



**NATIONAL PARLIAMENT OF SOLOMON ISLANDS
BILLS AND LEGISLATION COMMITTEE**

**Report on the Currency
Declaration Bill 2009**

NP-Paper No. 28/2009

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National Parliament Office

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1 INTRODUCTION

The Bills and Legislation Committee has completed its review of the *Currency Declaration Bill 2009* (“**Bill**”) introduced in the House during the current (10th) meeting of Parliament by the Minister for Finance and Treasury. The Bill was submitted to the Speaker through the Clerk to Parliament as required under the *Standing Orders*¹. The Speaker examined the Bill² and authorised it to be introduced in the current Parliament meeting.

The Bill was read the first time on Monday 20 July 2009 according to the government’s revised order of business. It is proposed that the Bill be read the second time on Monday 27 July 2009. On 20 July 2009, the Bills and Legislation Committee considered the Bill and heard evidence from a range of stakeholders. On Friday 24 July the Minister gave notice of substantial amendments which required the Committee’s consideration and review particularly in terms of whether they were a result of recommended improvements and concerns expressed by stakeholders during evidence or whether they were new proposals being proposed for inclusion in the Bill by the government. The Committee met again on Friday 24 July after the adjournment of the House and following its deliberations the Committee makes this report to Parliament, with recommendations, for the information of Members and for Parliament’s consideration.

Terms of Reference

Pursuant to its mandate under the *Standing Orders*, the terms of reference of the Committee in this instance is to examine the Bill and to report its observations and recommendations on the Bill to Parliament.

Functions of the Committee

The Bills and Legislation Committee (“**Committee**”) is established under *Standing Order 71*, an Order made pursuant to the *Constitution*³, and under that Order 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;

¹ *Standing Order 44* (1).

² As required by *Standing Order 45* (1).

³ Section 62, *Constitution of Solomon Islands 1978*.

- (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.

Membership

The current members of the Bills and Legislation Committee (9th Parliament) are:

Hon. Severino Nuaiasi, MP (Chair)

Hon. Manasseh Sogavare, MP

Hon. Siriako Usa, MP

Hon. Isaac Inoke Tosika, MP

Hon. Augustine Taneko, MP

Hon. Nelson Ne'e, MP

Hon. Japhet Waipora, MP

2 POLICY BACKGROUND

Purpose of the Bill

The *Currency Declaration Bill 2009* includes the following government policy objectives:

1. To provide for obligation for declaration of currency, as part of anti-money laundering measures.
2. To provide powers for search, seizure, detention and forfeiture of currency.
3. To ensure that any currency used in other unlawful conduct or criminal activities are seized, detained and forfeited to the Crown.⁴

Background

In 2002 the Solomon Islands passed the first *Money Laundering and Proceeds of Crime Act 2002*. This Act was created to enable unlawful proceeds of all serious crime including drug trafficking to be identified, traced, frozen, seized and eventually confiscate. It also established an Anti-Money Laundering Commission required financial institutions and cash dealers to take prudential measures to combat money laundering.⁵ This Act was then amended in 2004⁶ primarily to establish the Financial Intelligence Unit⁷. Despite the legislation providing for the search, seizure and detainment of currency on the grounds that it is being used for money-laundering purposes, the legislation did not require any person to make an express declaration of any money that may be in their possession.

It was on this basis that the *Currency Declaration Bill 2009* (“**Bill**”) was deemed necessary. Thus, under the Bill any person who leaves or arrives in Solomon Islands with SBD\$50,000 or more in currency or negotiable bearer instruments (or its equivalent in a foreign currency) on his or her person, or in his or her baggage, is required to declare it. Information obtained through the declaration process is made available to the Financial Intelligence Unit.

Authorities in Solomon Islands now have powers, under the Bill, to seize and detain currency or negotiable bearer instruments that are suspected to be related to a serious offence, terrorist financing or money laundering, or that are falsely declared or disclosed.

⁴ See the Explanatory Memorandum attached to the Bill, page 15.

⁵ See the Short Title of the Act, page 3

⁶ Money Laundering and Proceeds of Crime (Amendment) Act 2004.

⁷ Money Laundering and Proceeds of Crime (Amendment) Act 2004, s.11A

These measures are put in place to further strengthen Solomon Islands overall efforts to combat money laundering, terrorism financing and other serious criminal activities. Physical movements and smuggling of currency around the world has been widely practiced by criminals in order to launder their ill-gotten, illicit and criminal profits. These new measures will therefore facilitate the detection, investigation and prosecution of money laundering activities. It will also ultimately strengthen and protect Solomon Islands borders.

The new requirement is not an exchange control measure. The new law does not limit or restrict travellers from carrying an amount of currency but requires them to merely make a declaration. The new border currency reporting measures also support Solomon Islands commitment to comply with the international anti-money laundering and counter-financing of terrorism standards recommended by the Financial Action Task Force and relevant Security Council Resolutions of the United Nations.

Specialist have warned that money laundering can hinder the integrity of our financial institutions and business sector because it means criminals are using legitimate financial institutions and businesses to launder or clean their illegal assets and funds.

Money launderers and other criminals tend to seek out jurisdictions in which there is a low risk of detection because of weak financial systems and regulatory measures. It is therefore important for Solomon Islands to put in effective measures and to be seen as a committed global partner in this fight. These and other developments in the global scene provide urgency to this legislation. This Bill demonstrates that the Solomon Islands is serious about money laundering and concerned about how such activities can tarnish our reputation on the global scene; causing us to have weak financial and regulatory systems and making it difficult to attract credible investors.

3 REVIEW OF THE BILL

In its review of the Bill, the Committee considered secondary materials and also heard from certain key witnesses.

Secondary Material

In order to review the Bill in its proper context, the Committee received briefings from the Committee Secretariat on the history of Currency Declaration laws based on relevant laws enacted between 2002 and 2005. The Committee also received briefings on Currency Declaration laws in other common law jurisdictions, including Vanuatu, Fiji and other Pacific Island States.

Public Hearing

The Committee held a public hearing on Tuesday 21 July 2009, with the view to hear from relevant officials of the Ministry and key stakeholders. The following witnesses appeared before the Committee at the hearings:

- Director, Economic and Reform Unit, Ministry of Finance and Treasury;
- Permanent Secretary, Ministry of Justice and Legal Affairs;
- Principal Legal Advisor, Ministry of Justice and Legal Affairs;
- Legal Draftsman, Attorney General's Chamber;
- Commissioner of Police, Royal Solomon Islands Police Force;
- Chief Immigration Officer (Permit), Ministry of Commerce, Industry, Employment and Immigration;
- Comptroller of Customs (Ag), Ministry of Finance and Treasury;
- Deputy Director Quarantine, Ministry of Agriculture and Livestock;
- Director of Public Prosecution;
- Director of Public Solicitor;
- Head of Financial Intelligence Unit, Central Bank of Solomon Islands (CBSI);
- Representative of Australia New Zealand Banking Corporation (ANZ).

A complete list of witnesses who appeared at the hearing is annexed as **Appendix 2**.

4 ISSUES ARISING

From its preliminary research and evidence gathered at the hearing, the Committee identified a number of issues arising from its review of the Currency Declaration Bill 2009. These are considered in this Chapter, together with responses from witnesses and, where necessary, recommendations of the Committee on a specific issue.

Consultation on the Bill

One of the important functions of the Committee is to ensure that there is proper scrutiny of proposed legislation. The Committee has on many occasions entreated the Government to consult widely with stakeholders before introducing legislation to parliament and placing it in the hands of this Committee. The Committee however, feels that very little consultation is made between key government Ministries and departments.

The Ministry of Finance submitted that the Bill was developed by the Anti-Money Laundering Steering Committee (AML) within the Ministry of Finance and Treasury (“**Ministry**”). The Ministry however recognizes the need for a wider consultation with relevant government Ministries. The Ministry said that any suggested amendments would be noted and the Ministry will commit itself to working together with Attorney General’s Chambers to oversee further scrutiny to the Bill.

The Committee is concerned that considerable consultations with stakeholders involved are necessary for meaningful feedback on the proposed provisions. While the Committee acknowledges that a bill cannot delve into the details of currency declaration legislation a common understanding amongst all stakeholders should have been reached before a bill is introduced in Parliament.

Rationale and approach

In 2002 Parliament passed the *Money Laundering and Proceed of Crimes Act 2002* which was subsequently amended in 2004 to establish the Financial Intelligence Unit. The Act ensures that money laundering is a serious crime in Solomon Islands. As part of the Solomon Islands obligation to apply international best practice and meet certain international obligations, legislative reform addressing money-laundering and counter-terrorism has been brought before Parliament in the current meeting. As part of this package of reform this Bill specifically monitor’s currency, and ensures that any money of a certain amount that may be

used for or has been obtained by unlawful conduct, is seized. The Bill introduces the requirement for all persons entering and leaving the Solomon Islands to declare any currency that may be equal to or more than a specific amount.

The Bill will empower authorized officers to question travellers and confiscate currency or financial instruments from suspected individuals. These powers are not available in the existing laws of the country. The legislation will enhance and strengthen the currency declaration requirement that is currently implemented under the Money-Laundering and Proceeds of Crime Act 2002. It will also ensure that there is a development of stronger and effective anti-money laundering counter terrorism financing regime in the country.

In the submission by the Department of Immigration, officers have no powers to deal with financial declarations. As a result the Immigration department fully supported the purpose of the Bill and saw it as an important step to ensuring that powers are now given to immigration officers to exercise necessary powers.

The Ministry of Justice and Legal Affairs ("**Ministry of Justice**") were represented by Permanent Secretary Mr. James Remobatu and Legal Advisor, Ms. Pamela Wilde. The Ministry commended the Bill and viewed it as necessary to comply with international obligations as part of the country's package for anti-terrorism measures. There are a number of matters the Ministry considered the Committee should seek further clarification on in relation to legal policy issues in the Bill. This was echoed by the representatives from the other Ministries and government departments.

The Royal Solomon Islands Police Force ("**RSIP**"), was represented by the Commissioner of Police who commended the Bill stating it is a practical way to address money-laundering and counter-terrorism. He was of the view that there is nothing exceptional in the Bill. The Bill focuses and is specific in the aspect of its main purpose, however in relation to section 7, expressed some concern about the workability of the provision whereby an authorized officer has the power to detain a person for 72 hours. The Commissioner of Police wants this to be amended to 4 working days. This will allow detainment in the outer islands as well as long weekends and holidays.

The Director of Public Prosecution ("**DPP**") also supported the Bill and submitted that the right time for tighter and effective laws to be imposed to better strengthen measures targeting money laundering in the country.

The Australia New Zealand Banking Corporation as represented by Mr. Ben Anderson also agreed with the purpose and intention of the Act. However in his view, there are some strong obligations on banks. Banks will have great difficulty in complying with the obligations given the less sophisticated banking operation system in the Solomon Islands. Banks can easily breach their obligation. Banks do not have any information sharing requirements and may breach such obligations.

Departmental coordination and administration

- **Guideline on procedure on exercise of powers**

The Bill does not provide procedures which authorised officers must adhere to and comply with in carrying out powers afforded by the Bill. During the hearing it was clear that except for the Customs Department, all other agencies did not have procedural codes of practice that related to the powers to search and seize. Such guidelines may be made under section 17 of the Bill which allows the Minister to make necessary regulations to give effect to the Bill. The Committee recommends that these procedures are developed and regulated quickly and appropriate training of officers occurs if possible before the legislation commences.

Another aspect of this procedure is the need to provide adequate information prior to conducting a search. It is suggested that an authorized officer must take reasonable steps to provide the following information to the attention of the person being searched:

- (a) Information on the powers to search, seize and detain
- (b) Information on the individual's rights in these circumstances
- (c) The authorized officers name and department;
- (d) The object of the proposed search;
- (e) The authorized officers grounds for proposing to search;
- (f) The availability of a search record;

The search should not commence until the authorized officer provides such information, and the information must be given even if not requested.

- **Procedures on reporting of currency**

The Committee is of the view that the Bill needs to clearly provide for an obligation to properly record and report any currency that is seized, after the actual confiscation takes place. At present the Bill merely provides for the powers to seize currency but does not state what authorised officers need to do with it. This is very important and needs to be a provision in the Bill itself.

It is necessary to provide clearly what will happen after currency is seized under the Bill; there must be a record on the exercise of the power, the result of the search and where and whom to deliver any currency seized.

Again, the only department that has procedures in place currently is the Customs Department. The Comptroller Customs submitted that Customs had regulations that required a customs officer to inform a passenger of the relevant regulation, fill in a passenger currency report, issue the passenger with a receipt and submit such form to the Unit who would then report the matter to the police. Police would then be expected to undertake advise the Unit of the results of the investigation and make recommendations for prosecution to the DPP.

While the Committee commends the Customs in this respect, it is of the view that the procedures should be included as a substantive provision in the Bill so that officers and the public are aware of the procedures and their rights.

- **Role of FIU as primary administrator**

The role of the Financial Intelligence Unit (“**Unit**”) within the Central Bank of Solomon Islands (“**CBSI**”) needs to be better provided for in this Bill. It is understood that the Unit forms an integral part of the process of monitoring and processing currency offences. It is important that the Bill provides that the Unit act as the primary reporting authority for authorised officers.

In terms of reporting therefore, the Bill should clearly state that any exercise of powers under the Bill, particularly in respect of currency that is seized, the authorised officer must complete a currency report in the prescribed form and submit the report the Unit for further processing. This is very important given that the Unit, in its capacity as the primary

administrator of currency and money-laundering transaction in the Solomon Islands, would have appropriate record and technical capacity to administer the Bill.

This was also expressed by the representative for ANZ Bank who said that the banking organisations in the Solomon Islands did not have the technical capacity and banking systems that would enable them to comply with the legal obligations under the Bill. A plausible solution was to require Banks to submit currency reports to the Unit and allow the Unit to monitor and process any transaction that may appear suspicious.

The legal obligation and penalty created

- **Obligation to declare currency**

Section 3 creates an obligation for every person who enters or leaves Solomon Islands with the prescribed minimum amount of currency (local or its equivalent) to declare that fact to an authorised officer. The same duty is imposed on any person who electronically sends or receives the minimum amount.

This obligation is supported by a penalty for non-compliance and by section 4, which gives the power to authorised officers to question, search or detain persons or things in carrying out their duties. Failure to respond to questions without good reason also attracts a hefty penalty. This duty on travellers and the power conferred on immigration officers are not necessarily new rules; rather these appear to be restatements of existing laws, but with significant modifications. The comparison between section 3 and existing law is considered here whilst that for section 4 is dealt with in the next sub-issue. The final sub-issue looks at the penalties set out in sections 3 and 4 of the Bill.

At present the only law that applies to transfer of currency (whether local or foreign) is the *Exchange Control (Foreign Exchange) Regulations 1977*; a regulation made under the *Exchange Control Act*.⁸ That regulation addresses two areas that are relevant to the Bill:

- Taking or sending currency from Solomon Islands (regulation 4); and
- Proceeds of exports (Part IV).

Under the said regulation, taking or sending currency from Solomon Islands without the authority of the Central Bank or an authorised dealer is an offence, unless it is done by way

⁸ Chapter 51 [Cap. 51], Laws of Solomon Islands, 1996 Revision

of a money order obtained from a post office in accordance with the regulations. Similarly, Part IV of the regulation prohibits the export of goods from Solomon Islands without authority, unless the goods concerned are exempted under the regulation. Thus, any goods amounting to more than SBD\$250 must not be exported from Solomon Islands without authority. In addition, personal and household effects, including jewellery and precious metal or stone exceeding SBD\$10,000 must not be exported without the necessary authorisation.

It appears that based on these rules, Customs Division has, since independence been applying rules that effectively require people sending or taking currency from Solomon Islands, and those in possession of personal effects (gifts etc) over SBD\$10,000 to declare the same. Despite giving officers the power to search, there has never been any express rule requiring any person to make a declaration of these items. Moreover, the focus of the regulation has been on currency (including exports) leaving Solomon Islands and not on currency entering Solomon Islands. These rules also did not anticipate the newer forms of electronically transferring money to and from Solomon Islands.

In view of these, section 3 of the Bill appears to be an attempt to modernize existing laws to capture situations not previously anticipated and at the same time to adjust the associated penalties to reflect today's context.

The only issue with this approach is the relationship between this section and existing laws. Does section 3, by inference, supersede existing laws? If that were the case, it would be better to state that intended effect so as to avoid confusion for those travelling into or out of Solomon Islands. The bill is designed to assist in the fight against money laundering but the duty imposed by section 3 is very broad and will apply to every person who enters or leaves the Solomon Islands.

The question then is whether the minimum of SBD\$10,000 fixed for personal effects and current restrictions on transfer of money will still apply when a new minimum amount is fixed (SBD\$50,000) on currency in general (including jewellery and precious stone/metal). This is an issue that would require clarification at Committee Stage.

- **Obligation to answer questions regarding currency**

As mentioned earlier, section 4 of the Bill empowers an authorised officer to, amongst others, question any person in relation to currency in order to assess whether or not it is in

breach of the Bill. An authorised officer includes a police, customs or immigration officer.⁹ If the person questioned fails or refuses to answer, without reasonable excuse, he or she commits an offence. Whilst the Committee sees the practicality of the scope of this power, the Committee is concerned that such power has the potential to infringe on the right against self-incrimination.

That right is a universally accepted fundamental right and is now enshrined in the new *Evidence Act 2009* and is reflected in various other legislation in the Solomon Islands. These include the following:

(a) Evidence Act 2009:

Section 146 of the Evidence Act 2009 preserves the privilege of against self-incrimination. However, this does not apply if a written law expressly or by inference excludes this privilege.

(b) Police Act [Cap 110]:

In section 28 of this Act, a failure to answer questions by police officers seeking names and addresses is an offence. This is not a violation of the right against self-incrimination because such information (name and personal detail) do not incriminate but simply identify a person.

In section 49 of the Act any person who gives false information to an officer with the intent to defeat or delay justice commits an offence. Again, this is not the same as simply refusing to answer a question. A clear intention to interfere with the administration of justice needs to be proved. There is no express offence for mere refusal to answer a question put by a police officer.¹⁰

(c) Immigration Act [Cap. 60]

Section 4 (1) (b): an immigration officer has the power to interrogate a person entering Solomon Islands, who has applied for an exemption or permit, or who is believed to be a 'prohibited person' under the Act. Section 4 (3) provides that any

⁹ Section 2 (Interpretation)

¹⁰ Note that at common law (stemming from the Judges Rules), a person is not under any duty to answer questions by police officers or to follow them to police stations (only voluntarily). That duty arises only after a person has been *arrested*.

person (described above) who refuses to answer or knowingly gives misleading answers commits an offence.

Again, under this Act, the power to question is *limited* to a small class of travellers – those suspected to be prohibited persons or those applying for permits/exemptions. This power is not general.

(d) Customs and Excise Act [Cap. 121]

Section 3 states that for the purpose of carrying out this Act, customs officers have the same powers as that of police officers. Police powers relating to questioning are discussed above.

(e) Exchange Control (Foreign Exchange) Regulations 1977

Under Regulation 19, the Central Bank has the power to demand persons to provide information relating to transactions, accounts and so on. Sub-regulation (4) provides that:

A person may not refuse to furnish information, or to produce a book, document or record, when required to do so under this regulation on the ground that it might tend to incriminate him or make him liable to a penalty, but the information, book, document or record is not admissible in any proceedings against him other than proceedings under paragraph (2) or regulation 24 [proceedings on the offence of failing to give such information etc, or on offences for providing false information].

This is a clear example of how a written law can expressly exclude the privilege against self-incrimination that section 146 of the Evidence Act 2009 provides for.

The right against self-incrimination is one of the fundamental rights of any citizen and it should not be excluded lightly or by inference. If this right is to be excluded, there should be measures to ensure that its exclusion does not have the potential to be used arbitrarily. One such measure, as done in the above regulation, is to exclude the right but make information obtained by exclusion of the right *inadmissible* against the suspect in other legal proceedings.

Powers of search, seizure, detainment

- **Power to search, seize and detain without warrant**

One of the marked differences between this Bill and the *Money Laundering and Proceeds of Crime Act 2002* is the power to search a person and seize currency without their consent or without a warrant. Under the Bill there is not requirement for an authorised officer to first obtain a warrant.

In contrast to this, the *Money Laundering and Proceeds of Crime Act 2002* provides in section 49 that:

- 49. (1)** A police officer may -
- (a) search a person for tainted property;
 - (b) enter upon land or upon or into premises and search the land or premises for tainted property; and
 - (c) in either case, seize any property found in the course of the search that the police officer believes, on reasonable grounds to be tainted property,
- provided that the search or seizure is made -
- (i) with the consent of the person or the occupier of the land or premises as the case may be; or
 - (ii) under warrant issued under section 50.

With the exception to section 51 of the above Act¹¹, effectively, the powers provided to authorised officers under the Bill are very strong powers which must be exercised with considerable duty of care; an issue which was of great concern to the Committee.

During the hearing, the Permanent Secretary put forth the argument that the Bill needed to impose stricter rules regarding currency so as to deter money-laundering and counter terrorism activities in the Solomon Islands. The legal requirement to declare currency and the power to search, seize and detain under this Bill stems directly from the need to prevent money-laundering and counter terrorism activities.

¹¹ Section 51 provides for searches in emergencies where there are reasonable grounds of suspicion to believe that it is necessary to exercise the power to search and seize property.

Whilst the Committee acknowledges this explanation, it strongly emphasises that if an authorized officer is to carry out such powers without a warrant or before making an arrest, it is imperative that clear and proper regulations be developed to ensure that authorised officers do not in any way exercise this power negligently whatsoever. Accordingly, the Committee recommends that such a provision giving clear requirements for seizure of currency, be put in the Bill.

- **Definition of Minimum Amount**

The Bill provides in section 3 that “a person who enters or leaves the Solomon Islands with the minimum amount, must make a declaration to an authorised officer in the prescribed form”.

The definition of Minimum Amount is provided in section 2 which states that the minimum amount means an amount equal to or more than the minimum amount of Solomon Islands currency provided for in section 18 [sic].

The Committee believes that this definition requires significant improvements in that:

- (a) The minimum amount provided for in section 17(2) makes no reference to the term “currency” and therefore cannot include forms of currency as defined in section 2 of the Bill;
- (b) Alternatively, section 3 of the Bill needs to make reference to the term “currency” and should provide that a person declare any “currency equal to or more than” the minimum amount.

- **Determination of Unlawful Conduct**

As this Bill relates to money-laundering and counter-terrorism laws, the Committee seeks clarification as to why offences under these laws are not specifically referred to in this Bill.

The Ministry of Justice submitted that the definition was not restricted to money laundering and counter-terrorism because it should also relate to any other offence. The only issue is that the Bill was created to impose stricter rules regarding currency that would deter money-laundering and counter terrorism activities in the Solomon Islands. The legal

requirement to declare currency and the power to search, seize and detain under this Bill stems directly from the need to prevent money-laundering and counter terrorism activities.

The Committee also asked for views on the meaning of section 13 of the Bill and asked what it mean and how it was consistent with the provisions Criminal Procedure Code or Evidence Act. The relevant section reads:

- 13(2) In deciding whether any currency was obtained through unlawful conduct –
- ...
- (b) it is not necessary to show that the conduct was of a particular kind if it is shown that currency was obtained through conduct of one of a number of kinds, each of which would have been unlawful conduct.

The Attorney General Chambers said that section 13 stipulates matters that judges will take into account in determination of a lawful or unlawful conduct. Additionally, the Ministry of Justice added that the court does not have to consider whether or not it was sufficient in executing the unlawful conduct. It is relevant to the Evidence Act. It does not affect the admissibility or otherwise. Evidence obtained would still have to comply with all the provisions of the Evidence Act. Any evidence that would be admissible pursuant to the Evidence Act would still be admissible in relation to these.

- **Reasonable grounds for suspicion**

The Committee was also concerned with provision relating to “reasonable grounds for suspicion” and sought evidence as to what constituted “reasonable grounds” in this Bill and how this was consistent with the law on criminal procedures.

The Director of Public Prosecutions submitted that enactment of the Bill will not provide for sufficient power but only recognizes that there are areas in which the authorized officer may be able to exercise his power to realize the intention of the Bill. In his view, the Bill is consistent with the law on criminal procedures.

The Commissioner emphasised that the power to search and arrest is a normal day-to-day police responsibility and which is provided for and recognised in law.

The Committee maintains that there must be some basis for an authorized officer’s belief, related to a person entering or leaving the Solomon Islands, which can be considered and

evaluated by an objective third person. Mere suspicion based on hunch or instinct might justify observation but cannot justify a search.

The Committee is concerned that “reasonable suspicion” can exist without specific information or intelligence and on the basis of some level of generalization stemming from the behavior of a person. The power must be used fairly, responsibly, with respect for people being searched and without unlawful discrimination. This would include discrimination on grounds of race, colour, ethnic origin, nationality or national origin.

Reasonable grounds for suspicion cannot be based solely on attitudes or prejudices towards certain types of people, such as membership of a group within which offenders of a certain kind are relatively common.

- **The Burden of Proof**

The Committee was also concerned as to why the burden of proof for determining an “unlawful conduct” under section 13(1) only in a “balance of probabilities” and not “beyond reasonable doubt”.

The Committee heard from the Attorney General’s Chambers that in relation to section 13 (1) the judge determines whether the currency is an unlawful currency that maybe used for unlawful conduct for the purposes of this Act, therefore the burden of proof is lighter than the offence itself. It is a determination on whether or not the currency is an unlawful currency and in most cases these are matter of facts determined basically on matter of facts and the burden is on the balance of probability and not beyond reasonable doubt. The Committee is unsatisfied with this view. This is incorrect. The section is for the determination of unlawful conduct, committed by a person. It is determining how that money came to be with that person and whether or not it was used for unlawful conduct or to be used for commission of unlawful act so it is between the state and that person and the state will have to prove that not beyond reasonable doubt but on the balance of probabilities.

The Director of Public Prosecutions stated that the onus is on persons carrying currency to provide genuine information. However, reasonable suspicion may be taken from information provided by persons making declarations. On the part of the judge the determination on unlawful conduct is not ‘beyond reasonable doubt’ but on ‘balance of probabilities’.

The Committee is of the view that as unlawful conduct is criminal in nature, determination of whether there was unlawful conduct should be based on the burden of proof for determining a criminal offence. The balance of probabilities may easily find against a person alleged to breach this Bill.

- **Exemption from Liability**

In relation to section 16 which provides for the exemption of liability to authorised officers, employer, agent or any other person acting under the authority of the Bill officers, the Committee questions the legality of this provision particularly as it:

- (a) includes “employer”, meaning the state from liability; and
- (b) extends to cover negligent actions.

The Attorney General’s Chambers submitted that the section was a common clause designed to protect “personal” liability of persons exercising powers under an Act. It was intended to allow them to freely undertake statutory duties without fear of being sued. An officer will themselves not be liable and the State instead will be sued for compensation not individual officers.

The Committee accepted this position but maintains that the view that detailed legal advice must be given on this clause particularly with the use of words “whether negligently or not”, as provided in section 16(b). Assessment of similar clauses in the *Customs & Excise Act (Cap. 121)* appear to be substantially different. Section 249 of the *Customs & Excise Act (Cap. 121)* states:

Legal protection of officers

- 249.** Without prejudice to any protection afforded to the Comptroller or any officer by any of the provisions of this or any other Act or law, no legal proceeding or claim shall lie against the Comptroller or any officer for any act done **in good faith** and **without gross negligence** in the exercise or performance of any power given or duty laid upon him by or under this Act.

The Committee notes the significant difference between the element of “good faith” and “without gross negligence” in the above Act, in comparison to the provision provided in the Currency Declaration Bill 2009.

Similar clauses on exemption of liability in Australia, for example the *Independent Commission Against Corruption Act 1988 No 35* gives exemption where an officer (in that case, Commissioner) act in “good faith” only. An example is the s.109 (5) of the said Act states:

“No criminal or civil liability (apart from this Act) attaches to any person for compliance, or purported compliance in good faith, with any requirement made under this Act.”

The Committee notes that as more and more bills coming before Parliament contain this clause, and accepts that given the absence of any legal opinion on this, the Attorney General must clarify:

- (a) the general nature, intention and legality of such a clause;
- (b) the general nature, intention and legality of the clause as written in the Bill
- (c) the effect of including the “employer” in s.16 (1)
- (d) the effect of including “whether negligently or not” in s.16(b)

Dealing with detained currency

- **Seizure of currency**

In terms of the seizure of currency, the Committee maintains that the Bill must provide for the procedures after currency is seized. It must state what an authorised officer should do with the seized currency, how the seizure should be recorded and where the officer must deliver the seized currency. It may also be necessary for the Bill to require that an authorized officer record and report every occasion where a search or questioning was undertaken under section 4 and 5.

It is possible that section 17 will allow the Minister to make provision for these regulations to be made to address procedural issues of the Bill, but the Committee is of the view that a general clause on this must be provided for in the body of the Bill.

The Committee notes that except for Customs, other departments (Immigration and Quarantine) do not have any such procedures on what to do with seized currency.

- **Determination of origin of currency**

In terms of section 14 of the Bill, the Committee questioned the term “original currency” which was used for the first time and is not defined under section 2 of this Act. It is possible that “original currency” refers to currency in its original state after being subsequently converted into another form.

The Committee noted the importance to make definition to the word “original currency”.

- **Forfeiture to Crown - Consolidated Fund**

The Committee was concerned in terms of section 8 relating to the forfeiture of currency into the Consolidated Funds. The Committee is of the view that a special account be established within the Unit or similar authority where the currency can be recorded, monitored and safely kept for further processing by the Court.

The Attorney General’s Chambers however submitted that forfeited currency as proceeds of crime lawfully belonged to the crown and therefore must be deposited in the Consolidated Fund. However, section 8 only refers to currency detained for more than 48 hours. Whilst the Committee supports the idea to have such currencies (particularly legal tender) be deposited into an interest accruing account. However, it may be difficult to recover monies paid into the Consolidated Fund; particularly after it is determined that such currency is to be returned to the person from whom it was seized.

The Ministry of Justice further submitted that whilst section 10 (5) provided that currency seized be forfeited into the Consolidated Fund unless an appeal is lodged under section 15. However, section 9, section 11, section 12 also allows for the currency to be returned, and not forfeited. The Ministry submitted that there should be a reference to those sections in section 10 (5).

The Committee agrees that it is important that currency seized must be carefully kept before being forfeited into the Consolidated Funds.

- **Compensation**

The Committee also noted that section 12 provided for payment of compensation in respect of currency detained but not forfeited.

The Committee notes the following:

- (a) That the Bill is unclear on whether the currency detained will itself be returned to the person from whom it was seized;
- (b) The effect of this provision in light of section 16, which provides for exemption of liability;
- (c) The need for compensation given that it would not prevent any person from claiming redress for damages suffered

The Attorney General's Chambers submitted that section 12 deals with a situation where no forfeiture order is made. The loss suffered in this instance may be substantial and a person would be in a civil suit against the government (authorized officer) and may claim in a separate civil action a significant amount of damages.

The Committee is of the view that the provisions of compensation should be revisited in this sense because compensation under the Bill may become a very expensive exercise for the state.

- **Effect of obligation of Bill on financial institutions**

The ANZ Bank made strong submissions on the effect of the Bill on banking organisations, particularly in the Solomon Islands. In his opening statement Mr. Ben Anderson said that the obligations of declaration under the Bill would be difficult for local banks to comply with given the less sophisticated banking system that existed.

It would be difficult to monitor a customer who transferred money to another country in one bank and then did the same process in another bank. There will be difficulty for the two banks to be aware of what a customer is transferring in the different banks. Multiple bank monitoring is very difficult. The intention of the Bill is very difficult for the banks to achieve. They may intentionally or unintentionally breach the law.

Interbank disclosure is not the rationale choice. Customers do not want very private information to be shared between Banks. A better option is for the CBSI to have the onus of receiving/requesting information of transfers and putting these within its system.

The Committee is also concerned as to how realistic is the intention of this Bill in monitoring the movement of “currency in electronic form”.

ANZ submitted that with an ATM card or VISA card or an electronic debit card there’s limitations to how much can be taken out per day. In Solomon Islands through an ANZ ATM a customer can only take out SBD\$3,000 per day. Where multiple transactions are done over a day in another country, it would be picked up by the system in the country of origin.

The Bill also attempts to include currency in “electronic form”. ANZ submitted that telegraphic transfer within ANZ is guided by a policy where it allows transfer on the basis of having an established account with the Bank. Exceptions are on non-Solomon Islands citizens or residents.

ANZ staff awareness on such issue is strong. The Banks will always review financial transactions, checking for the amount, the purpose etc. Anything which appears to be suspicious will be put in to a report.

It is difficult to monitor large amounts of currency that are supposedly used for large commercial deals where large amounts of monies are paid. The money laundering act can work with the currency declaration Act to monitor such transactions.

- **Monitoring currency on more than one person**

Another issue identified by the Committee is the capacity for authorised officers to monitor more than one person travelling together with more than the minimum amount distributed between them.

The Committee notes that the Unit and the Departments need to develop either procedural or technical means of identifying such persons. At the same time, the Committee notes that it is possible that travelling groups together who may have a total sum of currency equal to or more than the minimum amount.

The Bill provides in section 6 (2) that the sum of currency found on more than one person who are together, must be more than the minimum amount. To illustrate this, a hypothetical example was given about twenty (20) students with AUD\$500 each will between them have SBD\$50,000.

ANZ submitted that the only procedure would be to monitor individuals in a group and the currency they declare, and if there is suspicion that the group is in possession of currency that may be used for unlawful conduct, then an authorized officer may exercise powers of search under the Bill.

5 RECOMMENDATIONS

The Committee has reviewed the Bill and recommends that the government monitor matters raised in this report, in terms of assessing its implementation and effectiveness in achieving its important objectives, and report to Parliament 12 months after the commencement of the Act, and in particular recommends:

1. That there be proper consultation on the Bill between the relevant Ministry and the relevant departments involved in the administration of this Bill;
2. That the Bill develop a proper procedure to recording and reporting of all seized currency pursuant to the Act;
3. That there be departmental coordination and collective administrative approach to currency declaration regulation within Solomon Islands to develop stronger monitoring capacity in the country;
4. That the procedures under the Bill be developed and regulated quickly and appropriate training of officers occurs if possible before the legislation commences;
5. That a special account be established within the Central Bank of Solomon Islands where detained and seized currency can be kept in an interest accruing account;
6. That only after a forfeiture order is given by the Court, that currency detained be paid into the Consolidated Fund;
7. That the Attorney General provide a detailed advice on section 16 – ‘Exemption of Liability’ and the importance and implication of the use of the term “whether negligent or not” in such a clause;
8. That the following amendments be considered by the Ministry:
 - (a) That the Bill specifically identify the Court with the jurisdiction to deal with allegations under the Bill;

- (b) That section 3 (3) provides an offence for a person to “knowingly make a false declaration” offence” provision be included in that section;
- (c) That section 4 (3) includes a person who makes a “false declaration”;
- (d) That section 7 of the Bill amend the period of 72 hours to cater for weekends, public holidays and occasions where currency may be seized from provinces;
- (e) That the Bill provide a definition for the term “excepted joint owner” as referred to in section 10 (3) of the Bill;
- (f) That the term “Subject to sub-section (5)” in section 5(1) be in section 5 (2), which section actually refers to searches of a person.
- (g) That the term “original currency” as referred to in section 14 be properly defined in the Bill;
- (h) That section 17 (2) be made a separate and new section 18.
- (i) That as a new section 18, section 17 (2) provides: “The prescribed minimum amount shall be currency equal to or more than \$50,000 or unless another amount is prescribed as the minimum amount.



Hon. Severino Nuaiasi

Chairman

Bills and Legislation Committee

Friday, 23 July 2009

APPENDIX 1: MINUTES



BILLS AND LEGISLATION COMMITTEE

NATIONAL PARLIAMENT OF SOLOMON ISLANDS

Minutes of Proceedings

Hearing No. 1

Tuesday 21 July 2009

Conference Room 2, Parliament House, 2:30pm

1. Members Present

Hon. Severino Nuaiasi, MP (Chair)
Hon. Manasseh Sogavare, MP
Hon. Augustine Taneko, MP
Hon. Japheth Waipora, MP
Hon. Isaac Inoke Tosika, MP

Secretariat:

Mr. Noel Matea, Committee Secretariat

Witnesses:

Mr. James Remobatu, Permanent Secretary, Ministry of Justice and Legal Affairs
Ms. Pamela Wilde, Principal Legal Officer, Ministry of Justice and Legal Affairs
Mr. Rupeni Nawaqakuta, Legal Drafter, AG Chambers
Mr. Dentana Makini, Director Economic Policy & Reform Unit, MoFT
Mr. Luke Houpea, Chief Immigration Officer [Permit], MCIEI
Mr. Nathan Kama, Comptroller of Customs (Ag), MoFT
Mr. Patteson Akipu, Deputy Director Quarantine, MAG
Mr. Michael Ha'apio, Head of Financial Intelligence Unit, CBSI
Mr. Peter Marshall, Commissioner of Police, RSIPF
Mr. Ronald B. Talasasa, Director Public Prosecution, PPO
Mr. Douglas Hou, Director Public Solicitor, PSO
Mr. Ben Anderson, Head of Risk, ANZ Banking Cooperation

2. Opening Prayer / Welcome

Hon. Augustine Taneko said the opening prayer.

The Chair welcomed the Committee and witnesses to the public hearing into the Currency Declaration Bill 2009.

3. Hearing into the Currency Declaration Bill 2009

The Chairman made a brief opening statement and called on witnesses to make an opening statement to the Committee as they so wished.

The Witnesses made their opening statements to their position on the Bill.

The Committee questioned the witnesses.

The evidence concluded and the witnesses withdrew.

4. Close

The Chair thanked the witnesses for their attendance.

Hon. Japheth Waipora said the closing prayer.

Meeting ended 5:15 pm.



BILLS AND LEGISLATION COMMITTEE

NATIONAL PARLIAMENT OF SOLOMON ISLANDS

Minutes of Deliberative Proceedings

Monday 20 July 2009
Conference Room 2, Parliament House, 11:00am

Members Present

Hon. Severino Nuaiasi, MP (Chair)
Hon. Manasseh Sogavare, MP
Hon. Augustine Taneko, MP
Hon. Isaac Inoke Tosika, MP

Apology

Hon. Nelson Ne'e, MP
Hon. Siriako Usa, MP
Hon. Japheth Waipora, MP

Secretariat:

Mr. Warren Cahill, Project Manager
Mr. Calvin Ziru, Committee Secretariat (Legal)
Mr. David Kusilifu, Committee Secretariat
Mr. Noel Matea, Committee Secretariat

Opening Prayer / Welcome

Hon. Augustine Taneko said the opening prayer. Following this, the Chair welcomed Committee and Secretariats

5. Brief on objects and rationale into Currency Declaration Bill 2009

The Committee Secretariat (Legal) briefed committee on objects and rationale of the Currency Declaration Bill 2009.

6. Deliberation

The Committee deliberated and resolved that a public hearing into the Currency Declaration Bill 2009 be convened on Tuesday 21 July 2009, after adjournment of Parliament.

7. Close

Hon. Isaac Inoke said the closing prayer.

Meeting ended 11:36am.



BILLS AND LEGISLATION COMMITTEE

NATIONAL PARLIAMENT OF SOLOMON ISLANDS

Minutes of Proceedings

Thursday 23 July 2009
Conference Room 2, Parliament House, 12:20am

Members Present

Hon. Manasseh Sogavare, MP (Acting Chair)
Hon. Augustine Taneko, MP
Hon. Isaac Inoke Tosika, MP
Hon. Japheth Waipora, MP

Secretariat:

Mr. Warren Cahill, Project Manager
Mr. Calvin Ziru, Committee Secretariat (Legal)
Mr. David Kusilifu, Committee Secretariat
Mr. Noel Matea, Committee Secretariat

8. Election of Acting Chair

That in the absence of the Chair and in accordance with *Standing Order 72 (4)* the Committee resolved that Hon. Manasseh Sogavare act as Chair for the meeting.

9. Opening Prayer / Welcome

Hon. Isaac Inoke said the opening prayer. Following this, the Acting Chair welcomed Committee and Secretariats.

10. Currency Declaration Bill 2009 Report

The Committee Secretariat advised the Committee of deferment on tabling of the Currency Declaration Bill 2009 Report which was scheduled for 22.07.2009 as according to government business paper, to another sitting day. Reason being that first, Attorney General's Chamber advised the Bill is subject to further amendment and second, that a number of important issues were yet to be included in the report.

Committee Secretariat (legal) brief Committee on issues arising and proposed recommendations of the draft report, on the Currency Declaration Bill 2009.

11. Close

Mr. Ziru said the closing prayer and the meeting adjourned at 12:50pm.

APPENDIX 2: WITNESSES

Witnesses who appeared before the Bills and Legislation Committee on 21 July 2009 were:

1. **Mr. Dentana Makini**, Director Economic Policy and Reform Unit, Ministry of Finance and Treasury
2. **Mr. James Remobatu**, Permanent Secretary, Ministry of Justice and Legal Affairs
3. **Ms. Pamela Wilde**, Principal Legal Officer, Ministry of Justice and Legal Affairs
4. **Mr. Rupeni Nawaqakuta**, Legal Draftsman, Attorney-General's Chamber.
5. **Mr. Peter Marshall**, Commissioner of Police, Royal Solomon Islands Police Force
6. **Mr. Luke Houpea**, Chief Immigration Officer [Permit], Ministry of Commerce, Industry, Employment and Immigration
7. **Mr. Nathan Kama**, Comptroller of Customs (Ag), Ministry of Finance and Treasury
8. **Mr. Patteson Akipu**, Deputy Director Quarantine, Ministry of Agriculture and Livestock
9. **Mr. Michael Ha'apio**, Head of Financial Intelligence Unit, Central Bank of Solomon Islands
10. **Mr. Ronald B. Talasasa**, Director Public Prosecution
11. **Mr. Douglas Hou**, Director Public Solicitor
12. **Mr. Ben Anderson**, Head of Risk, ANZ Banking Cooperation