



SOLOMON ISLANDS NATIONAL PARLIAMENT

BILLS AND LEGISLATION COMMITTEE

REPORT

ON

THE CONSTITUTION (AMENDMENT) BILL 2005

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1. **TERMS OF REFERENCE**

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

“The Constitution (Amendment) Bill 2005”

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 of five members and the following have availed themselves for deliberations on the Bill on Friday 4 November and Monday 7 November 2005.

Hon. Edward J. Huniehu	-	Chairman
Hon. Dr. Stephen S. Aumanu	-	Member
Hon. Clement Kengava	-	“
Hon. Meshach M. Maetoloa	-	“

Apology was received from Hon. Manasseh Sogavare.

In attendance to the Committee was the Legal Draftsman to help explain and clarify questions/issues that may emanate from members and the Interim Project Manager of the Parliament Strengthening Project as an observer.

4. **PURPOSE OF THE BILL**

The Constitution (Amendment) Bill 2005

Objects and Reasons:

The objects and reasons as stated in the amending Bill are to amend [*The Constitution of Solomon Islands Act 1978*] as follows:

Section 78 of the Constitution prescribes the qualifications for the appointment of Judges to the High Court. One such requirement being that such person holds or has held high judicial office in any Commonwealth Country or any country outside the Commonwealth. The words “Commonwealth Country” by interpretation would include Solomon Islands. However, there appears to be some doubts as to whether the words in its present context would include Solomon Islands. Hence the amendment to subsection (3) of section 78.

Clause 3 seeks to amend section 80, which deals with the tenure of office of Judges of the High Court. The provisions at present permit the appointment of non-Solomon Islanders over the age of sixty as Judges for a term of years. This amendment seeks to enable Solomon Islands Judges and non-Solomon Islands Judges who have attained the age of 65 years to be appointed for a term of years.

Clause 4 seeks to make similar provisions in respect of tenure of office of Judges of the Court of Appeal.

5. **OBSERVATIONS**

The Bills and Legislation Committee met on Friday 4th November 2005 to examine and make its observations and recommendations on “**The Constitution (Amendment) Bill 2005**”. The Committee made the following:

Section 78: Qualification of Judges of the High Court

The Committee considered the amendment and issues relating to the definition of the Commonwealth.

The Committee has concerns with this amendment which are outlined in detail in the Recommendations below.

**Section 80: Tenure of office of Judges of High Court and,
Section 87: Tenure of office of Judges of Court of Appeal**

- Questions were raised on the rational of the age limit to 65 years, whether it should be extended to 70 years.
- It was questioned as to whether amendments would be discriminatory to the Judges. An example was given of the US Court system where Judges retired at will.
- The Committee also noted the immediate need to amend the said Bill as to cater for Judges reaching the age of 60 years.
- The Committee further noted that the Bill also amended these sections to enable Solomon Islands Judges and non-Solomon Islands Judges who have reached the age of 65 years to be appointed for a term of years to the High Court and the Court of Appeal.

The Committee agrees with the purpose of these amendments.

5. **RECOMMENDATIONS**

Section 78: Qualification of Judges of the High Court

The Committee has reviewed the amendment and has considerable reservations with it in its current form. The Committee is strongly of the view that any proposal to amend the Constitution of the Solomon Islands is an extremely important matter and must be thoroughly investigated and tested by this Committee before it reports to Parliament.

As outlined earlier in the report the stated 'Object and reason' for the Government proposing the amendment is to clarify a possible ambiguity as to "*whether the words in its present context would include the Solomon Islands.*" If the amendment is passed by Parliament section 78.(3) of the Constitution will read:

(3)A person shall not be qualified for appointment as a judge of the High Court unless-

(a) he holds, or has held, high judicial office in any country in the Commonwealth, including Solomon Islands or in any country outside the Commonwealth that may be prescribed by Parliament;
or

The Committee notes with some sympathy that the Government's intention is to ensure that there is no doubt that suitably qualified members of the Solomon Island legal fraternity are eligible for appointment to this Land's highest court. In effect the amendment appears to be a rather routine matter and subsidiary issue to the principal purpose of the Bill which deals with the retirement age and tenure of Judges of the High Court and the Court of Appeal. The Committee having studied the amendment carefully makes the following observations for consideration by Members prior to the Bill being considered by the House:

1. The Committee notes that the *Interpretation Act 1978* already provides clarity in relation to a statutory definition of 'the Commonwealth'. It states:

"the Commonwealth" means Solomon Islands and any country to which section 24 of the Constitution applies, and includes dependencies of any such country;

If the words 'the Commonwealth' in the proposed amendment are replaced with the definition, as stated above, it renders the amendment nonsensical. The Committee believes that if the rationale for the amendment is clarity then it fails and the Committee therefore recommends that the amendment not proceed in the current form.

2. The Committee is also of the view that should the Government believe such an amendment is essential and proceed, despite the apparent flaw outlined in paragraph 1, then the amendment should at least be redrafted to ensure that the Solomon Islands is not relegated to a position of secondary status within its own Constitution. The Committee is of the view that a more appropriate wording within the Constitution of the Solomon Islands would have been in the following terms:

*(a) he holds, or has held, high judicial office **in the Solomon Islands or** in any country in the Commonwealth, or in any country outside the Commonwealth that may be prescribed by Parliament;
or*

With the above observations, the Committee **RECOMMENDED** that “**The Constitution (Amendment) Bill 2005**” be presented and debated on in Parliament.

Hon. Edward J. Huniehu
Chairman
Bills & Legislation Committee

4 November 2005.