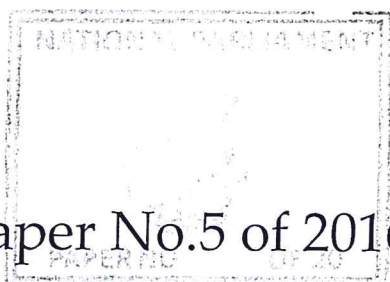


National Parliament of Solomon Islands

Bills and Legislation Committee

Committee Report

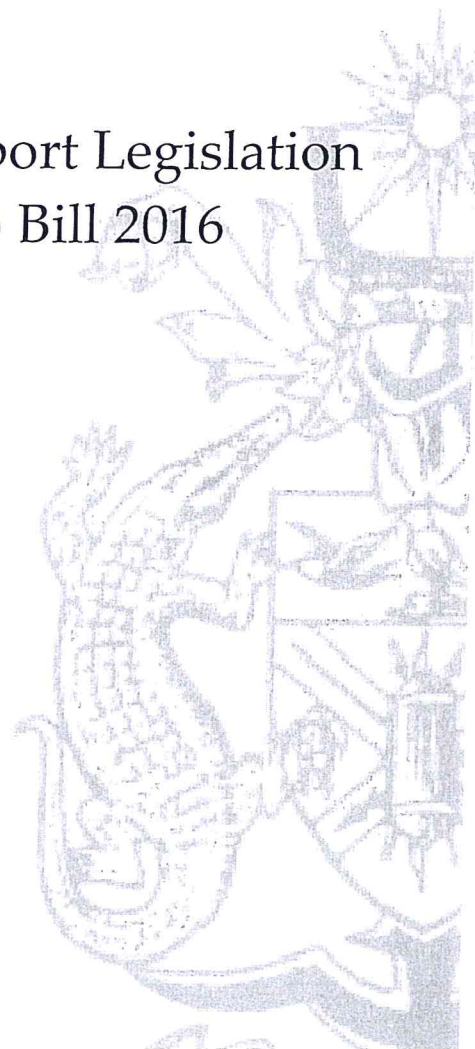
Report on the Police and Transport Legislation
(Amendment) (Alcohol Testing) Bill 2016
(No.2 of 2016)



NP-Paper No.5 of 2016

Presented on 29 April 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. Dr Derek Sikua, MP

Hon. Matthew C. Wale, MP

Hon. Steve Abana, MP

Hon. Commins A. Mewa, MP

Hon. Peter Tom, MP

Hon. Namson Tran, MP

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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, it is an honour and pleasure for me Sir, to present the Report of the Bills and Legislation Committee on the Inquiry into the **Police and Transport Legislation (Amendment) (Alcohol Testing) Bill 2016** for laying before Parliament.

A handwritten signature in black ink, appearing to read 'Connelly', written over a large, stylized circular flourish.

Hon. Connelly Sandakabatu

Chairman

Bills and Legislation Committee

29 April, 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”) had completed its inquiry into the Police and Transport Legislation (Amendment) (Alcohol Testing) Bill 2016 (“the Bill”) on 8 April.

The Bill seeks to amend the Police Act 2013, the Civil Aviation Act 2008, the Road Transport Act (Cap. 131) and the Shipping Act 1998, to provide for the testing of blood alcohol content in drivers and operators of vehicles, vessels and aircraft.

The Bill allows Police officers to stop drivers and operators, and require them to undergo a breath test using a prescribed device. The Bill creates offences for persons who operate vehicles, vessels and aircraft with a blood alcohol level of 50 milligrams or more per 100 millilitres of blood.

During inquiry into the Bill the Committee had been informed that driving under the influence of alcohol is currently against the law but there is widespread flouting of the current law. Under the current law, even if the police believe that a driver has been drinking, they must convince the court that they have a factual reasonable basis for that belief. This is often challenged by the defence and there is no objective evidence or sobriety test that can be applied that is universally accepted as evidence by courts.

During further discussions on the contents of the Bill, Committee members raised the following; calibration of the prescribe device, cautioning of first time offenders, testing for other narcotics substances, Police officers conduct in implementing the Bill and the Bills purported infringement of personal liberties under clause 111D (2) (b).

The Committee is concerned that consultation had not been done regarding the above infringement on personal liberties. Though what the clause state is common practise in other jurisdictions, the Committee is concern that it is incumbent on the government, sponsoring ministry or agencies to consult and seek the public views on such infringement.

Generally the Committee agrees with the policy intention of the Bill, which is to deter drivers and operators from driving a vehicle or operating a vessel or aircraft under the influence of alcohol. The Committee approves the Bill and commends it to the house for passing.

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1.0 INTRODUCTION

This Report contains the findings and recommendations of the Bills and Legislation Committee (“the Committee”) after having reviewed the **Police and Transport (Amendment) (Alcohol Testing) Bill 2016** (“the Bill”) as required under the Standing Orders of the National Parliament of Solomon Islands (“the Standing Orders”).

The Bill was received by the office of the Clerk on the 31st of March and endorsed by the Speaker on 1st April 2016.

The Committee resolved to conduct an inquiry into the Bill during its deliberative meeting held the 4th of April. Relevant stakeholders² were then invited to appear before the Committee and make presentations on the contents, policy matters, and intentions of the Bill.

Hearing into the Bill was held on the 8th 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.

²See Appendix 1

2.0 OBJECTIVES OF THE BILL

The object of the Bill is to amend the Police Act 2013, the Civil Aviation Act 2008, the Road Transport Act (Cap. 131) and the Shipping Act 1998 with the insertion of provisions to provide for testing of blood alcohol content in drivers and operators of vehicles, vessels and aircraft.

The Bill allows Police officers to stop drivers and require them to undergo a breath test using a prescribed device. The Bill creates offences for persons who drive or operate vehicles, vessels and aircraft with a blood alcohol level of 50 milligrams (mg) or more per 100 millilitres (ml) of blood.

The main purpose of this legislation is to reduce the number of drivers and operators affected by alcohol and reduce the damage, pain and suffering resulting in the accidents they cause. The legislation makes it easy for Police to detect these very dangerous drivers and operators to prosecute them and get them off the roads and our waterways. This greatly increases the protection and safety of all transport users.

3.0 SCOPE OF THE BILL

The Bill is divided into five parts. The first part deals with the Bill's short title and the commencement date.

The second part amends the Police Act 2013 by providing new definitions and inserting nine new clauses covering the following areas;

- power to conduct preliminary breath test,
- power to conduct additional breath test,
- when breath test must not be conducted,
- conduct of breath test,
- right to request blood test,
- evidentiary certificates,
- presumption as to concentration of alcohol, and
- consuming alcohol after accident or preliminary breath test.

The third part amends the Civil Aviation Act 2008 by creating an offence for aircraft operators if a concentration of alcohol is 50 (mg) or more in 100 (ml) of their blood.

The fourth part amends the Road Transport Act (cap. 131) by creating penalties for conviction in the Magistrates Courts and making it an offence if a driver of a motor vehicle have a concentration of alcohol is 50 (mg) or more in 100 (ml) of their blood.

Finally part five amends the Shipping Act 1998 by creating the same offence mentioned above for vessel operators and stating the penalties for the offence.

4.0 REASON FOR THE BILL

Current situation

Drinking and driving is a major road and water way safety issue throughout the world. Today it is an increasing problem for Solomon Islands (SI) because in recent years the country has experienced a rapid increase in the number of vehicles and drivers on roads. At the same time, (SI) also has a rapidly growing young population which increases the number of young and inexperienced drivers. The poor state of roads and the poor maintenance of vehicles also contribute to a high level of traffic accidents. When these risk factors are combined with a high level of alcohol impaired drivers, the results can be potentially very dangerous for all road users.

There is also increase in number of serious accidents, deaths and property damage is increasing and the government together with the Royal Solomon Islands Police Force (RSIPF) have a duty to address this problem and stop the carnage on roads. In the water ways, there is an increasing number of people travelling from their villages to the main centres. In the recent years SI has experienced increasing number of people missing at sea. Although bad weather is a common factor, alcohol impaired operators of boats also contribute to the loss of life.³

The proposal to introduce random breath testing for drivers is a response to the great public and police concern about the effects of drinking and driving. Driving under the influence of alcohol is currently against the law but there is widespread flouting of the current law. It is not working as a deterrent because drivers know there is very little chance for them to be caught and prosecuted⁴.

Under the current law, even if the police believe that a driver has been drinking, they must convince the court that they have a factual reasonable basis for that belief. This is often challenged by the defence and there is no objective evidence or sobriety test that can be applied that is

³ Edmond Sikua, PS, MPNSCS, oral evidence, 8 April, 2016

⁴ Ibid

universally accepted as evidence by courts. Unless a driver admits to drinking or is seen drinking, the case is very difficult to prove. It also means that police can only charge the drivers who are very obviously drunk and fail to detect those who have moderate levels of intoxication. These frustrations and the time consuming nature of drink-driving enforcement have led to reluctance by police to lay charges and resulted in very low number of convictions.⁵

Policy context and the proposed amendment

Random breath testing for drivers would significantly reduce the existing enforcement problems. The proposed random breath testing legislation will allow police to demand a breath sample from any driver or operator and would remove the requirement for reasonable suspicion. The problem of finding admissible evidence of intoxication and the problem of missing mildly impaired drivers and operators would both be eliminated. Thus, the proposed legislation would remove the two main obstacles to the detection and prosecution of alcohol impaired drivers and operators.⁶

Research from around the world has shown that having an offense of prescribed concentration of alcohol combined with random breath testing can dramatically reduce the number of drunk drivers and the number of road accidents and fatalities. Random breath testing at road sides screening stage is minimal intrusive. It is non invasive and only takes a few minutes. It is cheap and easy to administer and the readings are very accurate. It is 100 percent effective in detecting alcohol impaired drivers giving an accurate level of alcohol in their blood⁷.

⁵ Edmond Sikua, PS, MPNSCS, oral evidence, 8 April 2016

⁶ Ibid

⁷ Ibid

5.0 COMMITTEE OBSERVATIONS

The Committee in its scrutiny of the Bill discussed the following issues;

Calibration of prescribe device

The prescribed device recommended for use in this Bill is the 'Alcolyser LA5 Breathalyser'. It is a hand-held portable device capable of performing both passive and active tests.

One of the concerns raised during the inquiry on the Bill is the reliability of the prescribed device's calibration. The Ministry of Police were questioned on how reliable the prescribed device is over a long period of time and use. The reason is that most test equipment need to be calibrated to adjust for precision and confidence in use after certain prescribed or test period to ensure the readings provided are within the accepted range.

Officials from the Ministry assured the Committee that the device is an internationally recognised and certified machine that is in use in other countries. It is patented by the Australian Government National Measurement Institute and recommended by the WHO as a reliable device. The device can function for 190 days from the time it is calibrated and approximately 14 days to the expiry of the calibration date, the device will start to provide an indication or warning to the operator that it is approaching its calibration time.⁸

Further, the Bill clause 111F (2) allows a person to request a sample of his/her blood to be taken by a health practitioner and analysed to determine the concentration of alcohol if they have doubts about the prescribe device⁹.

Cautioning offenders

Also during discussion members of the Committee enquired whether it is necessary to caution offenders first before administering the prescribed device when they re-offend.

The Commissioner of Police when responding emphasised that the policy is to get people to stop driving when under the influence of alcohol because they are risking themselves and the lives of others. He stressed that there are no safe level of drinks in alcohol.¹⁰

⁸ Frank Prendegast, Commissioner of Police, RSIPF, oral evidence, 8 April 2016

⁹ Ibid

¹⁰ Ibid

The Commissioner further informed the Committee that the Police will do a strong public awareness campaign to go along with the implementation of the Bill. Furthermore, the introduction of roadside testing will be conducted together with a high profile of media campaign. This will make the program most effective and will receive public support and will be shown to save lives.

Also, the most effective part of the random breath testing is that it creates a high visibility of road side deterrent. This means people are well aware that their chances of being tested are high and there is a very good chance that they will be caught if they are over the limit.

The Committee was further informed that when this program was introduced in Finland road accidents was reduced by 50 percent. In New South Wales Australia, road deaths reduced by 20 percent. It is also reported that properly enforced random breath testing has proved to be a single most effective tool in the struggle to reduce road trauma and road deaths throughout the world.

Tests for other narcotics Substances

Committee members also enquired about the possibility to test for other narcotics substances on drivers and operators.

Officials from the Ministry of Police informed the Committee that currently there are no other devices for testing other substances¹¹.

In support of what the Ministry of Police mentioned, the Director of Public Prosecution (DPP) mentioned that there are provisions in the penal code and other legislations which prohibit the use of other substances. Those provisions could be used for drivers and operators intoxicated with other substances but it would require evidence to be brought in¹².

Police conduct

A concern was raised during the hearing of the Bill about the possibility of conflict of interest by police officers when administering the prescribed device along the public roads or water ways. During discussions, members of the Committee highlighted evidences from the public about Police officers accepting bribes on routine traffic checks¹³. The Committee feel these actions may

¹¹ Pamela Wilde, Legal Policy Adviser, MPNSCS & MJLA, oral evidence, 8 April 2016

¹² Ronald Bei Talasasa, DPP, Office of DPP, oral evidence, 8 April 2016

¹³ Hon. Matthew Wale, MP, Auki Langalanga, oral evidence, 8 April 2016

compromise the effective use of the prescribe device and derail efforts to deter people from driving when under the influence of alcohol.

In response to the above concern the Police Commissioner assured the Committee that the RSIPF is working very hard to improve the culture and standard of the Police force. He further requested that if there are allegations of misconduct by officers, it must be reported to their Professional Standards and Internal Investigations so that it can be seriously investigated.

Likely breach of personal liberty

A concern was raised on clause 111D (2) (b) where it states; *'a health practitioner may take sample of a person's blood and give to a police officer for analysis to determine the concentration of alcohol (b) if the person is incapable of consenting, without the person's consent'*. Members see this as a legislative breach and encroachment on personal liberties¹⁴.

When queried, officials of the Ministry of Police responded by explaining that the above clause applied when a person is unconscious or injured and unable to consent to a test. The Ministry also highlighted that it is common practise in Europe, Australia and other Countries. They cited that it is standard medical practise.¹⁵

However, Committee members express that when there are likely breaches of civil liberties in proposed legislations and there ought to be a thorough discussion in the country about whether the community feels that it is an appropriate infringement.

The Committee also expressed that when someone's own body sample could be incriminating themselves, there is obviously a civil liberty issue at stake. Therefore it is incumbent on the government, sponsoring ministries and agencies to consult and explain to the people, and allow them to decide on the policy direction to be taken on such matter.

Recommendation 1

The Committee recommends that whenever civil or personal liberties are interfered with in proposed legislation, the Government, sponsoring Ministry or agencies must consult with the public to get their views on the policy direction taken on the infringement.

¹⁴ Hon. Matthew Wale, MP, Auki Langalanga, oral evidence, 8 April 2016

¹⁵ Pamela Wilde, Legal Policy Adviser, MPNSCS & MJLA, oral evidence, 8 April 2016

Recommendation 2

The Committee commend the Bill to the House for passing.

6.0 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 whenever civil or personal liberties are interfered with in proposed legislation, the Government, sponsoring Ministry or agencies must consult with the public to get their views on the policy direction taken on the infringement.

Recommendation 2

The Committee commend the Bill to the House for passing.

END OF REPORT

7.0 APPENDICES

Appendix 1 Witnesses

Date	Name	Position & Organisation
Fri 8 April 2016 9:30am – 12:00noon	Mr Edmond Sikua	Permanent Secretary (PS), Ministry of Police, National Security & Correctional Services. (MPNSCS)
	Mr Frank Prendergast	Commissioner of Police, Royal Solomon Islands Police Force. (RSIPF)
	Ms Catriona Steele	Legal Draftsperson, Attorney Generals Chamber
	Ms Pamela Wilde	Legal Policy Adviser, Ministry of Justice & Legal Affairs (MJLA) & MPNSCS
	Mr Steve Martin	PPF Adviser, RAMSI
	Mr Paul Bulu	Director Traffic, RSIPF
	Mr Ronald Bei Talasasa	Director of Public Prosecution (DPP), Office of the Director of Public Prosecution,

Appendix 2: Minutes of Proceedings



NATIONAL PARLIAMENT OF SOLOMON ISLANDS

BILLS AND LEGISLATION COMMITTEE

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Minutes of Proceedings

Committee Hearing into the Police and Transport Legislation (Amendment) (Alcohol Testing)
Bill 2016

Friday 8th April 2016, CR II, Parliament House 10:10am.

1. Members Present

Hon. Connelly Sandakabatu, MP (Chairman)
Hon. Dr Derek Sikua, MP
Hon. Dr Culwick Togamana, MP
Hon. Matthew Wale, MP
Hon. Commins Mewa, MP

Apologies

Hon. Jeremiah Manele, MP
Hon. Rick Houenipwela, MP
Hon. Steve Abana, MP
Hon. Namson Tran, MP

Secretariat

Wilson Anii

2. Welcome and Opening Remarks

Hon. Dr Culwick Togamana said the opening prayer

The Chairman made opening remarks and welcomes the Permanent Secretary (PS) and other officials from the Ministry of Police, National Security and Correctional Services and the Attorney Generals Chamber. He then invites the PS to introduce his group and made his presentation.

3. Hearing into the Police and Transport Legislation (Amendment) (Alcohol Testing) Bill 2016

The Hearing proper commenced and the following witnesses were admitted:

Witnesses

Mr Edmond Sikua	Permanent Secretary (PS), Ministry of Police, National Security & Correctional Services. (MPNSCS)
Mr Frank Prendergast	Commissioner of Police, Royal Solomon Islands Police Force. (RSIPF)
Ms Catriona Steele	Legal Draftsperson, Attorney Generals Chamber
Ms Pamela Wilde	Legal Policy Adviser, Ministry of Justice & Legal Affairs (MJLA) & MPNSCS
Mr Steve Martin	PPF Adviser, RAMSI
Mr Paul Bulu	Director Traffic, RSIPF
Mr Ronald Bei Talasasa	Director of Public Prosecution (DPP), Office of the Director of Public Prosecution,

The PS with assistance from the AG Chambers made their presentation before the committee. The Committee questioned the PS, other officials and the Legal Draftsman on the contents of the Bill.

The PS and 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 12:00pm.



