

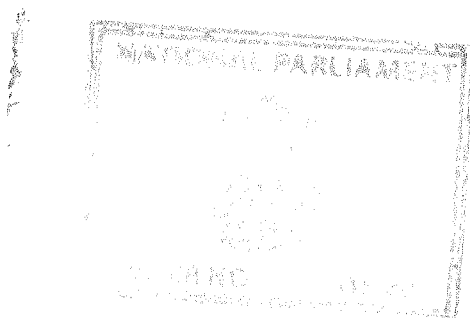


National Parliament of Solomon Islands

Bills and Legislation Committee

Committee Report

Report on the Anti-Corruption Bill 2016
(No. 3 of 2016)



NP-Paper No.13 of 2016

Presented on 20 May 2016

National Parliament Office

COMMITTEE MEMBERS

The current members of the Bills and Legislation Committee (10th Parliament) are:

Hon. Connelly Sandakabatu, MP (Chairman)

Hon. Jeremiah Manele, MP

Hon. Rick Houenipwela, MP

Hon. Dr Culwick Togamana, MP

Hon. Matthew Cooper Wale, MP

Hon. Dr Derek Sikua, MP

Hon. Commins Aston Mewa, MP

Hon. Peter Tom, MP

Hon. Steve Abana, MP

Hon. Namson Tran, MP

Secretariat:

Wilson Anii

Wilson Orisi

Salome Pilumate

Gregory Fineanganofa

Contacts

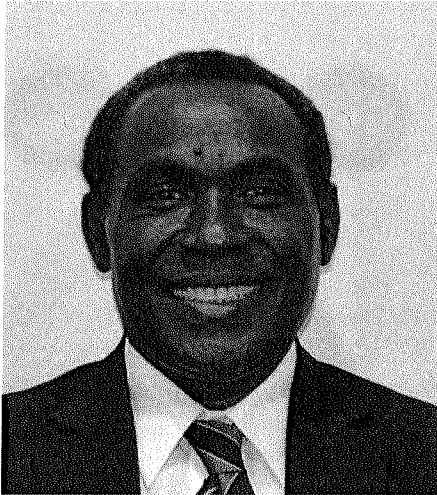
Bills and Legislation Committee
National Parliament of Solomon Islands
P O Box G19
HONIARA

Website: www.parliament.gov.sb

Telephone: (677) 24323

Facsimile: (677) 23080

CHAIR'S FOREWORD



Hon. Connelly Sandakabatu, MP Chairman

REPORT OF THE BILLS AND LEGISLATION COMMITTEE

Mr. Speaker,

Pursuant to Standing Orders No. 71 (g) of the National Parliament of Solomon Islands, it is an honour and pleasure for me Sir, to present the Report of the Bills and Legislation Committee on the Inquiry into the **Anti-Corruption Bill 2016** for laying before Parliament.

A handwritten signature in black ink, appearing to read 'Connelly Sandakabatu'. The signature is stylized with a large loop at the top and a horizontal line across the middle.

Hon. Connelly Sandakabatu

Chairman

Bills and Legislation Committee

20 May, 2016

COMMITTEE FUNCTIONS

The Committee is established under *Standing Order*⁷¹; an Order made pursuant to the *Constitution*¹ 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;
- (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.

¹Section 62, *Constitution of Solomon Islands 1978*.

EXECUTIVE SUMMARY

The Bills and Legislation Committee (the Committee) completed its inquiry into the Anti-corruption Bill 2016 (the Bill). The Bill was received by the Speaker on the 31st of March and the Committee conducted hearings on it from the 20th to the 23rd of April 2016.

The Bill proposes to establish the Solomon Islands Independent Commission against Corruption (SIICAC). An authority that is tasked to receive, process, investigate and refer for prosecution any corruption complaints referred to it by the public and or whistleblowers.

From the outset, the Committee believes that the Bill was hastily drafted and has not gone through a thorough robust consultation. The Committee is of the firm view that a better and more effective model was not considered in the consultations. As a result, the oversight model proposed in the bill may not be the best to combat corruption in Solomon Islands.

Some of the clauses proposed in the Bill could weaken the integrity of the Commission such as; the membership of the nominating Committee who are politicians or politically appointed and the process for their appointment, the non-inclusion of provisions against unjust enrichment, the vulnerability of the Commission as a result of the necessary budgetary process and resourcing, and the use of custom as a defence.

The Committee makes Sixteen (16) recommendations under this Bill and urges the Office of the Prime Minister and Cabinet (OPMC) as the sponsors of the Bill, to seriously consider the recommendations and make the necessary amendments.

TABLE OF CONTENTS

COMMITTEE MEMBERS	i
CHAIR'S FOREWORD	iii
COMMITTEE FUNCTIONS	iv
EXECUTIVE SUMMARY	v
1.0 INTRODUCTION	1
2.0 BACKGROUND INFORMATION.....	2
Corruption in Solomon Islands	2
What is corruption?.....	2
Public concern	2
Cost of Corruption.....	3
Government policy on corruption	4
Committee Comments.....	4
Anti-corruption Model	5
Resourcing and Capacity	7
Unjust Enrichment (unexplained wealth or illicit gains)	7
Consultations	8
3.0 OBJECTIVES OF THE BILL	9
4.0 SCOPE OF THE BILL.....	9
Bill Structure	9
Committee comments	10
5.0 RECOMMENDATIONS	16
6.0 APPENDICES	19
Appendix 1: Witnesses	19
Appendix 2: Minutes of Proceedings	21
Appendix 3: Submissions.....	26

1.0 INTRODUCTION

This Report contains the findings and recommendations of the Bills and Legislation Committee ('the Committee') after having reviewed the **Anti-Corruption Bill 2016** ('the Bill') as required under the Standing Orders of the National Parliament of Solomon Islands ('the Standing Orders').

The Committee resolved to conduct an inquiry into the Bill and invited relevant stakeholders² to appear before the Committee and make presentations on the contents, policy matters, and intentions of the Bill.

Hearings into the Bill were held from the 20th to the 23rd of April 2016 at the National Parliament Building. The List of witnesses that appeared before the Committee and minutes of these proceedings are contained in Appendix 1 and 2 respectively.

Written submissions were also received from witnesses that appeared before the Committee and those that respond to the call for submission by the Committee advertised in the media. A list of Written Submissions can be found in Appendix 3.

²See Appendix 1

2.0 BACKGROUND INFORMATION

This part outlines the background information and the government policy on corruption in Solomon Islands.

Corruption in Solomon Islands

What is corruption?

Corruption is seen as the greatest impediment to the achievement of good governance in Solomon Islands. The World Bank defines it as ‘the abuse of public office for private gain’.³ Some of the witnesses who appeared before the Committee defined it as, ‘the misuse of official power on one side to enrich oneself or ones family and on the other side, inducing the misuse of official power by paying in some way, persons who have the official power’.⁴

It is categorised into the demand for and the supply of corruption services. The demand side of it is when public office is abused for private gain when an official accepts, solicits or extorts a bribe. The supply side of it is when private agents actively offer bribes to circumvent public policies and processes for competitive advantage and profit. However public office can be abused for personal benefit even if no bribery occurs, through patronage and nepotism, the theft of state assets, or the diversion of state revenues.⁵

Clause 3 of the Bill defines the term as a ‘conduct that constitutes a corruption offence’. Corruption offence is defined under the same clause as ‘an offence, (a) under Part X of the Penal Code (Cap 26); or (b) an offence of bribery under any written law; or (c) an offence prescribed to be a corruption offence by an Act.

Public concern

Corruption is one of the most talked about issues among Solomon Islanders today. There is a swell of public perception that corruption is happening in both the public and private sector. Like any other country, corruption can take place in the political sphere including elections, in the construction and design of economic policies and in the administrative systems implementing Government policies.

During nationwide consultations on political integrity and stability issues from 2011 to 2012 and when the Constitutional Review Unit of the Prime Minister’s Office consulted on the Federal

³ OPMC, DCCG policy on anti-corruption, annex 2, p.3

⁴ Tony Hughes, Commissioner, TSI, oral evidence, 20 April 2016

⁵ OPMC, DCCG policy on anti-corruption, annex 2, p.3

Constitution around the country, the people of Solomon Islands mentioned the issue of corruption as an impediment to development that must be addressed comprehensively.⁶

Cost of Corruption

Whilst it is difficult to explicitly measure the social and economic cost of corruption in Solomon Islands due to the absence of reliable data, it is sufficient to establish the financial cost of corruption mainly from cases of corruption in Government public finances. This enables us to form an opinion on the magnitude of the damage corruption is inflicting on the country's economy.

To establish the financial cost of corruption in Government it is important to look into the evidences presented by relevant authorities in Government that are tasked with managing public finances. The Ministry of Finance and Treasury (MOFT), is the principal administrator of the Public Financial Management Act 2013 (PFMA), the current legislation that governs the management of public finances. The PFMA addresses the weaknesses in its predecessor legislation by clarifying and strengthening the principles and policy intentions of good financial governance in its provisions. In enforcing the provisions on procurement, which are underpinned by the principles of value for money, competitive bidding and transparency, MOFT is dealing with cases which are deemed to have breached or undermined the rules that give effect to the provisions of the PFMA.

The table below is a case study of the extent of violations of public financial management rules and requirements. These are potential corruption cases the MOFT is dealing with. The table depicts a summary of actual cases/projects currently under the scrutiny of MOFT.⁷

Stage of risk assessment	No. of Ministries	Estimated value of transactions	Details
A. Compliance	4	\$42.5m	These cases relate to breach or flouting of public financial management rules and requirements that could possibly be attributed to pecuniary interests on the part of officials of the ministry concerned.
B. Internal audit/review/investigation	17	\$20.4m	Involves cases where verifiable evidence has been established pointing to clear breach of legislation and rules and loss of public funds, which has evidence of collusion from within the concerned ministry officials with dubious suppliers for private or personal beneficial interest. These generally relate to: 1) vastly inflated prices for goods or services; 2) payment for non-existent goods and services

⁶ Andrew Muaki, SSPM, OPMC, oral evidence, 20 April 2016

⁷ OPMC, DCCG policy on anti-corruption, annex 2, p.5

C. Identified as transactions of highly questionable nature	3	\$9m	Highly questionable nature of transactions that are not supported nor justified by neither verifiable documentary sources nor evidence of exchange of consideration. These transactions have been established as attempts to fleece Government of public funds with little or no goods/services supplied in return.
-------------------------------------------------------------	---	------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Excluded from these potential corruption cases are publicly funded organisations such as State Owned Enterprises (SOEs).

Government policy on corruption

Solomon Islands is the 120 least corrupt nation out of 175 countries (1 being the best, and 175 the worst). According to the 2011 Corruption Perception Index reported by Transparency International, Solomon Islands' rank averaged 112.20 from 2007 until 2011, reaching an all time high of 120 in 2011 and a record low of 109 in 2008.⁸

In January 2012, the Solomon Islands Government on behalf of the nation ratified the UN Convention against Corruption.⁹ It is a commitment the country has taken at the international level to address corruption locally.

When the DCCG Government came into office in late 2014, one of its fundamental policies is to address corruption and the need to come up with a bill. The DCCG Government is committed to take up the fight against corruption head-on. Under its fundamental reform category of its policy priorities, the Government is committed to do the following within the next four years:¹⁰

4.1 (b) - Establish the Solomon Islands Independent Commission Against Corruption. (SIICAC);

4.1 (c) – Review anti-corruption legislations to combat corruption;

4.1 (j) – Review and amend the National Parliament Electoral Provisions Act;

(Added) – Strengthen institutions that are directly responsible for ensuring proper governance and accountability of the use of public funds.

Committee Comments

The Committee in its inquiry on the Bill is concerned with the approach the Government has taken with regards to its policy on corruption. The government is yet to produce, publish and advocate on a national anti-corruption strategy. The Committee sees this important policy platform as a

⁸ OPMC, Solomon Islands Corruption Rank 2007-2016, annex 6

⁹ Andrew Muaki, SSPM, OPMC, oral evidence, 20 April 2016

¹⁰ OPMC, DCCG policy on anti-corruption, annex 2, p.2

critical prerequisite to developing a robust and comprehensive cocktail of policy and legislative measures to combat corruption in Solomon Islands. Consequently, the bill does not benefit from such a platform. This is highly regrettable.

Anti-corruption Model

During discussions members of the Committee were informed of two basic models of anti-corruption bodies used in other countries. They are;

- i) the tribunal model (as in NSW, Australia) where an anti-corruption body is established much like a court where they conduct hearings on corruption offences, and
- ii) the oversight model where an anti-corruption body is established to manage and investigate corruption complaints and refer the corruption offences to the DPP for prosecution. This is the model proposed in the Bill.

In evidence, and as justification for the choice of the oversight model, officials from the Prime Minister's Office stated that the model is more affordable and is relevant to our situation as a developing country.¹¹ No evidence was provided to the Committee to substantiate these significant assertions. They explained that the Commission will decide whether an investigation is warranted and whether it goes for prosecution. The actual hearing and prosecution will be dealt with in our normal courts and undertaken by the Director of Public Prosecutions.

In evidence, it became clear to the Committee that the tribunal model was not even studied/explored by the sponsoring ministry before the choice was made to go with the oversight model. Officials from the PMO appearing before the Committee dismissed the tribunal model without the slightest exploration of its merits or demerits and its suitability for Solomon Islands. The excuse given for this is that there was a rush to get the bill before the house in this meeting.

The Committee is very concerned by this. The Committee recognises that corruption is a very serious issue in Solomon Islands and must be dealt with robustly.

The Committee urges the government, after passage of the bill, to undertake a more robust approach to raise public awareness, understanding and engagement on the issue. Such consultation ought to be conducted based on a comprehensive national anti-corruption strategy. Ideally, these should have been the basis of a white paper for thorough debate in Parliament. The

¹¹ Andrew Muaki, SSPM, OPMC, oral evidence, 20 April 2016

outcome of the debate would then have been the basis of the Cabinet paper giving drafting instructions for an appropriate bill to be drafted and submitted to the House.

The Committee sees that such a robust process would have had the benefit of ensuring that all issues involved are canvassed, all models are studied, and the most effective and efficient model is then chosen for enactment, and in the process building support at all levels of society and leadership.

The Committee disagrees that the model proposed in the bill is the best choice for Solomon Islands. Our experience with the oversight model in this country ought to give us pause in the search for the best model in the fight against corruption.

The Committee applauds the government's noble intention to combat corruption and supports it. However, the Committee sees the need for the government to build a serious platform, using the national anti-corruption strategy which is yet to be developed, and stakeholder and public engagement as critical elements in an effective and robust public policy response to the scourge of corruption. The Committee regrets that the perceived need to rush to legislation was done without the prerequisite elements being in place. The level of permeation by corruption in our society and in public life coupled with the fight that is required to uproot this evil require that a more thorough, comprehensive and robust process should have been pursued, under bi-partisan sponsorship, to ensure the best outcomes.

Recommendation 1

The Committee recommends that the national anti-corruption strategy is developed and widely published for input.

Recommendation 2

The Committee recommends that a stakeholder and public consultation is conducted on, and informed by, the national anti-corruption strategy. Provinces ought also to be consulted.

Recommendation 3

The Committee urges the government to explore the more effective tribunal model used in New South Wales Australia and present a comparative to the oversight model to determine whether further amendments may be needed in the near future.

Resourcing and Capacity

During the hearings some of the witnesses¹² mentioned the need to support existing accountability institutions in the country. We have three institutions; they are the Leadership Code Commission, the Ombudsman and the Office of the Auditor General. These offices have been doing their part to combat corruption and up to today these offices still require support in human resources, logistics and finance. The witnesses¹³ expressed that; it is incumbent upon the government and those who are charged with the responsibility to give support to these institutions so that they operate well. The Bill proposes to establish another organization on top of these three and the fear is that it might encounter the same problems faced by the existing institutions.

Committee members concur with the sentiments raised by the witnesses and express that, this piece of legislation will only be effective if the other accountability institutions are strengthened. Other subsequent legislations will come after this one for amendments making the Bill not a standalone. It will require the strengthening in terms of resourcing capacity and finance of all accountability institutions along with the Commission for an effective fight against corruption.¹⁴

Unjust Enrichment (unexplained wealth or illicit gains)

This issue of unjust enrichment (or illicit wealth) was raised by the Law Reform Commission (LRC)¹⁵ during the hearings. According to the LRC, unjust enrichment can occur when someone cannot justify, based on their means of income, how they own things that are beyond their income. It places the burden of proof on an accused to prove that their level of income is sufficient to procure assets they own. The LRC recommended its inclusion to the sponsoring ministry, but the recommendation was rejected.

According to the LRC there has been a study carried out by the United Nations and World Bank in 2012, which 44 countries have adopted that particular provision to enhance the legal framework they have to fight corruption and they found it to be a very effective tool. The LRC advocated that it is good for us to consider adopting and having such provision in our legislation. This will show to our people how serious we are about fighting corruption.

In response, officials from the PMO and supported by some witnesses¹⁶ say that such provisions takes away the principle of presumption of innocence. As a legal principle, any person accused of

¹² DPP, Chairman Leadership Commission and Ombudsman, oral evidence, 21 April 2016

¹³ Ronald Bei Talasasa, DPP, ODPP, oral evidence, 21 April 2016

¹⁴ Hon. Jeremiah Manele, MP, oral evidence, 21 April 2016

¹⁵ Frank Paulsen, Chairman, LRC, oral evidence, 20 April 2016

¹⁶ Pamela Wilde, Legal Policy Adviser, MJLA, oral evidence, 20 April 2016

a crime is always presumed to be innocent unless proven guilty by a court of law. Including such provisions in the Bill may erode this principle as there are already related offences in the Penal Code and other legislations that can take care of the issue. On balance, however, and in light of the levels of corruption in our public sector, unjust enrichment provisions are justifiable and do not pose a threat to the principle of presumption of innocence.

The Committee finds the exclusion of provisions against illicit/unjust enrichment as a regrettable and serious omission. Such provisions offer the most effective tool in the fight against corruption. The Committee recommends that the bill be amended to include provisions against illicit/unjust enrichment.

During discussions Committee members concurred with the submission by the LRC that the Bill should take a zero tolerance approach against all forms of corrupt practice that is intruding into various levels of our society.¹⁷

Consultations

According to information supplied¹⁸, consultation on the Bill took place from the month of May to November 2015. There were two consultation processes happening. First consultation was in relation to getting ideas relevant to the drafting of the Bill. The second consultation was on the Bill itself and its contents. The following were involved in the consultations; permanent secretaries, CSOs (TSI and others), provincial government MPAs, provincial public servants, chiefs, LRC, AG Chambers, DPP, Commissioner of Police, officials of the UNODC (UNCA Secretariat), Ombudsman and anti-corruption officials in Malaysia, Hong Kong, Singapore and Timor Leste.

However during the inquiry, it became clear to the Committee that the Bill did not go through a more robust public consultation. The Committee believes that public consultations should have sought input on: the type of anti-corruption model the country should adopt, whether unjust enrichment should be included, the composition of the nominating committee including the eligibility of persons with prior convictions for appointment to the committee, the use of custom as a defence, accountability and remuneration of integrity officers, and other issues.

¹⁷ Hon. Matthew Wale, MP, oral evidence, 20 April 2016

¹⁸ BLC, Bills Checklist, 18 April 2016

Recommendation 4

The Committee recommends that the Government fully resource and support the existing accountability institutions in the country and the proposed Solomon Islands Independent Commission against Corruption (SIICAC).

Recommendation 5

The Committee recommends that, provisions against unjust enrichment be included in the Bill.

3.0 OBJECTIVES OF THE BILL

The objectives of the Bill are outlined under clause 5. The clause states that the Bill is intended to combat corruption in Solomon Islands in all its forms by;

- establishing the Solomon Islands Independent Commission Against Corruption to prevent, investigate and prosecute corruption offences,
- establishing a system for receiving and managing complaints about potential corruption engaged in by persons in the public or private sector, and
- introducing measures to prevent corruption, including raising public awareness about the effects and prevention of corruption.

4.0 SCOPE OF THE BILL

Under this part, a brief outline of the structure of the Bill is presented and the concerns and issues raised on the contents of the Bill is discussed.

Bill Structure

Structurally the Bill is divided into seven parts.

Part 1 deals with preliminary matters such as its short title, the commencement date, definitions of terms used, provision binding the Crown and the objects of the Bill as outlined above.

Part 2 establishes the Solomon Islands Independent Commission against Corruption and outlines its composition and membership, the procedures of the Commission, its staff and authorised officers and its finance and administrative matters.

Part 3 outline the corruption prevention roles of the Government, the Minister and the Commission while Part 4 outlines the Commissions' investigating and prosecution procedures.

Part 5 highlights some of the general offences in the Bill and Part 6 look at other miscellaneous matters in the Bill.

Finally, part 7 deals with consequential amendments to the Penal Code, the Companies Act 2009 and the Telecommunications Act 2009.

Committee comments

The following are some of the concerns the Committee and witnesses raised on the clauses of the Bill which may require amending or clarification.

Part 1

In part 1 under **clause 3 (d) (ii)** Committee members¹⁹ state that the threshold of 20% of the total value of assets of the trust is too high and should be reduced to 10%.

Part 2

Clarification²⁰ is sought regarding **clause 10 (2)** in comparison to clause 10 (6), on the power and functions of the deputy chairperson. Clause 10(2) states that the deputy chairperson 'has all the powers and functions of the chairperson at any time the chairperson is unable to exercise them.' The second clause states that, 'the nominating committee may only nominate a person to be chairperson.....if the person is qualified for appointment as a Judge of the High Court.' Does this mean the deputy chairperson shall have the same qualification as the chairperson? If so, the Deputy Chairperson also ought to be appointed by the Judicial Legal Services Commission.

Witnesses²¹ also made comments on **clause 10 (3) (a) (c)**, stating that it is too broad or general and could have been more specific or made clearer. They suggested for subclause (a) just stating two men and women and subclause (c) to be just specific to mention representatives from religious organisations or CSOs.

¹⁹ Hon. Matthew Wale, MP, oral evidence, 20 April 2016

²⁰ Andrew Radclyffe, submission 1, 4 April 2016

²¹ Sir Albert Palmer, Chairman, JLSC : Albert Kabui, Assistant Registrar, ORPP, 21 April 2016

One of the clauses that attracted a lot of debate and discussions during the hearings is **clause 10 (4)**, where members of the nominating committee are specified. Committee members²² were very concerned that the committee consists mostly of politicians or politically appointed persons. This could potentially compromise any appointments they make, as it is not free from political interference. Consequently the integrity of the Commission may be undermined.

Also witnesses²³ sought clarification on **clause 10 (5) (iii)**. There is concern that this clause may be discriminatory. Further, the process to determine the physical and mental capacity of a member is unclear. Witnesses said a person can be physically disabled but still be mentally capable to perform his or her function as a member.

Another issue that attracted lots of discussion by Committee members is with **clause 10 (5) (b) (v) (vi)**. The two subclause outline minimum criteria for persons with previous conviction to become members of the Commission. Committee members express that, this undermines the integrity of the Commission. It is suggested that persons with previous conviction, regardless of length of sentence, be ineligible for appointment.²⁴

Clause 12(2) (a) is similar to **clause 10 (5) (iii)** discussed above. How can the Governor General reach a decision to determine that a member of the Commission is physically or mentally unable to perform their duties of office? The process to be used by the GG to reach such a decision should be included.

Recommendation 6

The Committee recommends that, clause 10 (4) be amended so that members of the nominating committee are not politicians or politically appointed.

Recommendation 7

The Committee recommends that, clause 10 (5) (b) (v) (vi) be amended to state; 'persons with previous convictions are not eligible for appointment to the Commission'.

Committee members²⁵ also have issue with **clause 18**. Whilst stating that, the Commission meeting can be presided over by the chairperson or deputy if the chair is absent, it does not provide for the situation when both the chair and deputy are absent. The suggestion is for further provision to allow other members of the Commission to form a quorum and elect an acting chair.

²² Hon. Matthew Wale, MP, oral evidence, 20 April 2016

²³ Casper Fa'asala, Advocate: Women in Leadership, NCW, 22 April 2016

²⁴ Hon. Matthew Wale, MP, oral evidence, 20 April 2016

²⁵ Ibid

Concern was also raised with regards to **clauses 21 and 22**. Whilst the clauses allow members of the commission to disclose their interest in any matter considered under this Bill, it does not do so in other corresponding legislation such as the Leadership Code Commission Act. Suggestion is for member's interest to be disclosed to the public in all subsequent legislations.²⁶ There is need for a public register of interests to be kept at the Commission for all members and staff.

Recommendation 8

The Committee recommends that a public register of interests be kept at the Commission for all members and staff.

Clause 24 (5) and (7) on identity card also need better clarification. Suggestion is for the Director General to also co-sign on the identity card and additional provisions which persuade a person, who ceases to be an authorised officer to return the card within 21 days, be included under subclause (7).

Another issue that relates to the integrity of the Commission is mentioned under **clause 27 (a)**. The clause mentioned that the Commission is taken as a Government agency with a head of revenue and expenditure in the national budget. This arrangement can affect the financial independence of the Commission as there is possibility of interference by the Ministry of Finance or the Minister in the Commissions' delivery of services through budget cuts or use of discretionary powers. During discussions Committee members²⁷ proposed the following:

- (1) the Commission's budget submission may only be increased by the Ministry of Finance. Only Parliament may reduce the Commissions budget based on reasonable and justifiable grounds, or
- (2) A statutory formula by operation of law regulates the Commission's level of funding.

Recommendation 9

The Committee recommends that, provisions regarding the budget for the Commission to include either of the following; (1) the Commission's budget submission cannot be reduced by the Ministry of Finance can only increase it. Only Parliament can reduce the Commissions budget based on reasonable and justifiable grounds. Or (2) A statutory formula by operation of law is used to regulate the level of the Commission funding.

²⁶ Ibid

²⁷ Hon. Matthew Wale, MP, Oral evidence, 22 April 2016

The issue of annual reporting to the Minister is highlighted in **clause 28(2) (3)**. A preferable arrangement would have been for the Commission to report directly to Parliament. It is suggested that the report be tabled in Parliament at the same time it is issued to the Minister. For subclause (3) the Committee envisages difficulties in implementing it because Parliament has no specific meeting times or a parliamentary calendar, and therefore recommends the reference to sitting days be removed.

Recommendation 10

The Committee recommends that the Commission report directly to Parliament by 31st March following the end of the financial year.

Recommendation 11

The Committee recommends that, clause 28 (3) be deleted from the Bill

Part 3

Concern was also raised on **clause 32 (3)**. Witnesses²⁸ questioned why an integrity officer need not receive additional remuneration on top of his existing job. They expressed, this weakens the work morale of an integrity officer making them not effective in their duty. A public officer, who is an integrity officer, is more likely to give his/her attention to the work for which they are remunerated. The Ombudsman, in evidence, stated that his office has public officers acting as focal points in provincial governments unremunerated. He stated this has never worked.

Recommendation 12

The Committee recommends that the integrity officers be appropriately remunerated for the extra responsibility entrusted to them.

Clause 38(a) is also a concern to the Committee because the Director General can dismiss any corruption complaint without investigating it, if insufficient or no further information is given upon request. This could be unfair on those who depend on other bodies or organisations to supply needed information, as it is not their failure that their corruption complaint is dismissed.

Parts 4 & 5

Committee members are satisfied with the clauses under parts 4 and 5.

²⁸ Joe Poraiwai, Ombudsman, oral evidence, 21 April 2016

Part 6

Clause 55 mentioned that the Minister can make Regulations under the Bill once it becomes an Act. Committee members always highlight the need and recommends the Government lay regulations under this Bill before Parliament at its earliest opportunity.

Part 7

The Committee also took issue with clause 59 (2) on the definition of 'foreign public official'. The definition does not cover foreigners working for International NGOs or foreign advisers working in government, who are contracted by donor governments to work in our country.

Recommendation 13

The Committee recommends that, definition of "foreign public official" under clause 59(2) be amended to include foreigners working for international NGOs or foreign advisers working in government and are contracted by donor governments working in the country.

Clause 62 proposes to repeal and replace certain sections in the Penal Code. One section is "91 where it deals with cooperation between agencies and lists several government agencies. Committee members proposed to include in the list of agencies the Internal Audit division (or its Director) of the Ministry of Finance and Treasury.

The proposed amendments to the Penal Code for sections 92(3) and 93(2) were the most discussed and debated issues during the hearings. The availability of custom as a defence in corruption offences. Committee members²⁹ expressed the strong view that the availability of custom as a defence may offer an easy pretext for perpetrators to go free.

There is high hope that the Bill will combat corruption, a scourge in our society, by taking a zero tolerance approach. However by including custom as a defence weakens the fight against corruption, and shows that we are not serious in tackling this problem.

Recommendation 14

The Committee recommends that, clause 92 (3) and clause 93 (2) be amended to remove custom as a defence.

Further the courts have already developed common law on custom from cases such as election petitions, and it is not necessary to have it codified in this bill. As a defence it will be used as an excuse and our courts will be caught up in determining whether or not it was custom and what

²⁹ Hon. Matthew Wale, MP, oral evidence, 20 April 2016

kind of custom and whose custom. It will be a laborious job for the Courts trying to determine each particular custom practise.

Recommendation 15

The Committee recommends that in the appointment of members of the Commission, the Governor General acts on the advice of the nominating committee.

5.0 RECOMMENDATIONS

At the conclusion of the hearing and based on the evidences collected at the hearing, the Committee makes the following recommendations –

Recommendation 1

The Committee recommends that the national anti-corruption strategy is developed and widely published for input.

Recommendation 2

The Committee recommends that a stakeholder and public consultation is conducted on, and informed by, the national anti-corruption strategy. Provinces ought also to be consulted.

Recommendation 3

The Committee urges the government to explore the more effective tribunal model used in New South Wales Australia and present a comparative to the oversight model to determine whether further amendments may be needed in the near future.

Recommendation 4

The Committee recommends that the Government fully resource and support existing accountability institutions in the country and the proposed Solomon Islands Independent Commission against Corruption (SIICAC).

Recommendation 5

The Committee recommends that, provisions against unjust enrichment be included in the Bill.

Recommendation 6

The Committee recommends that, clause 10 (4) be amended so that members of the nominating committee are not politicians or politically appointed persons.

Recommendation 7

The Committee recommends that, clause 10 (5) (b) (v) (vi) be amended to state; 'persons with previous convictions are not eligible for appointment to the Commission'.

Recommendation 8

The Committee recommends that a public register be kept at the Commission for all members and staff.

Recommendation 9

The Committee recommends that, provisions regarding the budget for the Commission to include either of the following; (1) the Commission's budget submission cannot be reduced by the Ministry of Finance can only increase it. Only Parliament can reduce the Commissions budget based on reasonable and justifiable grounds. Or (2) A statutory formula by operation of law is used to regulate the level of the Commission funding.

Recommendation 10

The Committee recommends that the Commission report directly to Parliament by 31st March following the end of the financial year.

Recommendation 11

The Committee recommends that, clause 28 (3) be deleted from the Bill

Recommendation 12

The Committee recommends that the integrity officers be appropriately remunerated for the extra responsibility entrusted to them.

Recommendation 13

The Committee recommends that, definition of "foreign public official" under clause 59(2) be amended to include foreigners working for international NGOs or foreign advisers working in government and are contracted by donor governments working in the country.

Recommendation 14

The Committee recommends that, clause 92 (3) and clause 93 (2) be amended to remove custom as a defence.

Recommendation 15

The Committee recommends that in the appointment of members of the Commission, the Governor General acts on the advice of the nominating committee.
previous convictions are not eligible to be a member of the Commission'.

Recommendation 16

The Committee recommends that the regulations to the Bill be laid before Parliament at the earliest opportunity.

END OF REPORT

6.0 APPENDICES

Appendix 1: Witnesses

Date	Name	Position & Organisation	
Wed 20 April 2016 9:30am – 4:30pm	Frank Paulsen	Chairman, Law Reform Commission (LRC)	
	Andrew D. Muaki	Special Secretary to PM (SSPM), OPMC	
	Pamela Wilde	Legal Policy Adviser, MJLA	
	Catriona Steele	Legal Draftsman, AG Chambers	
	Waeta Ben	Commissioner, LRC	
	Tabusasi		
	Philip Kanairara	Chief Legal Officer, LRC	
	Derek Futaiasi	Deputy SPM, OPMC	
	Rev. Philemon Riti	Commissioner, LRC	
	Georgie McArthur	LRC Lawyer, LRC	
	Mose Saitala	Chief Technical Adviser, OPMC	
	Frank Paulsen	Chairman, Law Reform Commission (LRC)	
	Andrew D. Muaki	Special Secretary to PM (SSPM), OPMC	
Thur 21 April 2016 9:30am - 12:30pm	Pamela Wilde	Legal Policy Adviser, MJLA	
	Catriona Steele	Legal Draftsman, AG Chambers	
	Waeta Ben	Commissioner, LRC	
	Tabusasi		
	Philip Kanairara	Chief Legal Officer, LRC	
	Derek Futaiasi	Deputy SPM, OPMC	
	Rev. Philemon Riti	Commissioner, LRC	
	Georgie McArthur	LRC Lawyer, LRC	
	Mose Saitala	Chief Technical Adviser, OPMC	
	Solomon Kalu	Chairman, Leadership Code Commission (LCC)	
	Sir A. R. Palmer	Chairman, JLSC	
	Joe Poraiwai	Ombudsman, Office of Ombudsman	
	Ronald bei	Director of Public Prosecution (DPP), ODPP, MJLA	
1:30pm – 4:30pm	Talasila		
	Florence Joel	Chief Legal Officer, ODPP, MJLA	
	Willy Vaiyu	Legal Officer, ODPP, MJLA	
	Elma Veenah Rizzu	Legal Officer, ODPP, MJLA	
	Droumand Rupert	Secretary, PSC, MPS	
	Dismus Orihao	Manager Corporate, OAG	
	Ian Vaevaso	Director, NCID, MPNS&CS	
	Edmond Sikua	PS, MPNSCS	
	Frank Prendergast	Commissioner, RSIPF, MPNSCS	
	Pamela Wilde	Legal Policy Adviser, MJLA	
	Albert Kabui	Assistant Registrar, ORPPC	
	Sir Paul Tovua	Chairman, PPC	
	Fri 22 April 2016 9:30am – 12:00pm	Ruth Liloqula	Commissioner, TSI
Tony Hughes		Member, TSI Board	
Alphonsus Pero		CEO (Ag), SIEC Office, MHA	
Casper J. Fa'asala		Advocator for Women in Leadership, NCW	
Fredrick Bosoboe		PAO/Operations, MHA, SIEC Office	
Robert Zutu		Chairman, DSE	
Emily Peoa		Staff-FO, NCW	
Phil Whelan		Strategic Adviser, SIEC Office	
Dr. Patricia Rodie		Commissioner, PPC	
Rev. Philimon Riti		Commissioner, PPC	
Sat 23 April 2016		Frank Paulsen	Chairman, LRC
		Philip P. Kanairara	Chief Legal Officer, LRC

10:00am – 12:30pm

Mose Saitala
Catriona Steele
Derek Futaiasi

Chief Technical Adviser, OPMC
Legal Draftsman, AG Chambers
DSPM, OPMC

Appendix 2: Minutes of Proceedings



NATIONAL PARLIAMENT OF SOLOMON ISLANDS

BILLS AND LEGISLATION COMMITTEE

P.O. Box G19,
Honiara.

Tel: 28520/23424.

Fax: 24272

Minutes of Proceedings

Committee Hearing into the Anti-Corruption and Whistleblower Protection Bill 2016

Day 1/Wednesday 20th April 2016, CR II, Parliament House 10:05am.

1. Members Present

Hon. Connelly Sandakabatu, MP (Chairman)

Hon. Jeremiah Manele, MP

Hon. Dr CulwickTogamana, MP

Hon. Dr Derek Sikua, MP

Hon. Matthew C. Wale, MP

Hon. Commins A. Mewa, MP

Apologies

Hon. Rick Hou, MP

Hon. Steve Abana, MP

Hon. Namson Tran, MP

Secretariat

Wilson Anii

Salome Pilumate

2. Welcome and Opening Remarks

Hon. Jeremiah Manele said the opening prayer

The Chairman made opening remarks and welcomes the SSPM, Chairman and Commissioners of LRC and other officials from the OPMC and the Attorney Generals Chamber. He then invites the SSPM to introduce his group and made his presentation.

3. Committee hearing into the Anti- Corruption and Whistleblower Protection Bill 2016

The Hearing proper commenced and the following witnesses were admitted:

Hearing 1 Witnesses

Frank Paulsen	Chairman, Law Reform Commission (LRC)
Andrew D. Muaki	Special Secretary to PM (SSPM), OPMC
Pamela Wilde	Legal Policy Adviser, MJLA
Catriona Steele	Legal Draftsman, AG Chambers
Waeta Ben Tabusasi	Commissioner, LRC
Philip kanairara	Chief Legal Officer, LRC
Derek Futaiasi	Deputy SPM, OPMC
Rev. Philemon Riti	Commissioner, LRC
Georgie M ^c Arthur	LRC Lawyer, LRC

Mose Saitala Chief Technical Adviser, OPMC

The SSPM, Chair of LRC with assistance from the AG Chambers made their presentation before the committee.

The Committee questioned the officials and the Legal Draftsman on the contents of the Bill.

The his officials answered, made clarification and commented on the Bill.

Evidence concluded and the Chair thanks the witnesses for their attendance and contribution on the Bill.

4. Adjournment

Closing remarks from the Chair

The Committee hearing closed at 4:30pm.

Day 2 /Thursday 21 April 2016, CR II, Parliament House 10:55am.

1. Members Present

Hon. Cornelly Sandakabatu, MP (Chairman)

Hon. Jeremiah Manele, MP

Hon. Dr CulwickTogamana, MP

Hon. Matthew C. Wale, MP

Apologies

Hon. Dr Derek Sikua, MP

Hon. Rick Hou, MP

Hon. Steve Abana, MP

Hon. Commins A. Mewa, MP

Hon. Namson Tran, MP

Secretariat

Wilson Anii

Salome Pilumate

2. Welcome and Opening Remarks

Hon. Jeremiah Manele said the opening prayer

The Chairman made opening remarks and welcomes the SSPM and other officials from the OPMC the Attorney Generals Chamber, the Law Reform Commission and the MJLA. He then invites questions from Committee members to the witnesses on the clauses of the Bill.

3. Committee hearing into the Penal Code (Amendment) (Sexual Offences) Bill 2016

The Hearing proper commenced and the following witnesses were admitted:

Hearing 1 Witnesses still Continue

Frank Paulsen	Chairman, Law Reform Commission (LRC)
Andrew D. Muaki	Special Secretary to PM (SSPM), OPMC
Pamela Wilde	Legal Policy Adviser, MJLA
Catriona Steele	Legal Draftsman, AG Chambers
Waeta Ben Tabusasi	Commissioner, LRC
Philip kanairara	Chief Legal Officer, LRC
Derek Futaiasi	Deputy SPM, OPMC
Rev. Philemon Riti	Commissioner, LRC
Georgie M ^c arthur	LRC Lawyer, LRC
Mose Saitala	Chief Technical Adviser, OPMC

The SSPM with assistance from the AG Chambers made his presentation before the committee. The Committee questioned the OPMC officials and the Legal Draftsman on the matters raised by other representatives and in submissions received by the Committee

The SSPM and his officials answered, made clarification and commented on these matters.

Evidence concluded and the Chair thanks the witnesses for their attendance and contribution on the Bill.

Hearing suspended.

The Hearing resumed at 2:55pm and the following witnesses were admitted:

Hearing 2 Witness

Solomon Kalu	Chairman, Leadership Code Commission (LCC)
Sir A. R. Palmer	Chairman, JLSC
Joe Poraiwai	Ombudsman, Office of Ombudsman
Ronald bei Talasasa	Director of Public Prosecution (DPP), ODPP, MJLA
Florence Joel	Chief Legal Officer, ODPP, MJLA
Willy Vaiyu	Legal Officer, ODPP, MJLA
Elma Veenah Rizzu	Legal Officer, ODPP, MJLA

The Chairman made opening remarks and invites the witnesses to introduce themselves and make their presentations.

Members of the Committee then question the witnesses on their presentations.

Evidence concluded and the Chair thanks the witnesses for their attendance and contribution on the Bill.

4. Adjournment

Closing remarks from the Chair

The Committee hearing closed at 4:30pm.

Day 3/ Friday 22April 2016, CR II, Parliament House 10:55am

1. Members Present

Hon. Connelly Sandakabatu, MP (Chairman)

Hon. Jeremiah Manele, MP

Hon. Dr Culwick Togamana, MP

Hon. Matthew C. Wale, MP

Apologies

Hon. Dr Derek Sikua, MP

Hon. Commins A. Mewa, MP

Hon. Rick Houenipwela, MP

Hon. Steve Abana, MP

Hon. Namson Tran, MP

Secretariat

Wilson Anii

Salome Pilumate

2. Welcome and Opening Remarks

Hon. Dr Culwick Togamana said the opening prayer

The Chairman made opening remarks and welcomes the witnesses and invites them to make their presentations.

3. Committee hearing into the Anti-Corruption Bill 2016 and the Whistleblower Protection Bill 2016

The Hearing proper commenced and the following witnesses were admitted:

Hearing 3 Witness

Droumand Rupert	Secretary, PSC, MPS
Dismus Orihao	Manager Corporate, OAG
Ian Vaevaso	Director, NCID, MPNS&CS
Edmond Sikua	PS, MPNSCS
Frank Prendergast	Commissioner, RSIPF, MPNSCS
Pamela Wilde	Legal Policy Adviser, MJLA

The Chairman made opening remarks and invites the witnesses to introduce themselves and make their presentations.

Members of the Committee then question the witnesses on their presentations.

Evidence concluded and the Chair thanks the witnesses for their attendance and contribution on the Bill.

Hearing suspended.

The Hearing resumed at 1:55pm and the following witnesses were admitted:

Hearing 4 Witnesses

Albert Kabui	Assistant Registrar, ORPPC
Sir Paul Tovua	Chairman, PPC
Ruth Liloqula	Commissioner, TSI
Tony Hughes	Member, TSI Board
Alphonsus Pero	CEO (Ag), SIEC Office, MHA
Casper J. Fa'asala	Advocator for Women in Leadership, NCW
Fredrick Bosoboe	PAO/Operations, MHA, SIEC Office
Robert Zutu	Chairman, DSE
Emily Peoa	Staff-FO, NCW
Phil Whelan	Strategic Adviser, SIEC Office
Dr. Patricia Rodie	Commissioner, PPC
Rev. Philimon Riti	Commissioner, PPC

The Chairman made opening remarks and invites the witnesses to introduce themselves and make their presentations.

Members of the Committee then question the representatives on their presentations.

Evidence concluded and the Chair thanks the witnesses for their attendance and contribution on the Bill.

4. Adjournment

Closing remarks from the Chair

The Committee hearing closed at 4:30pm.

Day 4/ Saturday 23 April 2016, CR II, Parliament House 9:55am

1. Members Present

Hon. Connelly Sandakabatu, MP (Chairman)

Hon. Jeremiah Manele, MP

Hon. Dr Culwick Togamana, MP

Hon. Matthew C. Wale, MP
Hon. Commins A. Mewa, MP

Apologies

Hon. Dr Derek Sikua, MP
Hon. Rick Houenipwela, MP
Hon. Steve Abana, MP
Hon. Namson Tran, MP

Secretariat

Wilson Anii
Salome Pilumate

2. Welcome and Opening Remarks

Hon. Dr Culwick Togamana said the opening prayer

The Chairman made opening remarks and welcomes the witnesses and invites them to make their presentations.

3. Committee hearing into the Anti-Corruption Bill 2016m and the Whistleblower Protection Bill 2016

The Hearing proper commenced and the following witnesses were admitted:

Hearing 5 Witness

Frank Paulsen	Chairman, LRC
Philip P. Kanairara	Chief Legal Officer, LRC
Mose Saitala	Chief Technical Adviser, OPMC
Catriona Steele	Legal Draftsman, AG Chambers
Derek Futaiasi	DSPM, OPMC

The Chairman made opening remarks and invites the witnesses to introduce themselves and make their presentations.

Members of the Committee then question the representatives on their presentations.

Evidence concluded and the Chair thanks the witnesses for their attendance and contribution on the Bill.

4. Adjournment

Closing remarks from the Chair

The Committee hearing closed at 12:24pm.

Appendix 3: Submissions

No	Author
1.	Law reform Commission (LRC), Corruption Offences, Submission 3a.
2.	LRC, Comments on Anti-corruption Bill 2016, Submission 4.
3.	LRC, Comments on the Whistleblower Protection Bill 2016, submission 5.
4.	OPMC, Bills Checklist, Submission 7a.
5.	OPMC, Report to BLC on Making of Anti-Corruption Bill 2016 and Whistleblower Protection Bill 2016, Submission 7b.
6.	OPMC, Annex 1 Consolidated Report on Nationwide Consultation on Political Integrity and stability Issues in Sol Is, Submission 7c.
7.	OPMC, Annex 2, DCCG policy on Anti-Corruption, Submission 7d.
8.	OPMC, Annex 3, SILRC, Review of the Penal Code and Criminal Procedure Code, 1st Interim Report, Corruption Offences parts x and xxxviii of the Penal Code 2011, Submission 7e
9.	OPMC, Annex 4, Executive Summary of Sol Is Key findings Under UN Convention Against Corruption Review Mechanism, Submission 7f
10.	OPMC, Annex 5, Chap 12 of Constitution of Federal Republic of Sol Is 2014 "Independent Commissions and Offices", Submission 7g.
11.	OPMC, Annex 6, Sol Is Corruption Rank 2007-2016, Submission 7h

