and experienced valuers are covered by the clause and therefore enhance the local profession. It is also anticipated that the number of foreign valuers covered by Clause 13 will be minimal.

The Committee notes the practicality of Clause 13 but wishes to hear from the Minister on the progress, if any, on regulations that outline in more detail the limitations to be imposed on foreign valuers holding temporary registration, including grounds for cancellation of registration.

Recommendation 6:

That the Minister advises Parliament at Committee Stage on the progress, if any, on regulations that outline in more detail the limitations to be imposed on foreign valuers holding temporary registration, including grounds for cancellation of registration.

RECOMMENDATIONS

The Committee has reviewed the Bill and recommends that the government monitor matters raised in the report, in terms of assessing its implementation and effectiveness in achieving its important objectives and report to Parliament 12 months after the commencement of the Act, and in particular recommends:

1. That, by amendment to Clause 4 or further regulations, the power of the Minister to appoint Board members is qualified so that it is only exercised on the nomination or advice of the relevant authority or institution;
2. That the Ministry explains further to Parliament, at Committee Stage, the full extent of the consultation process leading to drafting of the Bill, and the views of current (unregistered) practising valuers;
3. That the Minister explains further to Parliament, at Committee Stage, the likely financial implications that implementation of this Bill is expected to have on public funds or donor money if there is external assistance;
4. That, by amendment to Clause 8 or further regulations, services considered as "land valuation", or "other branch of valuation" be defined;
5. That Clause 12 make reference to the *Mental Treatment Act* (Cap. 103) for the definition of "a person of unsound mind", and if necessary distinguish between a person medically certified to be of unsound mind and a person adjudged by a Magistrate to be of unsound mind; and
6. That the Minister advises Parliament at Committee Stage on the progress, if any, on regulations that outline in more detail the limitations to be imposed on foreign valuers holding temporary registration, including grounds for cancellation of registration.



Hon. Severino Nuaiasi
Chairman
Bills & Legislation Committee
18 March 2009

APPENDIX 1:



BILLS AND LEGISLATION COMMITTEE

NATIONAL PARLIAMENT OF SOLOMON ISLANDS

**Minutes of Proceedings
Meeting No. 2**

Hearing on the Valuers Fund Bill 2009.

Friday 13th March 2009, Parliament House, 5:45pm

1. Members Present

Hon. Severino Nuaiasi, MP (Chair)
Hon. Manasseh Sogavare MP
Hon. Isaach Inoke Tosika, MP
Hon. Japhet Waipora, MP

Witnesses

Mr. Ronald Unusi, Permanent Secretary, Ministry of Lands, Housing & Survey
Mr. Eric Goparana, Under Secretary, Ministry of Lands, Housing & Survey
Mr. Rupeni Nawaqakuta, Legal Draftsman, Attorney Generals Chambers

Secretariat

Mr. David Kusilifu, Committee Secretariat

2. The Valuers Bill 2009.

The Permanent Secretary and officials from the Ministries of Infrastructure Development appeared before the Committee.

The Chair welcomed the Permanent Secretary and invited the Permanent Secretary from Infrastructure to brief the committee.

The Committee questioned the Permanent Secretary and Officials.

Evidence concluded.

The Committee deliberated.

3. **Close**
Committee adjourned at 5:45 pm until 6:20 pm.

APPENDIX 2:

LIST OF WITNESSES & STAKEHOLDERS

- Mr. Ronald Unusi, Permanent Secretary, Ministry of Lands, Housing & Survey
- Mr. Eric Goparana, Under Secretary, Ministry of Lands, Housing & Survey
- Mr. Rupeni Nawaqakuta, Legal Draftsman, Attorney Generals Chambers
- Mr. Chris Robinson, Consultant, Ministry of Infrastructure Development
- Mr. John Taaru, Permanent Secretary, Ministry of Infrastructure Development
- Mr. Graham Powell, Consultant, Ministry of Infrastructure Development
- Mr. Francis Wale, Consultant, Ministry of Infrastructure Development
- Mr. Chris Hunubaeriu, Deputy Secretary to Prime Minister & Cabinet
- Mr. Luma Darcy, Permanent Secretary, Ministry of Communication & Aviation
- Mr. Ben Kere, Director of Civil Aviation