National Parliament of Solomon Islands

Bills and Legislation Committee

Committee Report

Report on the Customs and Excise (Validation and Amendment) Bill 2021 (No. 5 of 2021)

NP-Paper No. 24 of 2021
Presented on 4 October, 2021
National Parliament Office
COMMITTEE MEMBERS

The current members of the Bills and Legislation Committee (11th Parliament) are:
- Hon. John Maneniaru, MP (Chairman)
- Hon. Matthew Cooper Wale, MP
- Hon. John Deane Kuku, MP
- Hon. Stanley Festus Sofu, MP
- Hon. Hick Nelson Houenipwela, MP
- Hon. Peter Kenilorea Jnr, MP
- Hon. Lilly Maefai, MP
- Hon. Derrick Rawcliffe Manuari, MP
- Hon. Sam Shemuel Iduri, MP

Secretariat:
- Committee's Secretariat

Supporting Departments:
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- Hansard
- Sargent at Arms

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CHAIR’S FOREWORD

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 Customs and Excise (Validation and Amendment) Bill 2021 (No. 5 of 2021) for laying before Parliament.

Hon. John Maneniaru, MP
Chairman
Bills and Legislation Committee

4 October 2021
COMMITTEE FUNCTIONS

Refer to Standing Order 71 of the National Parliament of Solomon Islands.

EXECUTIVE SUMMARY

The Committee conducted its hearings into the Customs and Excise (Validation and Amendment) Bill 2021 ("the Bill") on the 19th, the 25th of September and on the 2nd of October 2021 as mandated under Order 71 (g) of the Parliamentary Standing Orders.

The object of the Bill is to:

a) give effect to the HS Code 2017 on and from 1 October 2018,
b) validate the import duty rates and export duty rates levied and collected under the Act\(^1\) on and from 1 October 2018,
c) amend section 7 of the Act to enable the Minister with the approval of the Cabinet to repeal and replace the First Schedule to the Act in addition to amending the export and import duty rates specified in the First Schedule, and
d) insert a new section 7A into the Act to provide an alternative means to publishing orders made under section 7.

The Committee, following its scrutiny of the Bill, recognizes and supports the intentions of the Bill and the need for its enactment into law. The Committee, however, has some concerns on the likely impact of clauses 5 and 6 of the Bill, as drafted, on the National Constitution of Solomon Islands (the Constitution). The Committee believes that these two clauses infringe sections 10 (8) and 77 (1) of the Constitution.

Pursuant to the ruling of the Court of Appeal in the case, ‘Kenilorea v Attorney General [1984] SBCA 3; [1984] SILR 179 (21 December 1984)\(^2\), the Committee is of the view that the provisions contained in the above mentioned clauses of the Bill could be seen as an attempt to usurp the independence, impartiality and the original jurisdiction of the judiciary and is “an unwarranted legislative intrusion into the area allotted to the judicial power.”

As a consequence of the likely infringement on the Constitution and the separation of powers expressed in the same, the validating clauses of the Bill could very well be unconstitutional thereby potentially rendering key provisions of the Bill unenforceable, even when enacted.

The Committee therefore recommends that;
1. The Bill be withdrawn for redrafting.

\(^1\) Customs and Excise Act (Cap 121)

\(^2\) Bills and Legislation Committee Report: October 2021
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1.0 INTRODUCTION

This Report presents the findings and recommendations by the Bills and Legislation Committee ("the Committee") after inquiring into the Customs and Excise (Validation and Amendment) Bill 2021 ("the Bill") as required under the Standing Orders of the National Parliament of Solomon Islands ("the Standing Orders").

The object of the Bill is to:

a) give effect to the HS Code 2017 on and from 1 October 2018,

b) validate the import duty rates and export duty rates levied and collected under the Act on and from 1 October 2018,

c) amend section 7 of the Act to enable the Minister with the approval of the Cabinet to repeal and replace the First Schedule to the Act in addition to amending the export and import duty rates specified in the First Schedule, and

d) insert a new section 7A into the Act to provide an alternative means to publishing orders made under section 7.

The hearings into the Bill was held on the 19th, the 25th of September and on the 2nd of October 2021. Relevant stakeholders were invited before the Committee to make presentations or provide submissions on the contents, policy matters, and intentions of the Bill. The List of witnesses that appeared before the Committee and minutes of these proceedings are contained in Appendix 1 and 2.

1.1 Background

The Ministry of Finance officials inform the Committee that from the 1st of October 2018 a revised HS Code 2017 had been used as the First Schedule to determine export and import duties rates. However they realised that the revised First Schedule had not been published in the Gazette and laid before Parliament as required under sections 61 and 62 of the Interpretation and General Provisions Act (Cap 85). The Bill is an attempt to correct this oversight.

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2 Customs and Excise Act (Cap 121)
3 See Appendix 1
2.0 ISSUES WITH THE BILL

The Committee supports the Governments effort to revise the country's financial legislations for improved and enhance revenue collection. In this regard the Committee recognizes and supports the intentions of the Bill and the need for it to be enacted into law. The Committee's sole concern is on the likely infringement of clauses 5 and 6 ('validation clauses') on the Constitution.

2.1 Infringement of clauses 5 & 6 on the Constitution

The Committee is concerned that the validation clauses prohibits any person initiating legal proceedings against the Gov't for actions or consequences emanating from the invalid application of the First Schedule on and after the 1st of October 2018.

The Court of Appeal case of Kenilorea v Attorney General [1984] SBCA 3; [1984] SILR 179 (21 December 1984) ('the Kenilorea case') set the precedent in the separate roles of parliament and judiciary. The facts stem if a situation not indifferent to those found in the current circumstances.

On the 23rd November 1983 the National Parliament passed the Price Control (Retrospective Operation and Validation) Act 1983. The 1983 Act contained provisions retrospectively validating orders made and acts done under the 1982 Act and by ss 4 and 5 making provision that the validity of certain act and orders under the 1982 could not be called into question before the court.

The Appellant who was Leader of the Official Opposition objected to ss. 4 and 5 of the 1983 Act on the grounds that they were in effect changing the constitution by interfering with the jurisdiction and powers of the judiciary.

The Court of Appeal entered judgement in favour of the appellant on the basis that ss 5 (d) and 5(e) of the 1983 Act in question were invalid as being beyond the power of the National Parliament.

The Committee believes that the circumstances of this Bill and the drafting of certain key parts of the Bill are similar to the circumstances surrounding the Kenilorea case. As such the Committee urged the Attorney General's Drafters to properly research the legality of the validating clauses in the Bill in light of the findings of the Court of Appeal's Kenilorea Case.

The Committee is of the view that it is prudent practice to ensure, to the greatest extent possible, that Bills brought to parliament and their specific provisions adhere to and take into account settled court findings and precedence even before parliament enacts them into law. In this case the issues for which the Committee is flagging is essential to the separation of powers provided for in the Constitution.

Proposed law:
Clause 5 of the Bill proposes to validate the HS Code 2017 as the First Schedule and give immunity to the Government from legal proceedings on matters and consequences arising from the First Schedule on and after 1 October 2018.
Clause 6 of the Bill proposes to validate previous Government actions and provide the Government immunity from legal proceedings for previous actions or consequences of actions done on and after 1 October 2018.

**Issue with proposed law:**
The Committee believed that clauses 5 and 6 in its current form encroaches on to the judiciary’s sphere and that the validating clauses is an attempt by the executive and the legislature to usurp the judiciary’s role. This is in direct breach of s 10 (8) and s 77 (1) of the Constitution.

S 10 (8) of the Constitution protects the independence and impartiality of the judiciary and s 77 (1) provides the High Court unlimited original jurisdiction to hear and determine any civil or criminal proceedings.

As a consequence of the likely infringement of s 10 (8) and s 77(1) of the Constitution, the validating clauses could very well be deemed unconstitutional and unenforceable, therefore rendering the Bill ineffective in achieving its objective (b) as mentioned in the explanatory memorandum.

**Recommendations**
The Committee, therefore, following its scrutiny of the Bill make the following recommendation;

1. The Bill be withdrawn for redrafting.

END OF REPORT
### Appendix 1: Witnesses

<table>
<thead>
<tr>
<th>Date</th>
<th>Name</th>
<th>Position &amp; Organisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Saturday 19 September 2021</td>
<td>Mr. McKinzie Dentana</td>
<td>PS, MOFT</td>
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<tr>
<td></td>
<td>Mr. Jim Sutton</td>
<td>Comptroller, Customs</td>
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<tr>
<td></td>
<td>Mr. Joseph Dokekana</td>
<td>Commissioner, IRD</td>
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<tr>
<td></td>
<td>Mrs. Primula Kingmele,</td>
<td>Director, ERU, MOFT</td>
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<td></td>
<td>Mrs. Margaret Leoa</td>
<td>ERU</td>
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<td></td>
<td>Mr. Selwyn Takana</td>
<td>DSE(Ag), MOFT</td>
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<tr>
<td>Saturday 25 September 2021</td>
<td>Mr. Joseph Dokekana</td>
<td>Commissioner, IRD</td>
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<tr>
<td></td>
<td>Mrs. Primula Kingmele</td>
<td>ERU, MOFT</td>
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<td></td>
<td>Mrs. Margaret Leoa</td>
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<td></td>
<td>Mr. Selwyn Takana</td>
<td>DSE(Ag)</td>
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<tr>
<td></td>
<td>Ms. Victoria Aitken</td>
<td>Legal Drafter- AG Chambers</td>
</tr>
<tr>
<td>Saturday 2 October 2021</td>
<td>Mr. Michael Kikiolo</td>
<td>Management Policy Advisor, CBSI</td>
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<tr>
<td></td>
<td>Mrs. Louisa Baragamu</td>
<td>Chief Manager, ERS, CBSI</td>
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Appendix 2: Minutes of Proceedings

NATIONAL PARLIAMENT OF SOLOMON ISLANDS

BILL AND LEGISLATION COMMITTEE

Minutes of Proceedings
Committee Hearing into the Customs and Excise (Validation and Amendment) Bill 2021 (No.5 of 2021)

Day 1 /2021


1. Members Present
Hon. John Maneniaru, MP, Chairman
Hon. Matthew Wale, MP
Hon. John Dean Kuku, MP
Hon. Lilly Maefai, MP
Hon. Derrick Manu'ari, MP

Absent/Apologies
Hon. Sam Iduri, MP
Hon. Peter Kenilorea (Jr), MP
Hon. Rick Houenipwela, MP
Hon. Stanley Solu, MP

Secretariat
Mr. Wilson Anii, Committee Secretary
Ms. Cordney. M. Wala, Committee Secretary
Mr. Wilson Orisi, Committee Secretary
Mr. Whitmon Tabiru, Committee Secretary
Ms. Sherilyn Ragosi Hansard Reporter
Mr. Lawrence Scott, Senior Media Officer

2. Opening prayer
The MP for Aoke/Langalanga, Hon. Matthew Wale said the opening prayer.

3. Welcome and Opening Remarks
The Chairman of the Bills and Legislation Committee Hon. John Maneniaru made his opening remarks. The Chair informed the witnesses of the Parliamentary privileges.

4. Inquiry into the Customs and Excise (Validation and Amendment) Bill 2021 (No.5 of 2021)

The Hearing proper commenced and the following witnesses from the Ministry of Finance & Treasury were admitted:

Hearing 1 Witnesses

i. Mr. McKinnie Dentana, PS
ii. Mr. Jim Sutton, Comptroller, Customs
iii. Mr. Joseph Dokekana, CIR, IRD
iv. Mrs. Primula Kingmele, ERU
v. Mrs. Margaret Leoa, ERU
vi. Mr. Selwyn Takana, DSE(Ag)

The witness made their presentations before the committee. The committee questioned the witness based on the evidences presented. The examination concluded.
Hearing suspends at 1:54 pm

The Hearing proper continued at 2:00 pm and the following witnesses from the Central Bank of Solomon Islands were admitted:

**Hearing 2 Witnesses**
1. Mr. Michael Kikiolo, Management Policy Advisor
2. Mrs. Louisa Baragamu, Chief Manager/ERSD

The witness made their presentations before the committee.
The committee questioned the witness based on the evidences presented.
The examination concluded.

**Hearing adjourn at 2:03 pm**

5. **Adjournment**
Closing prayer by Hon. John Deane Kuku.
The committee adjourned hearing at 2:05 pm

6. **Documents Tabled**
None

**Day 2 / 2021**

**Saturday 25th September 2021, CR II, Parliament House 10:25 am.**

3. **Members Present**
Hon. John Maneniaru, MP, Chairman
Hon. Matthew Wale, MP
Hon. John Dean Kuku, MP
Hon. Peter Kenilorea (Jr), MP

**Absent/Apologies**
Hon. Sam Iduri, MP
Hon. Rick Houenipwela, MP
Hon. Stanley Sofu, MP
Hon. Lilly Maefai, MP
Hon. Derrick Manu’ari, MP

**Secretariat**
Mr. Gregory Fineangganofo, Committee Director
Mr. Wilson Antii, Committee Secretary
Ms. Cordney. M. Wale, Committee Secretary
Mr. Wilson Orisi, Committee Secretary
Mr. Greg Kinimete, Hansard Reporter
Mr. Lawrence Scott, Senior Media Officer

4. **Opening prayer**
The MP for East AreAre, Hon. Peter Kenilorea Jr, said the opening prayer.

3. **Welcome and Opening Remarks**
The Chairman of the Bills and Legislation Committee Hon. John Maneniaru made his opening remarks. The Chair informed the witnesses of the Parliamentary privileges.

4. **Inquiry Into the Customs and Excise (Validation and Amendment) Bill 2021 (No.5 of 2021)**
The Hearing proper commenced and the following witnesses from the Ministry of Finance & Treasury and AG Chambers were admitted:

**Hearing 3 Witnesses**
1. Mr. Joseph Dokekana, CIR, IRD
ii. Mrs. Primula Kingmele, ERU
iii. Mrs. Margaret Leoa, ERU
iv. Mr. Selwyn Takana, DSE(Ag)
v. Ms. Victoria Alken, Legal Drafter, AG Chambers

The witness made their presentations before the committee.
The committee questioned the witness based on the evidences presented.
The examination concluded.

Hearing adjourn at 10:42 am

5. Adjournment
Closing prayer by Hon. John Deane Kuku.

The committee adjourned hearing at 10:42 am.

6. Documents Tabled

None

Day 3 /2021

Saturday 2nd October 2021, CR II, Parliament House 10:14 am

1. Members Present
Hon. John Maneniaru, MP, Chairman
Hon. Matthew Wale, MP
Hon. Rick Houenipwela, MP
Hon. Lilly Maeafai, MP
Hon. Peter Kenilorea Jr, MP

Absent/Apology
Hon. John Deane Kuku, MP
Hon. Stanley Sofu, MP
Hon. Derrick Manuari
Hon. Sam Shamuel Iduri

Secretariat
Mr. Wilson Anii, Committee Secretary
Mr. Gregory Fineanganofo, Committee Secretary
Ms. Salome Pilumate, Committee Secretary
Mr. Whitmon Tabiru, Committee Secretary
Mr. Wilson Orisi, Committee Secretary
Mr. Richard Allen, Hansard Reporter
Mr. Lawrence Scott, Media Officer

2. Prayer
The MP for Small Malaita, Hon. Rick Houenipwela said the opening prayer.

3. Welcome and Opening Remarks
The Chairman of the Bills and Legislation Committee, Hon. John Maneniaru made his opening remarks. The Chair informed the witnesses of the Parliamentary privileges.

4. Inquiry into the Customs and Excise (Validation and Amendment) Bill 2021 (No.5 of 2021)

The Hearing proper commenced and the following witnesses from the Central Bank of Solomon Islands were admitted:

Hearing 1 Witnesses

i. Mr. Michael Kikiolo, Management Policy Advisor
ii. Mrs. Louisa Baragamu, Chief Manager, ERS

The witnesses made their presentations before the committee.
The committee questioned the witnesses based on the evidences presented.
The examination concluded
Parliament adjourns at 10:36am

4. Adjournment:
The committee adjourned hearing at 10:48am

5. Closing Prayer
The MP for East Are’Are, Hon. Peter Kenilorea Jr said the closing prayer.

5. Documents Tabled

None