



**NATIONAL PARLIAMENT OF SOLOMON ISLANDS**

**BILLS AND LEGISLATION COMMITTEE**

**REPORT**

**ON**

**THE STATE OWNED ENTERPRISES BILL 2007**

*National Parliament Paper No 48. of 2007*

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1. **TERMS OF REFERENCE**

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

**"The State Owned Enterprises Bill 2007"**

2. **FUNCTIONS**

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

- (a) examine such matters as may be referred to it by Parliament or the Government;
- (b) review all draft legislation prepared for introduction into Parliament;
- (c) examine all subsidiary legislation made under any Act so as to ensure compliance with the Acts under which they are made;
- (d) monitor all motions adopted by Parliament which require legislative action;
- (e) review current or proposed legislative measures to the extent it deems necessary;
- (f) examine such other matters in relation to legislation that, in the opinion of the Committee require examination; and
- (g) make a written report to each Meeting of Parliament containing the observations and recommendations arising from the Committee's deliberations.

3. **MEMBERSHIP**

The Membership of the Bills & Legislation Committee comprises:

Hon. Edward J. Huniehu, MP (Chairman)

Hon. Peter Boyers, MP

Hon. Laurie Chan, MP

Hon. Seth Gukuna, MP

Hon. Fred Fono, MP

Hon. James Tora, MP

4. **PURPOSE OF THE STATE OWNED ENTERPRISES BILL 2007**

The objects and reasons as stated in the Bill are to:

“Promote improved performance of government trading activities, by specifying principles governing the operations of state enterprises; establishing requirements for the accountability of state enterprises, and the responsibilities of Ministers.”

5. **BACKGROUND<sup>1</sup>**

The Government currently owns a wide range of State Owned Enterprises (SOEs) whose activities significantly affect the performance of our economy. Activities of the State Owned Enterprises include important infrastructural services such as electricity, water, ports, airline services, postal services and broadcasting. Other SOEs have engaged in development ventures, including canning, commodities exports, fishing,

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<sup>1</sup> Pete Rodger, Standalone SOE Bill Explanatory Memo 26 March(2), p.1.

forestry, livestock and plantations. It is important that these SOEs contribute to the long term economic and social development of the Solomon Islands.

Currently, SOEs face a number of problems. These include a lack of clear strategic goals and performance targets, a lack of clarity around the roles of the Ministers and directors, a lack of up to date information on the SOEs service and financial performance, and a lack of accountability. Boards often lack the mix of relevant members needed to run the State Owned Enterprise. There is lack of planning and transparency around the provision of non-economic services (such as rural services).

Some SOEs are companies and some are statutory corporations with their own establishment legislation. The State Owned Enterprises Act focuses focus on the matters raised above, and will apply in addition the Companies act and other relevant legislations. Where there is any inconsistency the Stated Owned Enterprises Act and its regulations will prevail.

## 6. OBSERVATIONS

The Bills and Legislation Committee met on Wednesday 15 August 2007 at 9:30am - 12:00pm to examine and make its observations and recommendations on **“The State Owned Enterprises Bill 2007”**.

The Committee yet again emphasizes the need for ample time to be given to the Committee to conduct its deliberations on the Bill before it is presented to Parliament for its second reading. This is a very important and substantive piece of legislation. The operation of State Owned Enterprises (SOEs) can impact greatly on the budget of the Solomon Islands Government. Any adverse circumstances, such as the one now faced by the Solomon Airlines have the potential to result in substantial losses to the people of Solomon Islands. Therefore, the Committee and all Members of Parliament require adequate time to consider and debate such legislation.

Due to the severe time constraint in preparing this report in little more than 1 hour it only summarizes of the issues raised in the Committee’s deliberations with relevant officials from the Ministry of Finance and Treasury on the Bill.

The Committee expresses grave concern in the Bill in its present form and strongly recommends that the Bill be withdrawn and following further consultation a revised and much more detailed Bill be presented to Parliament in the Budget sitting. The Following are issues which the Committee would like to highlight;

- The policy direction in which the Bill was heading is not clearly articulated.

- The extensive power of the Minister of Finance and the holding of shares in SOEs give legitimacy to a practice that has been in the past subject to abuse.
- Although the overarching aim of the bill was to improve corporate governance of SOEs, and that SOEs would be more accountable to Parliament and the people, the Committee is concerned that the Bill does not clearly achieve this.
- The Committee notes that there are no provisions in the Bill to avoid future liability by taxpayers in relation to liquidity problems or bankruptcy of SOEs.
- The Committee notes that provisions in the Bill for “Community Service Obligation” no matter how well intentioned it has, are prone to and can be subject to abuse.
- Another matter of concern is the appointment and composition of the Board of Directors of SOEs which is at the discretion of the Minister. This has been a matter of contention and the Committee is concerned that the Bill that seeks to improve corporate governance of SOE’s should limit the opportunities for political interference in the operation of SOEs.
- The Committee also notes that the bill does not provide a director of a SOE to declare financial interests (conflict of interest issues). Since the purpose of this Bill is to improve transparency and accountability of SOEs, the Committee strongly recommends that such matter be addressed in the Bill.
- The Bill requires a large amount of subordinate legislation to be made by the Minister to address certain key issues such as decisions to pursue community service obligations and the

appointment and the conduct of directors including the declaration of financial interests. These regulations, the Committee understands, are still in the process of consultations and will be made at a later date. To this effect, the Committee is of the view that the act should not come into force until these regulations are made.

Furthermore, the Committee notes that whilst directors of companies have certain fiduciary obligations under the Companies Act and under each company's Articles of Association, including possibly the declaration of any financial interests (including loans etc), some of the SOEs (in the future especially) may not fall under the said Act. In any event, the number of establishing Acts and Articles for each SOE would make a director's duty to declare financial interests vague and possibly inconsistent when considering separate Acts and Articles. The Committee strongly believes that this duty, which is standard in most other jurisdictions, should be expressly included in the SOE Bill given that the Bill when enacted will apply across the board. Including the said duty in the overarching requirements of the Bill would indeed be in line with the holistic approach that the Bill takes.



6. **RECOMMENDATIONS**

The Committee strongly recommends that consideration of the Bill be set down to a future date to enable more time for consultation and feedback from all Members of Parliament.

If the Minister refuses to take this advice, then the Committee request that the Minister move the following amendment to clause 1 of the Bill:

Clause 1 (1), line 2 – omit all words after ‘*Minister*’ in and insert instead “*publishes the regulations required throughout the Act and made under section 24*”.

**Hon. Edward J. Hunuiehu**  
**Chairman**  
**Bills & Legislation Committee**  
**28 August 2007**