

National Parliament of Solomon Islands

Bills and Legislation Committee

Committee Report

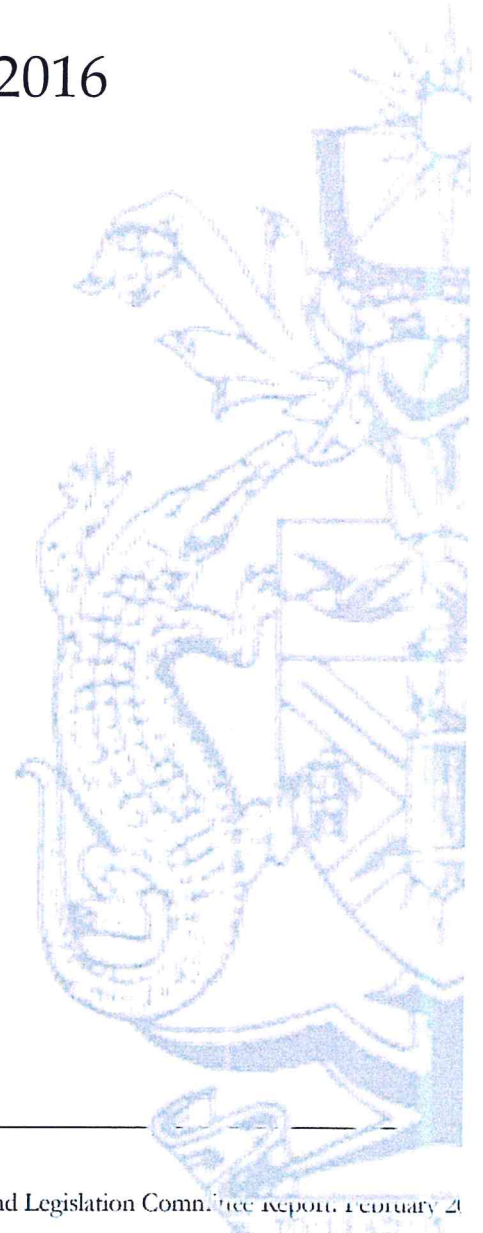
Report on the Ombudsman Bill 2016
(No. 17 of 2016)



NP-Paper No. 4 of 2017

Presented on 20th February 2017

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. Dr Derek Sikua, MP

Hon. Rick Houenipwela, MP

Hon. Matthew C. Wale, MP

Hon. Dr Culwick Togamana, MP

Hon. Steve Abana, MP

Hon. Commins A. Mewa, MP

Hon. Peter Tom, MP

Hon. Namson Tran, MP

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Mr Wilson Anii

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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, Sir it is an honour and pleasure for me to present the Report of the Bills and Legislation Committee on its Inquiry into the **Ombudsman Bill 2016 (National Paper No.17 of 2016)**, for laying before Parliament.

A handwritten signature in black ink, appearing to read 'Connelly', written over a horizontal line.

Hon. Connelly Sandakabatu

Chairman

Bills and Legislation Committee

20th February, 2017

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

A priority policy intention of the Democratic Coalition for Change Government (DCCG) includes providing a vibrant, prudent and accountable Government. Integrity institutions play an important role in ensuring this can be achieved. This Bill is one of a number of bills to strengthen each of integrity institutions.

The role of the Ombudsman is important to ensuring citizens are treated fairly and justly by government agencies in their exercise of administration. It is therefore critical that qualifications for appointment to this important office set a high standard. However, section 96 of the Constitution that deals with the appointment of the Ombudsman does not set any qualifications or allow Parliament to set qualifications for appointment. Therefore, consistent with the Constitution, this Bill sets no minimum qualifications for appointment to the office of Ombudsman. The Committee urges government to consider amending the Constitution to allow such minimum qualifications to be set either in the constitution, or better still in legislation.

The Committee commends the Office of the Ombudsman for the good work it continues to do in ensuring that aggrieved citizens can have their complaints investigated and recommendations made to improve the conduct of administration.

The Committee urges the government to resource the Ombudsman's adequately so that it can perform its mandate effectively. The Committee notes there is a backlog of cases pending for investigations because of resource constraints.

The Committee notes with interest the establishment of Focal Points across the public service and in the provincial administrations. The Committee commends this creation which has increased the reach of the Ombudsman beyond its office. However, the Committee is concerned that officers performing the role of Focal Point for the Ombudsman are doing it on a voluntary basis, which clearly affects their ability to be more active and committed. The Committee regrets that this arrangement will remain the same under the proposals in this Bill. Such officers ought to be appropriately remunerated.

The Committee fully supports the intentions under the Bill to give financial and administrative autonomy to the Office of the Ombudsman.

The Ombudsman Bill 2016 is a well-crafted response to mal-administration and corruption. Through its collaborative efforts with the RSIPF, DPP, LCC, the Ombudsman will play an important role in the

fight against corruption in the public sector. The features of the Bill that will enable the Ombudsman to be effective are:

- a) The Ombudsman will be able subpoena evidence, without warrant from a Court
- b) The Ombudsman will be able to subpoena witnesses, without a warrant from a Court
- c) Heavy penalties are imposed for non-compliance with a request for attendance before the Ombudsman or request for evidence/information
- d) The Ombudsman will be able to enter into collaborative arrangements with other key agencies like the RSIPF, DPP, LCC, and the Public Service ministry
- e) The Ombudsman will be able to refer matters that fall outside its mandate to the relevant agencies such as the RSIPF, DPP, LCC

Whilst the mandate of the Ombudsman will remain focussed on mal-administration, the Bill will succeed at allowing the Ombudsman to be an opening into other potentially corrupt/criminal investigations. The Committee welcomes this and sees it as a good response as part of the series of measures necessary to fight corruption.

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1.0 INTRODUCTION

This report outlines the findings and recommendations by the Bills and Legislation Committee (“the Committee”) of its inquiry into the Ombudsman Bill 2016.

In compliance with the Standing Orders, as well as to fulfil the Legislature’s oversight role the report is compiled to assist Members of Parliament in their debate of the Bill in the House. The report highlights issues raised during the inquiry and outlines the Committee’s views on such issues.

The Committee conducted its inquiry into the Bill on the 23rd and 24th January, 2017. All hearings were held at the Conference Room II of the Parliament House and were open to the public. The list of witnesses who appeared before the Committee and the minutes of those hearings are listed in Appendices 1 and 2 respectively of this report. There was only one Written Submission received during the inquiry.

The Committee sincerely thanks the Office of the Ombudsman and the Office of the Prime Minister and Cabinet (Sponsoring Ministry), the Office of the Leadership Code Commission, the Office of the Director of Public Prosecutions, the Office of the Public Solicitor and the Attorney General’s Chambers for providing the Committee with valuable evidence.

2.0 BACKGROUND INFORMATION

2.1 The Office of the Ombudsman Solomon Islands

The Office of the Ombudsman Solomon Islands², was established as an independent body under Chapter IV of the Constitution, 1978. Section 97 (1)(a) – (c) of the Constitution mandates the Ombudsman to “enquire into the conduct of any personin the exercise of his office or authority or the abuse thereof; assist in the improvement of practices and procedures of public bodies; and ensure the elimination of arbitrary and unfair decisions”.

In the last 35 years, the Office of the Ombudsman has responded to written complaints received by the Office. Section 97((3) outlines the government agencies that are subject to the Ombudsman’s mandate. It also empowers Parliament to prescribe any other government agencies. The Bill proposes to do this in Clause 5(3).

The Ombudsman has, for a long time, struggled to fulfil his mandate, seriously constrained by inadequate resourcing. It is important to build the capacity of the Office to ensure that it can effectively fulfil its mandate.

It is necessary that the Office be given autonomy in order for it to be totally impartial and be able to operate without fear or favour.

The Office undertook a review of the current legislation. In 2015 consultations were held on the new Bill in all provinces, except for Renbel Province due to financial difficulties. In the consultation period it conducted 13 workshops on the Bill for public servants, civil society organisations and community leaders which attracted strong interest and support for the Bill.

The Bill seeks to repeal the current *Ombudsman (Further Provision) Act 1980* in its entirety. The objectives of the Bill are in line with the legislative reform agenda of the Democratic Coalition for Change Government policy priority (Part 4.1(a) and (c) [Policy Statements, Strategy and Translations] which aspires to provide a vibrant, prudent and accountable Government to “*oversee efficient and effective conduct of oversight institution to eradicate corruption at all levels in the country*” and “*review and strengthen anti- corruption legislations and related subsidiary legislations*”.

²http://www.pacificombudsman.org/__data/assets/pdf_file/0013/2434/Roles_and_functions_ombudsman.pdf

2.2 Objectives of the Bill

The Bill seeks to:

- (a) Repeal and replace the current Ombudsman (Further Provisions) Act (Cap.88) to give effect to the Constitutional independence and mandate of the Office of the Ombudsman in an improved manner;
- (b) Ensure there is continuity in the functions of the Ombudsman even in cases where the position of the Ombudsman is vacant;
- (c) Ensure there is more responsiveness on the part of prescribed persons and bodies in relation to implementing the recommendations of the Ombudsman;
- (d) Provide more transparency, accountability and protection from arbitrary and unfair decisions by prescribed persons or bodies against citizens and residents of Solomon Islands.

The passage of this Bill will secure some level of financial and administrative autonomy to enhance the Office of the Ombudsman's capability to implement its mandate.

2.3 Commencement Date

Although the Bill's commencement will be on a date to be determined by the Minister, the Ombudsman indicated that it is expected to be commenced in July 2017.

3.0 ISSUES DISCUSSED

A number of issues were raised during the inquiry and the Committee's deliberations on the Bill.

3.1 Administrative Issues

Establishment and Appointment of the Ombudsman

The Office of the Ombudsman in Solomon Islands is established by the Constitution³ and is a public office governed by the *Ombudsman (Further Provision) Act 1980*. The Ombudsman is appointed by the Governor General upon the advice of a committee comprising the Chairman of the Public Service Commission, the Chairman of the Judicial and Legal Service Commission and the Speaker of Parliament.

Committee Comment

The Committee acknowledges that the Constitution does not set minimum requirements/standards as qualifications for appointment as Ombudsman. It is therefore difficult for the Bill to set any such qualifications. However, the Committee is of the view that the Constitution be amended to allow for such qualifications to be set – either in the Constitution itself or in an Act of Parliament. Any such qualifications are to state the exclusion of persons with prior convictions.

Recommendation 1

The Committee recommends that government consider amending the constitution to set qualification/disqualification standards for eligibility for appointment as Ombudsman.

Role of the Office of the Ombudsman

The traditional role of the Office of the Ombudsman is to investigate reports of mal-administration. Governmental power, administrative processes and decision making must be exercised with due care. Any citizen that suspects that they have been treated unfairly by a government agency may lodge a complaint with the Ombudsman. This is important to ensuring that powers of the government are not abused nor used in a manner that is arbitrary and unfair on citizens.

³ Section 96 of the Constitution of the Solomon Islands, 1978, page 68

The conduct of investigations by the office of the Ombudsman may include:

- Summoning information from government agencies;
- Entry into official premises to collect information; or
- The collection of any document or items that may be useful in its investigations.

The Ombudsman may summon witnesses. The Ombudsman may refuse to investigate a complaint if:

- it appears that the complaint is trivial, frivolous;
- the complainant has no sufficient personal interest; or
- the complaint is more than 12 months old.

Where the findings warrant, the Office then makes recommendations on remedial action to the Office of the Prime Minister and or to the concerned ministry.

The Committee was informed that where its recommendations are not adhered to, the Office of the Ombudsman must report on the matter to Parliament. The Committee notes that this Bill seeks to provide further powers to the Office to enforce implementation of recommendations.

It was reiterated during the hearing that strengthening the roles and functions of the Office is vital in enabling citizens to hold their government accountable. This is fundamental in a democracy such as in Solomon Islands. And the Committee affirms this important intention.

Collaboration with other integrity institutions

The Committee affirms the strengthening of the office of the Ombudsman as proposed in this Bill and looks forward to further reforms to the Leadership Code Commission in the same direction. It is important that these two institutions collaborate with each other, the RSIPF and the DPP to ensure maximum sharing of information and resources. Such collaboration must extend to include the Solomon Islands Anti-Corruption Commission, once established.

Recommendation 2

The Committee recommends that an administrative mechanism be established to facilitate collaboration between integrity institutions, to enhance resource and information sharing.

Office Capacity

In evidence, the Committee was informed that the Office receives an increasing demand for its services. Currently, the Office receives on average 300⁴ complaints a year and has reported an accumulated backlog. The Committee noted that this is an overwhelming number of complaints which is managed by a very lean staff.

The Committee noted that the Bill will enable the Office to address its capacity issues by expanding on its current staff establishment and to recruit accordingly. This would also take into account the recruitment of qualified personnel suited for various technical and specific tasks. The Office anticipates these increases to be introduced by 2018.

The Committee was informed that previously the Office engaged public servants who are posted in the provincial headquarters to perform investigations in the provinces on behalf of the Ombudsman. These public officers are referred to as the “Focal Point Personnel”, who provide assistance on an *ad hoc* and voluntary basis. The Committee is concerned that in a situation where there is conflict of interest, proper investigation of complaints will be compromised under such arrangements

Committee Comment

The Committee supports the need for the Ombudsman to have a strong presence and reach in all Provinces. However, the Committee is of the view that the time has come for the Ombudsman to have his own staff in the provinces. Where Focal Point Personnel are used – these should be remunerated for their work and clear guidelines are set to avoid conflicts of interest situations.

Recommendation 3

The Committee recommends that the Ombudsman has at least one of his own officers in each of the nine provinces. And where Focal Point Personnel are still used, that guidelines are established to protect the integrity of the Ombudsman and its mandate from being brought into disrepute.

Recommendation 4

The Committee recommends that the Ministry of Public Service and the Ministry of Finance and Treasury work together with the Office of the Ombudsman to urgently pursue recruitment within the next 12 Months.

⁴ Porowai J, Evidence, 24th January 2017

Financial/Administrative Autonomy

The Office of the Ombudsman is currently funded and administered through the Office of the Prime Minister and Cabinet. It is noted that this arrangement has raised doubts, not only in terms of the integrity, but also on the effectiveness and efficiency of the Office. Furthermore, under current arrangements, the Ombudsman is usually in the awkward situation where it depends on the Prime Minister's Office for funding of his investigations into and reports on maladministration of government affairs.

The Committee heard that the Bill seeks to strengthen the financial and administrative autonomy of the Office of the Ombudsman. The Bill designates the Ombudsman as an accountable officer and gives power to the Office to develop and implement its own budget. The Bill proposes financial autonomy to strengthen the independence of the Ombudsman's office and to ensure effective and efficient systems in its operations. The Bill will provide the Ombudsman with a separate budget head and obligates the government through the Ministry of Public Service to provide the Ombudsman's office with adequate staff and other necessary resources.

The Bill also provides for administrative powers to the Ombudsman to control the Office operational affairs more independently. For example being able to determine their own activities and to make recruitment. These provisions are deemed necessary for an efficient and effective Ombudsman Office.

The Committee noted that these reforms are consistent with the policy intentions of the DCC Government in its quest to promote good governance.

Committee Comment

The Committee supports the intentions for an independent administrative operation of the Office of the Ombudsman. It notes this would safe guard that Office from external interference and other influences which may undermine the integrity of investigations by the Office as well as public confidence in the Ombudsman.

Recommendation 5

The Committee recommends that upon the enactment of this Bill the Ombudsman, the Ministry of Public Service, PMO, and the Ministry of Finance work out administrative

arrangements that will give effect to the autonomy requirements imposed by this Bill.

3.2 Conduct of Investigations

Who conducts investigations?

The Bill stipulates that only “Authorised Officers” appointed by the Ombudsman can conduct investigations. And these are staff members of his office. Authorised Officers will be required to carry appropriate identity cards and present these, if asked to do so.

The Committee is of the view that Authorised Officers ought to be required to present their identity card, even without being asked.

Medium for recording of complaints

The Committee heard that the current mode of recording complaints is oral and in written form. Templates for recording of complaints are provided. Complaints are taken under oath and are vetted by the complainant. Concern was raised that relevant provisions should be made in the Bill to include other modern forms of recording instead of relying on written form.

Immunities to investigation

The Committee notes that Clause 5(3)(c) may be ultra vires of Section 97 of the Constitution which exempts the DPP and the Governor General from the mandate of the Ombudsman.

In evidence, the Director of Public Prosecutions was very concerned by the effect of Clause 5(3)(c) and states that the constitutional exemption be respected to ensure that his office can continue to discharge its mandate as intended in the Constitution.

Parliament as a legislative body and Members of Parliament in terms of their legislative roles are also not subject to the investigations of the Office of the Ombudsman. However, Parliamentarians can be investigated in their role as managers of public funds under the Ministry of Rural Development.

Referrals

The Committee was informed that the Office of the Ombudsman only deals with maladministration, and not corruptions. On instances where a reported maladministration may be deemed as corruption or criminal, such cases may be referred to other agencies.

Committee Comments

The Committee is concern that the method for recording of evidence as prescribed by the Bill may limit the Office of the Ombudsman from the usage of other modern medium of recording.

With regards to engaging expertise, the Committee acknowledges that the Bill will enhance the role of the Ombudsman to investigate specific complaints, when and where it is required.

The Committee is concerned that the Bill needs to be aligned with Section 97(3) of the Constitution. The Committee notes that this clause is not clear on its intentions under Clauses 5(3)(c) which may be misinterpreted to also include, the Office of the Governor Generals, the office of the Director of Public Prosecution and Parliament.

Recommendation 6

The Committee recommends that the Bill be amended in Clause 5(3)(c) as follows, the words "subject to section 97 of the constitution" be inserted before the words "a body of office...".

Recommendation 7

The Committee recommends that the Bill makes provision for the usage of other medium of recording.

3.3 Liaisons with other Agencies

It is noted that the Bill limits the conduct of investigations to the Office of the Ombudsman only. But it allows the Ombudsman to refer matters that, in the course of an investigation or in the nature of a complaint that fall outside his mandate to relevant agencies.

The Committee notes that Clause 8 (1) (2) authorises the Ombudsman to enter into lawful arrangement with another institution for purposes of carrying out his or her powers and functions. This mechanism will enable the Ombudsman to, among other things, collaborate with another body in areas such as developing of rules, procedures and codes of conduct to any local body to strengthen the Ombudsman's investigations.

This mechanism would enhance timely responsiveness from the body investigated to the Ombudsman's requests and recommendations.

3.4 Penalties

The Committee notes the hefty penalties imposed in the Bill and supports it. This will encourage responsiveness to requests by the Ombudsman for information or attendance for questioning.

Recommendation 8

The Committee affirms the need to impose high penalties to discourage non-compliance with requests by the Ombudsman. The Committee recommends the establishment of an administrative register to record all requests issued by the Ombudsman and incidents of compliance or otherwise to such requests.

4.0 RECOMMENDATIONS

Based on the evidences collected at the hearing, the Committee makes the following recommendations:

Recommendation 1

The Committee recommends that government consider amending the constitution to set qualification/disqualification standards for eligibility for appointment as Ombudsman.

Recommendation 2

The Committee recommends that an administrative mechanism be established to facilitate collaboration between integrity institutions, to enhance resource and information sharing.

Recommendation 3

The Committee recommends that the Ombudsman has at least one of his own officers in each of the nine provinces. And where Focal Point Personnel are still used, that guidelines are established to protect the integrity of the Ombudsman and its mandate from being brought into disrepute.

Recommendation 4

The Committee recommends that the Ministry of Public Service and the Ministry of Finance and Treasury work together with the Office of the Ombudsman to urgently pursue recruitment within the next 12 Months.

Recommendation 5

The Committee recommends that upon the enactment of this Bill the Ombudsman, the Ministry of Public Service, PMO, and the Ministry of Finance work out administrative arrangements that will give effect to the autonomy requirements imposed by this Bill.

Recommendation 6

The Committee recommends that the Bill be amended in Clause 5(3)(c) as follows, the words "subject to section 97 of the constitution" be inserted before the words "a body of office...".

Recommendation 7

The Committee recommends that the Bill makes provision for the usage of other medium of recording.

Recommendation 8

The Committee affirms the need to impose high penalties to discourage non-compliance with requests by the Ombudsman. The Committee recommends the establishment of an administrative register to record all requests issued by the Ombudsman and incidents of compliance or otherwise to such requests.

END OF REPORT

5.0 APPENDICES

Appendix 1: Witnesses

Date	Name	Position & Organization
23th Jan 2017	Mr Joe Porowai	Ombudsman, Office of the Ombudsman
	Mr Nelson O Dhita	Director Legal, office of the Ombudsman
	Ms Catriona Steele	Legal Drafter, Office of the Attorney General
24 th Jan 2017	Mr Joe Porowai	Ombudsman, Office of the Ombudsman
	Mr Nelson O Dhita	Director Legal, office of the Ombudsman
	Ms Catriona Steele	Legal Drafter, Office of the Attorney General
	Mr Solomon Kalu	Chairman, Leadership Code Commission
	Mr Douglas Hou	Director , Public Solicitor
	Mrs Sirepu Ramosaea,	Principal Legal Officer
	Mr Ronald Bei Talasasa,	Director, Public Prosecution

Appendix 2: Minutes of Proceedings



NATIONAL PARLIAMENT OF SOLOMON ISLANDS

BILLS AND LEGISLATION COMMITTEE

P.O. Box G19,
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BILLS AND LEGISLATION COMMITTEE

Minutes of Proceedings
Committee Hearing No: 01

Monday 23rd January 2017, Parliament Conference Room II, 9:55am

1. Members Present

Hon. Connelly Sandakabatu (chairman)
Hon. Matthew Wale
Hon. Jeremiah Manele
Hon. Rick Houenipwela
Hon. Dr Culwick Togamana

2. Absent/Apologies

Hon. Peter Tom
Hon. Dr Derek Sikua
Hon. Namson Tran
Hon. Commins Mewa
Hon. Steve Abana

3. Support Staff

Mr Marson Lilopeza, Committee Secretariat
Mr Wilson Anii, Committee Secretariat
Mr Wilson Orisi, Committee Secretariat
Ms Salome Pilumate, Committee Secretariat
Mr Lawrence Scott, Media Officer
Mr Marlon Keni, Hansard Officer

4. Inquiry into Ombudsman Bill 2016

The Chairperson made the opening statement. The Chair informs the witnesses of the Parliamentary privileges.

The following witnesses were examined;

Mr Joe Pora'awai (Ombudsman – Ombudsman office)
Mr Nelson O Dhita (Director Legal Service –Ombudsman office)
Ms Catriona Steele (Legal Drafts Lady – Attorney general Office)

The witnesses made their presentation before the Committee. The Chairman adjourns the hearing to 9:30 am Tuesday 24th January 2017.

5. Adjournment

The hearing adjourned at 10:10am

Minutes of Proceedings
Committee Hearing No: 02

Tuesday 24th January 2017, Parliament Conference Room II, 9:33am

1. Members Present

Hon Connelly Sandakabatu - (Chairman)
Hon Rick Houenipwela
Hon Derek Sikua
Hon Culwick Togamana
Hon Jeremiah Manele

2. Absent/Apologies

Hon. Matthew Wale
Hon. Peter Tom
Hon. Namson Tran
Hon. Commins Mewa
Hon. Steve Abana

3. Support Staff

Ivory Iruha'a, Committee Secretariat
Mr Lawrence Scott, Media Officer
Mr Ignatius Talifilu, Hansard Officer

4. Inquiry into Ombudsman Bill 2016

The Chairperson made the opening statement. The Chair informs the witnesses of the Parliamentary privileges.

The following witnesses were examined;

Mr Joe Pora'awai (Ombudsman – Ombudsman office)
Mr Nelson O Dhita (Director Legal Service –Ombudsman office)
Ms Catriona Steele (Legal Drafts Lady – Attorney general Office)

The Committee conclude their examination and suspended for lunch at 11:13am

The meeting resumes at 2:05pm.

The following witnesses were examined;

Mr Solomon Kalu, Chairman Leadership Code Commission
Mr Douglas Hou, Public Solicitor
Mr Ronald Bei Talasasa, Director Public Prosecution
Mrs Sirepu Ramosaea, Principal Legal Officer

The witnesses made their presentation before the Committee. The Committee questioned the witnesses based on evidences presented. Evidence concluded and witnesses withdrew.

5. Adjournment

The hearing adjourned at 3:38pm.

Appendix 3: List of Submissions

Sub No.	Date	Title of Submission	Organisation/ Persons
1	23/01/17	Ombudsman's presentation on the Ombudsman Bill 2016	Office of the Ombudsman

