

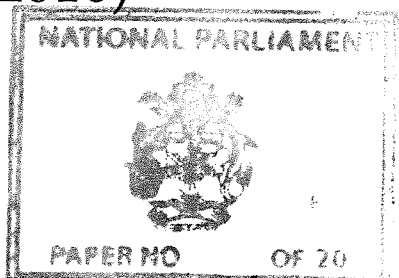


National Parliament of Solomon Islands

Bills and Legislation Committee

Committee Report

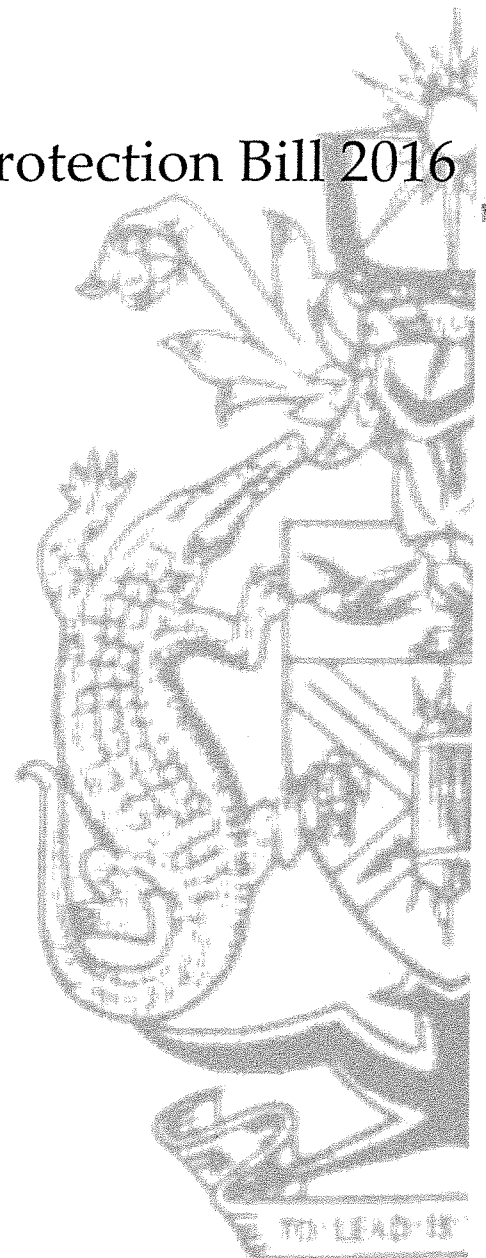
Report on the Whistleblowers Protection Bill 2016
(No. 4 of 2016)



NP-Paper No. 14 of 2016

Presented on 16 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:

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National Parliament of Solomon Islands
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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 **Whistleblowers Protection 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 several horizontal strokes.

Hon. Connelly Sandakabatu

Chairman

Bills and Legislation Committee

16 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 Whistleblowers Protection Bill 2016 is to protect persons making disclosures about conduct that may constitute corruption, maladministration or misconduct in public office from liability and victimisation. The Committee in conducting the inquiry looked at the public interest disclosures, the protections from liability and victimisation and the obligations of public bodies and officers.

The Committee welcomes this important reform intended to provide such protections, not only in the context of corruption, but also in maladministration and misconduct in public office. The Bill achieves its objects by providing protections from civil and criminal liability, as well as protection from victimisation.

This Bill is an important step forward in enhancing integrity in the public sector. The Committee recommends it to the House.

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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 Whistleblowers Protection Bill 2016 ('the Bill') as required under the Standing Orders of the National Parliament of Solomon Islands ('the Standing Orders').

The Bill was submitted on 30th May 2016 to the Speaker through the Clerk to Parliament as required under the *Standing Orders*². The Committee deliberated on 4th April and resolved to conduct an inquiry into the Bill and invited relevant stakeholders³ to appear before the Committee and make presentations on the contents, policy matters, and intentions of the Bill.

Hearings into the Bill were held together with the Anti-Corruption Bill 2016 from the 20 of April to the 23 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.

²*Standing Order 44 (1)*

³See Appendix 1

2.0 BACKGROUND INFORMATION

The Whistleblowers Protection Bill 2016 intended to protect people who provide information for the purpose of combatting corruption, maladministration and or misconduct in public office. This occurs when information is given to the authority with the power to investigate the relevant allegations.⁴

The overall objective of the Bill is to provide protection not only in the context of corruption, but also maladministration and misconduct in public office. The Bill achieves its objects by providing protections from civil and criminal liability, as well as protection from victimisation.

During the inquiry, the Committee was informed that allegations of corruption in the public sector are rife but that there has been very little prosecution because there is lack of evidence that stems from the fact that people are fearful of coming forward without any protections accorded to them. Therefore, the Committee Commends this report to the House.

3.0 OBJECTIVES OF THE BILL

The object of the Whistleblowers Protection Bill 2016 is to protect persons making disclosures about conduct that may constitute corruption, maladministration or misconduct in public office from liability and victimisation.⁵

In 2014, the UN Office on Drugs and Crime Conducted a Review of Solomon Islands' compliance with the United Nations Convention against Corruption. It showed deficiencies in several areas of law and administration, in particular as regards the scope of the existing laws and their effectiveness in preventing corruption.⁶

The Government has accepted most of the recommendations in the UN Review, and the Anti-Corruption Unit in the Office of the Prime Minister and Cabinet has developed a Policy on Anti-Corruption, one component of which is this Bill.⁷

⁴Prime Minsiter's Office, Information paper, 2016, Pg.2

⁵Prime Minsiter's Office, Information paper, 2016, Pg.1

⁶ Ibid

⁷ Ibid

Prosecutions for corruption are rare because evidence is difficult to obtain. This is because either people do not understand what corruption is, or they are reluctant to come forward. The Review recommended that as well as revising the offences in relation to corruption, the government should put in place legislation to protect people who come forward with information about conduct that may constitute corruption, and those who cooperate with investigations into corruption.⁸

This Bill is intended to provide such protection, not only in the context of corruption, but also maladministration and misconduct in public office. The Bill achieves its objects by providing protections from civil and criminal liability, as well as protection from victimisation.⁹

4.0 ISSUES DISCUSSED

The following are the Committee's observations regarding the Bill.

4.1 Protection / Disclosure of information to Appropriate Authority

The Committee noted that Section 5 of the Whistleblowers Protection Bill 2016 has identified appropriate authorities to whom information can be disclosed. In evidence, the appropriate authorities identified under this Bill are:

1. The Solomon Islands Independent Commission Against Corruption
2. The Ombudsman's Office
3. Leadership Code Commission
4. Police and Prison Service Commission or the Commissioner of Police
5. The Auditor-General's Office
6. The Chief Justice
7. The Speaker of Parliament
8. The Electoral Commission
9. The Political Parties Commission
10. The Minister responsible for local authority
11. The Public service Commission.

⁸ Ibid

⁹ Ibid

4.2 Disclosure of Information

Disclosing of Information to Local authority/ Chiefs/NGOs and Private Organisations

The Committee is concerned that the local authority including the Chiefs, NGO's or private organisations are not covered under the ambit of this legislation since they are not public offices.

During the hearing, the Committee was informed that although these offices may not be covered under this legislation however, the person who blows the whistle is covered because "anyone who makes a disclosure relating to a suspected corruption offences could have the protection of the privilege here, and the corruption offences can be committed by NGO, private sector organisations or anyone like that".¹⁰

Disclosure of Information to Public/ Media

One of the concerns raised during the inquiry on the bill is the lack of protection in this bill for a person who blows the whistle through the public media consequently because of the ineffectiveness of the agencies to address the allegations.

In her evidence, Ms Catriona Steele informed the Committee that the protections afforded by this Bill only apply to people who make disclosures to the appropriate authority as stated in the bill.¹¹ The protection from civil and criminal liability and disciplinary action would not apply to a person who discloses information to the media or to the public because they have not gone to the appropriate authority to disclose information.¹²

During the hearing, the Committee noted that the person making disclosures must do so to the appropriate authority so that the matter can be investigated by that appropriate authority and dealt with accordingly.¹³

The Committee further noted that the intention of this Bill is to encourage people to go to the appropriate authority in making disclosures. Ms. Catriona further highlighted in her evidence that the intention behind this is to encourage people to go to the appropriate channels in making disclosures:

¹⁰Ms.CatrionaSteele, Oral evidence, 23 April 2016

¹¹ Ibid

¹² Ibid

¹³Ibid

It does not apply to a person who goes to the media for whatever reason and that may happen because a person has exhausted all other channels but it may also happen without the person exhausting other channels, and the intention behind this is that the person goes through the appropriate channels in making disclosures.¹⁴

The Committee is concerned that in situations where all relevant channels provided under this bill have become ineffective or for some reason compromised, it would be good to encourage whistleblowers to use the public media. Perhaps, the bill ought to afford protections to journalists writing investigative articles.

Time frame to straighten false information disclosed

The Committee noted from evidence that there is no time limit specified within which misleading aspects of information already disclosed may be rectified. The Committee is concerned that relevant authorities resources could be spent in pursuit of false or misleading information.

In evidence, the Committee was informed that a person disclosing information is only protected to the extent where the person providing the information is telling the truth.¹⁵ A person providing false information is not protected as far as this Bill is concerned.

This raises the fear of civil defamation as an impediment to whistleblowing, where only partial information is known but such partial information may lead to discovery of corruption, maladministration and or abuse of office offences.

¹⁴Ibid

¹⁵Ibid

5.0 RECOMMENDATIONS

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

Recommendation 1

The Committee recommends that a legal officer be appointed by the Judicial Legal Services Commission to be responsible for a whistle blowing office within the Ministry of Justice and Legal Affairs.

Recommendation 2

The Committee recommends that the Bill is amended to provide protection for journalists writing investigative articles in public media. Such articles must satisfy the test that all other relevant channels under the Bill have been exhausted and nothing has been done to investigate and determine the allegations.

Recommendation 3

The Committee recommends the Bill to the House for passage.

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 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 |
| Thur 21 April 2016 9:30am - 12:30pm | 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 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 |
| 1:30pm – 4:30pm | 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 |
| Fri 22 April 2016 9:30am – 12:00pm | 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 |

| | | |
|-------------------|------------------------|--|
| 1:00pm – 5:00pm | 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 |
| 10:00am – 12:30pm | Philip P. Kanairara | Chief Legal Officer, LRC |
| | Mose Saitala | Chief Technical Adviser, OPMC |
| | Catriona Steele | Legal Draftsman, AG Chambers |
| | Derek Futaiasi | 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 McArthur | 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. Connelly 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 McArthur | 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 22 April 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 |

