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**Feasibility Study for the Creation of a Solomon Island  
Anti-Corruption Agency**

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## Executive Summary

We recommend the establishment of an ACA in Solomon Islands. With a reallocation of existing SIG resources and a reallocation of existing donor resources this reform can be achieved in an entirely cost-neutral manner. In addition, the added value of bringing together resources currently spread across a range of SIG agencies in this new body will lead to an increased efficiency dividend and will therefore lead to an overall cost saving for both SIG and donors.

In our consultation process we found that corruption is perceived to be a major problem in Solomon Islands. As they are currently structured, the SIG agencies involved in the country's integrity framework are unable to adequately fight corruption. Chronic issues of a lack of communication, coordination and collaboration plague the operation of these agencies. Given the learning available from international experience these issues can be overcome through the creation of a single anti-corruption agency which can:

- resolve coordination issues among integrity agencies involved in anti-corruption work;
- send a signal by government that corruption is a serious issue;
- centralise information and intelligence about corrupt activity; and
- ensure that agencies involved in anti-corruption work are not subject to control by vested interests within wider society.

We recommend that the creation and operation of an ACA occur over three discrete stages. In stage one sections of the country's legislative and administrative will be reformed to overcome some of the issues which lead to a lack of communication, coordination and collaboration between the SIG agencies involved in the fight against corruption. In the second stage an executive officer will work to create the internal administrative structures required to bring an ACA into existence. In the third and final stage the resources of the LCC and RSIPF Corruption Squad will be brought together to physically create the ACA. The FIU will be physically co-located with the ACA and a Prosecutor from the DPP will be seconded through to the new ACA.

In our opinion bringing about these changes will improve the ability of Solomon Islands agencies to combat corruption, and over time reduce the incidence of corruption in the country.

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## Anti-Corruption Agencies in Theory and Practice

Corruption is a major problem in many parts of the world. In order to combat corruption, a number of governments have created specific bodies tasked with fighting corruption. These Anti-Corruption Agencies (ACAs) come in a variety of shapes and forms. One particular title for an ACA which has gained a high degree of global prominence is Independent Commission Against Corruption (ICAC). With the first ICAC being started in Hong Kong in 1974 a number of other ICACs have, since that date, been created in a range of countries around the world. In the Pacific region New South Wales established an ICAC in 1988 and Fiji established one in 2006.<sup>1</sup> In general though, ICACs are not a specific form of ACA with different functions from other ACAs, instead ICAC is merely a name used in some jurisdictions to identify their ACAs. While discussions about ICAC's often focus on three specific anti-corruption functions: Investigation, Prevention and Education – these three functions may be carried out by ACAs which are not formally identified as being ICACs. In general then, there are no specific features or characteristics which separate ICACs out from other forms of ACAs. However, as compared to agencies which may possess some anti-corruption features such as specific corruption targeting squads within a wider Police Force or some aspects of the work carried out by Auditors-General Offices, ACAs usually possess a range of functions which separate them out from other forms of agencies involved in anti-corruption work. These six specific functions are:

- Receive and respond to complaints
- Intelligence, monitoring, and investigation
- Administrative orders and prosecutions<sup>2</sup>
- Preventive research, analysis, and technical assistance
- Ethics policy guidance, compliance review, and scrutiny of asset declarations
- Public information, education, and outreach.<sup>3</sup>

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<sup>1</sup> For more on the Fijian body see Peter Larmour, (forthcoming) "From clean up to FICAC: Anti-corruption in Fiji's post coup politics" *Crime, Law and Social Change*.

<sup>2</sup> We need to note that not all ACAs possess a prosecutorial function. By leaving that function with organisations such as a Director of Public Prosecutions, this reduces the risk of an ACA assuming too much power and not being accountable to the public.

<sup>3</sup> Meagher, Patrick, (2004) "Anti-Corruption Agencies: A Review of Experience" *The IRIS Discussion Papers in Institutions and Development* (Baltimore: Centre for Institutional Reform and the Informal Sector, University of Maryland), p. 9. See also De Speville, B. (2000). 'Why do Anti-corruption Agencies Fail?', UN Global Program Against Corruption (GPAC), UNCICP, Implementation Tools, the Development of an Anti-corruption Tool Kit:

An important implicit seventh function of ACA's is the coordination of the various agencies within a country involved in carrying out these functions.<sup>4</sup>

However, not all ACAs possess all of these seven functions. Indeed, some remarkable ACA successes do not possess all of these functions. Singapore's Corrupt Practices Investigation Bureau (CPIB), for example, does not possess any education function in terms of raising the public's awareness of corruption related issues. Instead the functions of an ACA should be crafted to the specific needs of each jurisdiction within which they are created. Nonetheless, as a group it is generally acknowledged that it is the bringing together of the majority of these various functions that separates ACAs from other agencies involved in anti-corruption work.

In the majority of cases the functions are distributed across three key areas, these being:

- investigation;
- prevention; and
- education.<sup>5</sup>

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Inputs for a United National Expert Group Meeting (not officially edited), Vienna: UN; Doig, A. (1995). Good government and sustainable anti-corruption strategies: a role for independent anti-corruption agencies? *Public Administration and Development*, 15/2, 151-165; Doig, A. (2000) 'Getting the Boring Bits Right First: Capacity Building for Anti-Corruption Agencies (ACA)', UN Global Program Against Corruption (GPAC), UNCICP, Implementation Tools, the Development of an Anti-corruption Tool Kit: Inputs for a United National Expert Group Meeting (not officially edited), Vienna: UN; Pope, J. (1999). The Need for, and Role of, an Independent Anti-Corruption Agency. TI Working Paper Series (available online: [www.transparency.org](http://www.transparency.org)); Pope, J. & Vogl, F. (2000). Making anti-corruption agencies more effective. *Finance & Development*. June, pp. 6-9; and Quah, J. (2000). 'Accountability and anticorruption agencies in the asia-pacific region' in *Combating Corruption in Asian and Pacific Economies*, Manila: Asian Development Bank, pp. 101-124.

<sup>4</sup> See Manuhua Barcham, (2009) "Cleaning up the Pacific: anti-corruption initiatives" *Australian Journal of International Affairs* 63 (2): 251-269 and Luis de Sousa, (forthcoming) "Anti-corruption agencies: between empowerment and irrelevance" *Crime, Law and Social Change*.

<sup>5</sup> This strategy is utilized by the ACAs in Botswana, Indonesia, Hong Kong, Latvia, Lithuania, New South Wales and Thailand. See United Nations Development Programme, (2005) *Institutional Arrangements to Combat Corruption: A Comparative Study* (Bangkok: UNDP).

The rationale for this is that investigations (and subsequent prosecutions) are very costly in terms of resources. It is more effective in a purely cost-savings sense to prevent corruption than it is to investigate it. So too, education about corruption and the possible consequences of corrupt behaviour helps raise public awareness and thereby reduces the chances of corrupt behaviour occurring. That said, there is always a need to maintain the investigative ability of an ACA as education, or even prevention alone, will not stop corruption – there is always a need for both a ‘carrot and a stick’. If corrupt behaviour is occurring then it needs to be exposed and stamped out. However, to maximize its effectiveness, this investigative function needs to be supported by a programme of prevention and education.<sup>6</sup>

## **Why Have an ACA?**

A key point to note is that not all countries have an ACA. Indeed, the general consensus is that not all countries require an ACA. The key rationale for establishing an ACA is that it will increase the effectiveness of anti-corruption efforts within a country. In general, an ACA will achieve this by:

- resolving coordination issues among integrity agencies involved in anti-corruption work;
- sending a signal by government that corruption is a serious issue;
- centralising information and intelligence about corrupt activity; and
- not being subject to control by vested interests within wider society.<sup>7</sup>

A lack of coordination and centralisation of anti-corruption activities by a country’s integrity institutions leading to low levels of success in combating corruption is thus a central reason for establishing an ACA.<sup>8</sup> We need to note though that the creation of an ACA is not necessarily able to control all aspects of corruption within a country. A 2005 UNDP Report thus concluded that:

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<sup>6</sup> United Nations Development Programme, (2005) *Institutional Arrangements to Combat Corruption: A Comparative Study* (Bangkok: UNDP), pp. 6-9.

<sup>7</sup> Meagher, Patrick, (2004) “Anti-Corruption Agencies: A Review of Experience” *The IRIS Discussion Papers in Institutions and Development* (Baltimore: Centre for Institutional Reform and the Informal Sector, University of Maryland), p. 2 & UNDP, (2005) *Institutional Arrangements to Combat Corruption: A Comparative Study* (Bangkok: UNDP), pp. 9-10.

<sup>8</sup> USAID, (2006) *Anti-Corruption Agencies* (Washington DC: USAID), p. 8.

Several countries have opted for or are currently considering creating an independent commission or agency charged with the overall responsibility of combating corruption. However, the creation of such an institution is not a panacea to the scourge of corruption. There are actually very few examples of successful independent anti-corruption commissions/agencies.<sup>9</sup>

The key reasons for the lack of success of these organisations is not that an ACA itself is not an appropriate option for these countries but rather that they lack political will and proper resourcing in their implementation. Where these factors have been provided, such as in Hong Kong and Singapore, these jurisdiction's ACAs have been extraordinarily successful.<sup>10</sup> However, in cases where there has been a lack of political will, a shortfall of resources and/or non-cooperation by other institutions in the country's integrity network such as for Botswana's Directorate on Corruption and Economic Crime (DCEC) the results have been less than spectacular.<sup>11</sup>

## **Factors for success**

One of the major lessons learnt from the international experience of the establishment and successful operation of ACAs is thus that there is a need for political will in both their creation and operation. The consensus appears to be that the ACAs that have been most effective have been those which operate with a strong degree of political will to combat corruption. The 'tone at the top' thus appears to be an important indicator of success for ACAs. Both the Singapore and Hong Kong's ACAs, which are often identified as being the 'leading lights' globally in terms of how the creation of a specific ACA has drastically improved the fight against corruption within a single country, were established and supported politically. The factor most closely associated with the issue of political will is that of adequate resourcing. Strong political will is often associated with an ACA being adequately resourced to effectively carry out its functions. A lack of political will is

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<sup>9</sup> United Nations Development Programme, (2005) *Institutional Arrangements to Combat Corruption: A Comparative Study* (Bangkok: UNDP).

<sup>10</sup> Meagher, Patrick, (2004) "Anti-Corruption Agencies: A Review of Experience" *The IRIS Discussion Papers in Institutions and Development* (Baltimore: Centre for Institutional Reform and the Informal Sector, University of Maryland), p. 6.

<sup>11</sup> Meagher, Patrick, (2004) "Anti-Corruption Agencies: A Review of Experience" *The IRIS Discussion Papers in Institutions and Development* (Baltimore: Centre for Institutional Reform and the Informal Sector, University of Maryland), p. 6.

conversely often associated with an ACA being provided with less than optimum amounts of resourcing. Both of these issues of political will and adequate resourcing constitute two parts of the general need to ensure that any ACA is independent of interference from the political leadership. To be otherwise is to not only provide opportunities for capture of the organisation by certain vested interests and loss of the organisation's legitimacy, but to also allow the ACA to be 'starved of resources' if its actions and decisions are not seen as being politically popular.

Another key point required for the successful creation and operation of an ACA is an effective legal framework to support its operations. As pointed out above, one of the key characteristics of a successful ACA is that it is able to act as a focal point for anti-corruption activity within a country, part of which involves coordinating not only its own work but also the work of other agencies within that country involved in anti-corruption activities. In order for this to occur there is a need for a legal framework to both enable and support this cooperation and coordination and provide the ACA with the powers it requires to operate effectively.

Two other points required for the successful operation of an ACA are the presence of a clear reporting hierarchy and the existence of a public oversight body for the ACA. The clear reporting hierarchy ensures that the operations of the ACA remain transparent and open to all. Without this safeguard the legitimacy of the organisation may be called into question as could its effectiveness if reports from the organisation are never made publicly available. This then leads on to the explanation of why a public oversight body for an ACA is required. Without such a body an ACA may become so powerful that it effectively becomes 'judge, jury and executioner'. This process would be made even worse if a powerful organisation such as this was taken over by vested interests. By reporting to a public body such as a specific Parliamentary Committee these issues about the vesting of so much power within one particular organisation can be minimised as too are the chances that the body will be taken over by any one specific political party or agency.

These four issues then comprise the areas where special work is required to ensure that a newly established ACA is able to prosper and survive. These areas again are:

- independence from interference by the political leadership;
- the presence of laws necessary for its success;
- a clear reporting hierarchy; and

- the presence of oversight committees.<sup>12</sup>

A fifth area which could also be added to this list is the creation of an over-all anti-corruption strategy for a country. Such a strategy can provide the roadmap through which an ACA can mobilize broader support for its actions amongst not only other integrity agencies working within a country but also across the public at large and in the private sector.<sup>13</sup>

## **ACA as a Part of a Broader National Integrity Framework**

Often the creation of an ACA involves the redistribution of resources within a country's integrity network including the possible disestablishment of certain agencies with some or all of their powers then being reconstituted within the new ACA. However, the establishment of an ACA does not mean that this agency will then conduct all anti-corruption activity within a country. While ACAs are designed to lead the fight against corruption within a specific country they are still part of a larger integrity network which operates across all aspects of society from government agencies such as Ombudsman Offices, Government Auditors, and public service commissions through to the private sector and civil society agencies.<sup>14</sup> One of the roles of an ACA is thus to help coordinate anti-corruption activity across this broader range of agencies involved in the fight against corruption. In making this claim it should be noted that while Ombudsman Offices, for example, are not specifically anti-corruption agencies they nonetheless play an important role in anti-corruption activities in that maladministration can act as a precursor or catalyst for corrupt activity. It is the coordination and collaboration of the work of these agencies with other agencies operating as part of a specific country's integrity network that can help increase the effectiveness of the network and thus help increase the effectiveness of these agencies fight against corruption.

Increased coordination and collaboration between agencies involved in anti-corruption activity is thus a key function of an ACA, and something which would usefully help a number of the capacity issues which currently hinder the functioning of Solomon Island's anti-corruption efforts. In

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<sup>12</sup> John R. Heilbrunn, (2004) *Anti-Corruption Commissions: Panacea or Real Medicine to Fight Corruption?* (Washington DC: World Bank), p. 15.

<sup>13</sup> USAID, (2006) *Anti-Corruption Agencies* (Washington DC: USAID), p. 8.

<sup>14</sup> Doig, Alan, and Stephanie McIvor, (2003) "The National Integrity system: assessing corruption and reform" *Public Administration and Development* **23**: 317-332.

addressing the issue of anti-corruption a useful mechanism for helping understand the web of relationships that can work together within a country to uphold integrity and combat corruption is the concept of the national integrity system developed by the anti-corruption NGO Transparency International.<sup>15</sup> The notion of a National Integrity System is based on the idea that corruption is a systemic phenomenon that can be addressed by reducing opportunities for corruption and increasing disincentives for corrupt behavior.<sup>16</sup> The model is based on the existence of a number of pillars including agencies such the judiciary, civil society groups including the media; the private sector; and other groups including those working in the field of international cooperation, which should together work to promote integrity within a country.

In 2003-2004 a survey was made of the National Integrity Systems of 12 Pacific Island countries including Solomon Islands.<sup>17</sup> In this National Integrity Systems-Pacific (NISPAC) study 11 pillars were identified. These pillars included: legislative assemblies; executive; judiciary; auditor-general; ombudsman; watchdog agencies; public services; media; civil society; private sector and the international community.<sup>18</sup> In a perfect case the pillars are interdependent, with the pillars with greater capacity helping the other pillars to uphold the country's integrity system. However, as the NISPAC studies showed this is not always the case. Indeed, one of the most startling results of the whole study came from the Solomon Islands report.

The country with the 'best' National Integrity System on paper in the Pacific region was the Solomon Islands, with a complete set of all 11 pillars.<sup>19</sup> However, while Solomon Islands possessed a robust National Integrity System on paper, when this study was completed in 2004 Solomon Islands was the closest country in the Pacific to achieving failed-state status. The existence of this institutional framework appeared to provide no impediment to the almost complete collapse of state structures in the country. A collapse credited in part at least to rampant corruption within the

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<sup>15</sup> For more on the concept of National Integrity Systems see [http://www.transparency.org/policy\\_research/nis](http://www.transparency.org/policy_research/nis).

<sup>16</sup> Doig, Alan, and Stephanie McIvor, (2003) "The National Integrity system: assessing corruption and reform" *Public Administration and Development* **23**: 317-332.

<sup>17</sup> The NISPAC Study included the following countries: Cook Islands, Federated States of Micronesia, Kiribati, Marshall Islands, Nauru, Niue, Palau, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.

<sup>18</sup> Larmour, Peter, and Manuhua Barcham, (2004) *National Integrity Systems Pacific Islands: Overview Report* (Australia: Transparency International-Australia).

<sup>19</sup> Larmour, Peter, and Manuhua Barcham, (2004) *National Integrity Systems Pacific Islands: Overview Report* (Australia: Transparency International-Australia).

country.<sup>20</sup> The problem was that in the Solomon Islands these pillars were largely ‘hollow’ with many agencies having little, if any, capacity to fulfill the anti-corruption activities they were obliged to discharge.<sup>21</sup> As recent fieldwork has shown, this lack of internal capacity, while improved due to help from RAMSI, is still rather low. This internal lack of capacity is, in the Solomon Island’s case further compounded by a general inability for the various agencies in Solomon Island’s National Integrity system to coordinate their activities and to effectively collaborate in anti-corruption work.

An ACA is thus never a ‘silver bullet’ to rid a country of corruption. Rather, an ACA provides a point of focus for a country’s integrity network to maximize the effectiveness of that country’s anti-corruption efforts. Where such a focal point does not exist the creation of an ACA can act to provide such a point.

### **Single-Agency Versus Multiple-Agency ACAs**

There are two main approaches in creating an ACA: the single-agency approach and the multiple-agency approach.<sup>22</sup> The single agency approach involves placing the key anti-corruption resources and capabilities within one single organisation. The obvious advantage of this approach is that it provides a ‘strong lead’ on anti-corruption activities and can reduce the problems of coordination that can bedevil anti-corruption efforts in countries with a number of agencies involved in anti-corruption work. Despite encompassing a range of functions these single-agency models nonetheless must still interact with other agencies involved in the broader fight against corruption such as the Ombudsman and the Auditor General. A possible negative impact of these single-agency models flows from the fact that as a single-agency they possess an extraordinary wide range of powers and so represent a threat if they themselves are ‘taken over’ by vested interests. The multiple-agency approach in some respects helps overcome this issue of providing a target of take-over by vested interests as its powers and resources are spread over a range of organisations. The

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<sup>20</sup> Dinnen, Sinclair, (2002) “Winners and Losers: Politics and Disorder in the Solomon Islands 2000-2002” *The Journal of Pacific History* 37 (3): 285-298; and Wainwright, Elisina, (2003) “Responding to state failure - the case of Australia and Solomon Islands” *Australian Journal of International Affairs* 57 (3):485-498.

<sup>21</sup> Roughan, Paul, (2004), ‘Solomon Islands’ *Transparency International Country Study Report* (Australia: Transparency International-Australia).

<sup>22</sup> Quah, Jon S. T. (1999a), “Comparing Anti-corruption Measures in Asian Countries: Lessons to be Learnt”, *Asian Review of Public Administration*, Vol. XI, no. 2.

difficulty with pursuing a multi-agency approach, however, is that it can fall prey to the very issues of low levels of coordination and collaboration that underlay the need for an ACA in the first place. Given this, while a multi-agency approach can be seen as constituting a form of ACA it will not necessarily improve the functioning of a country's integrity system if increased levels of coordination and collaboration are not achieved by the agencies involved in the integrity network. However, a multi-agency model can be seen as a useful stepping-stone towards the creation of a single-agency model.

## **International Obligations**

While Solomon Islands is not yet party to the United Nations Convention Against Corruption (UNCAC) a key part of the new Partnership Framework between Solomon Islands Government and the Regional Assistance Mission to Solomon Islands is that Solomon Islands Government becomes a state party to the United Nations Convention Against Corruption.<sup>23</sup> This is an important consideration when looking at the creation of an ACA in Solomon Islands as Article 36 of the United Nations Convention Against Corruption [UNCAC] states that:

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement.

If Solomon Islands Government signs up to UNCAC then a functioning ACA would help ensure that their country was in compliance with this section of the Convention.<sup>24</sup>

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<sup>23</sup> Solomon Islands Government and the Regional Assistance Mission to Solomon Islands, (2009) *Partnership Framework* (Honiara: Solomon Islands Government and the Regional Assistance Mission to Solomon Islands), p. 89.

<sup>24</sup> Karen Hussmann, Hannes Hechler & Miguel Peñailillo, (2009) *Institutional arrangements for corruption prevention: Considerations for the implementation of the United Nations Convention against Corruption Article 6* (Bergen: U4).

# **Solomon Islands Environmental Scan**

## **Country Overview**

The Solomon Islands integrity system has made major strides since the troubles of the ethnic conflict in 1999-2003. RAMSI support has helped not only stabilise the law and order situation in the country, it has also helped invigorate and prop up the country's ailing institutions. However, while much has been done, without ongoing support for at least the next ten years these positive changes may easily fall away. RAMSI has played a major role in strengthening the country's integrity institutions since the intervention began. The problem with this though is that, as things currently stand, these institutions would not be able to maintain their current level of activity if the RAMSI support was removed. One of the key issues facing Solomon Islands and RAMSI is ensuring that this support is transferred to sustainable reform within these agencies. Many of the issues faced by Solomon Island institutions stem from very basic capacity constraints. Low levels of literacy within sections of the country's public service thus provide a constraint on the effectiveness of the country's institutions. One of the key developments in the country's integrity system is the creation of the Integrity Group Forum. This group is helping overcome many of the problems of a lack of information flow between the various agencies involved in anti-corruption work in the country. However, despite the existence of this group the various agencies involved in anti-corruption work within the country continue to be beset with problems of coordination and a lack of ability to effectively collaborate to maximize the effectiveness of the resources that they do have. In the following section an analysis is made of the various agencies currently involved in the fight against corruption in Solomon Islands in order to provide a body of evidence as to whether or not it is feasible and/or advisable to establish an ACA in Solomon Islands.

## **National legislature**

The Public Accounts Committee (PAC) is appointed under Standing Order 69 (1). The main powers of the committee are:

- to examine the accounts prescribed by section 38 of the Public Finance and Audit Act, together with the report of the Auditor-General thereon, and to report the results of such examination to Parliament.
- to report to Parliament in such a way that the report may inform Members prior to the Parliamentary debate thereon of the background to the Draft Estimates and draw attention to those matters which the Committee feels should be the subject for such Parliamentary debate; and
- to make such recommendations as the Committee sees fit and subsequently receive comments and reports on such recommendations from the Government.

Before the initiation of the UNDP Parliamentary Strengthening project the Parliamentary Committee system was almost completely inactive. However, as a result of this particular project, all Parliamentary Committees, including the PEC, are now meeting at least semi-regularly.

## **The Judiciary**

The national judiciary has undergone a dramatic program of expansion and revitalization as part of the RAMSI intervention. Due to the emphasis on restoring law and order, considerable investment was made through the development of court facilities, provision of judges, prosecutors and public defenders as well as associated systems. Apart from delays in hearing and determining matters, the superior courts are generally regarded as operating well.

## **The Department of Public Prosecutions (DPP)**

In interviews the DPP explained that since the 1999 amendments to the LCC Act the sole source of corruption briefs is the Police service. In his view the quality of briefs has improved post-RAMSI participation. Notwithstanding, he considers there has always been a delay in getting briefs to the DPP (before and after the amendments). He encourages more proactive seeking of advice by the Police. Although there is an informal mechanism between the Police and DPP for communication of information he thinks a more formal mechanism is important to both to:

- ensure correct lines of jurisdiction are followed (ie advisors go through SIG systems not through their own parallel systems in engaging with DPP), and
- under-pin the necessity for the investigative body to work with the DPP from early stages of an investigation.

The DPP suggested that an investigative capacity for corruption cases, independent of the Police service, would be desirable. He supported an ACA type body with educative and prevention functions combined with investigative functions to leverage the outcomes from investigations. He stressed the importance of investigations being carried out independently and thoroughly, and opined that this had not always been the perception in the past. The DPP suggested that there was a need to ensure that staff rotated through the CID, and in particular the corruption investigation area, to reduce risk of institutionalising corruption.

The DPP highlighted a significant deficiency in the timeliness and lack of transmission of information between the relevant agencies and sought a solution to that issue. He raised the possibility of the creation of a Leadership Tribunal presided over by magistrates to address what was seen as interminable delay in dealing with Leadership Code breaches. The DPP also identified a need for a review of the country's penal code. This is something that the Law Reform Commission is currently doing. Official corruption (part 10 of the Penal Code) is a priority for the review. Reform of the Law of Evidence is also currently underway.

## **Law enforcement agencies**

There are two main anti-corruption sections within the Royal Solomon Islands Police Force (RSIPF). They are the Corruption Squad (formally called the Corruption Targeting Team) and the Professional Standards and Internal Investigations (PSII) Section. The Corruption Squad is charged with policing external corruption in all of its forms while the PSII is charged with policing internal Police matters and the actions of staff members.

The Corruption Squad was established with RAMSI assistance in 2004 specifically to combat corruption of public officials. The Squad was established separately from the Fraud Squad which already existed. The Fraud Squad still remains and has a staff of four with two advisors. The Corruption Squad initially only targeted grand corruption (Ministers and large sums of money) but now investigates any allegation of corruption. They have two main avenues for receiving complaints: audit reports from the Office of the Auditor General and complaints from the public. Under previous governments they experienced massive levels of political interference which have disappeared under the current administration, although fear was expressed through the various ranks that interference may return in the future. Most of the corruption investigated by the Squad relates to fraud.

A group discussion was held with most members of the Corruption Squad to ascertain their views with respect to their activities. The squad is managed by a local Inspector with advisors from the Participating Police Force (PPF). The locals had no training at all with respect to anti-corruption training before 2004 and continue to rely heavily on RAMSI through the PPF advisors. Currently the squad is staffed with 5 SI police and 5 advisors. It was explained that one RSIPF officer had been moved out to maintain the good name of the Corruption Squad although he had not been officially dealt with. It was suggested that they could do with 3-4 times more resources to deal with the back-log of matters. It was explained that they have 27 allocated jobs and 34 unallocated jobs of which some were politically sensitive. On occasions the Corruption Squad had been given important tasks which were not corruption matters on request of the Commissioner of Police via the director of the unit. They acknowledged that these matters, although important, invariably held back the work on corruption issues.

Although skill levels of current staff are being increased through the development of a detectives programme, the senior advisor thought that the greatest issue was sustainability. It was generally thought that there were 9-10 RSIPF who, while not fully competent, could conduct corruption investigations. It was universally expressed that if RAMSI withdrew its resources the squad would not be able to function. It was also the general view that RSIPF would require ongoing logistical support, such as vehicles and equipment, from the donor community.

The officers from the unit advised that they had no capacity to be pro-active and relied on information from complaints. The Corruption Squad stated that in recent times no information has been received from the LCC. With respect to information going to the LCC from the Police they explained that there was no reason for such communication as most of the information was criminal in nature and not disciplinary. The Corruption Squad stated that where the LCC was thought to have information which may have been of assistance to a particular investigation generated by the Corruption Squad experience has shown that little cooperation has been shown by the LCC to provide the information.

The Corruption Squad considered that excellent information could be obtained from the OAG reports which ultimately went to Parliament. However, under current legislation the OAG was unable to refer matters to the squad until the reports were tabled in Parliament. This generated a perception that Police were not interested in the matters that the OAG was investigating as it is common knowledge that the OAG had information evidencing conduct of a criminal nature. Another consequence was that by the time the information was ultimately available to the squad there was considerable delay and forewarning of suspects and witnesses. This made investigation of the allegations almost pointless. It was stressed that this was not through lack of will of the OAG.

With respect to the Internal Revenue Department (IRD) it was explained that virtually no information would be obtained from that office unless they wanted to make a complaint with respect to their own officers. It was explained that the IRD had much relevant information but it was not accessible due to current legislative limitations. On the other hand with respect to the (Financial Intelligence Unit) FIU the Corruption Squad believed that there were problems with regards information transfer, although it was conceded that it may be because of a log jam within the RSIPF itself. It is understood that information from the FIU dating back to 2008 was yet to be directed by senior Police to the Corruption Squad. Although they have received three lots of information from the FIU it is understood that there are 20 other reports from the FIU held up by RSIPF processes at the moment.

The Corruption Squad considered another avenue of delay for the squad was turn around time from the DPP of briefs of evidence. This they explained referred to not only a response from the DPP with respect to a completed brief of evidence, but also with respect to advice on investigative steps.

We were told that there were a number of cases where the turnaround was 6-8 months, although the DPP guidelines suggested that it would be in the order of a month. They explained that they have experienced significant delay through rotation of both prosecutors and PPF advisors. They believed that the team would be greatly assisted by lawyers within the squad as well as other disciplines such as officers with a financial background. It was also suggested that the co-location of an officer from the DPP would reduce the delay arising from the turnaround. It was stated that having a dedicated prosecutor dealing with corruption matters would build up experience that was necessary to successfully prosecute and investigate such matters. It was also seen that bringing FIU resources together with the investigative resources of the police would reduce delay significantly.

The officers were of the view that they had inadequate powers to deal with corruption and as a result could not do any proactive work. Especially highlighted was the fact that they had no notice to discover power, and were frustrated that any attempt to obtain documents from any government agency required a search warrant. They also saw the value of a coercive hearing power somewhere in the system. They saw that there was insufficient infrastructure or resources for listening devices or telephone intercept technology.

It was universally thought amongst officers of the Corruption Squad that the transfer of the Squad to a single independent body which also investigated possible breaches of the Leadership Code was highly desirable. They considered it would produce significant efficiencies, reduce delays, increase experience and decrease the possibility of political interference and reprisal against investigators. They were of the view that any secondment of Police to the ACA would also require supply of adequate logistical support such as vehicles, computers etc. However, this could be achieved at no further cost if the current physical resources of the Corruption Squad were transferred along with the staff to the new body. These views were also expressed by the Commissioner of Police and his deputies, who also saw a significant role for an independent body in overseeing the investigation of allegations against police. They recognised that the integrity of the RSIPF could only be enhanced by such oversight.

The Commissioner explained that the Police Act provided for a very effective tribunal system where deputy and assistant commissioners and a permanent Superintendent sat (the Superintendent dealt with the lesser ranks). He also explained that the Police Act provided for evidence to be taken

on oath and no defence counsel was permitted below a certain rank. He believed one of the great benefits of this tribunal was its timeliness, and referred to 10 days as being the period in which most matters were finalised. He thought that a classification of offence system with respect to misconduct by police would be a good idea with the independent agency having primary control over the most serious activity and monitoring of the less serious categories.

## **Ombudsman**

The Office of the Ombudsman is established under Section 97 of the Constitution, although the Office itself wasn't established until 1981. The Ombudsman is appointed for a term of five years. The appointment committee comprises the Chief Justice (who chairs the committee), the Speaker of Parliament and the Chair of the Public Service Commission. The Ombudsman can only be removed from Office for gross misconduct.

The Office was without an Ombudsman for a substantial period after the penultimate Ombudsman stepped down in 2006. The initial candidate for the Office of Ombudsman (as selected by the selection committee) was turned down by the Governor-General on the recommendation of the then Attorney-General for political reasons. This decision was taken to court by the candidate where the decision was over-turned. The decision was then in turn taken to court by the Solomon Island Government. This decision has recently been upheld and the original candidate has now taken up the position.

The whole process has taken over a year and severely impeded the operations of the Office – particularly in terms of morale where the whole process was seen as being a form of political interference in the operation of the Office. The other result of this process was that no Ombudsman report was able to be tabled in Parliament since 2006. This was because there was no power of delegation. For while the Office had gone forward with their investigations, without an Ombudsman being appointed, when they went to table their annual report it was sent back as the Constitution allows for no power of delegation.

Clearly, a repeat of such events would significantly impact the on-going development of the integrity framework. While the Office possesses wide-ranging powers for the pursuit of investigations including magistrates' powers of summons these are not matched by similar powers to enforce decisions or recommendations reached as a result of their investigations. As part of their role in increasing awareness of the Office of the Ombudsman and its function the Office began an outreach programme in 2006. This outreach function is included in the Act. This programme now operates in all provinces except for Guadalcanal. A specific education unit within the Office coordinates these activities with other institutions such as the Office of the Auditor General and the Leadership Code Commission. There is a general consensus that since the appointment of the current ombudsman the office is working well and considerable progress is occurring.

### **Leadership Code Commission**

The Leadership Code is established under the Constitution. Sections 93 to 95 of the Constitution provide for the Leadership Code. The Leadership Code covers all public officers – all Members of Parliament, Members of Provincial Assemblies, and members of Commissions, officers of statutory bodies and agencies as well as public servants. The Leadership Code (Further Provisions) Act provides more detailed definitions. While the Leadership Code Commission (LCC) was provided for in the constitution the Commission was only actually created with the passing of the Leadership Code Act in 1981 and 1983. Further legislation was then passed in 1999 which effectively removed many of the punitive powers of the LCC. This legislation, the Leadership Code (Further Provisions) Act, is still in force today, and is one of the reasons that the LCC is generally considered weak and ineffective.

The budget for the LCC comes from the Prime Minister's Office. All requests for purchases or expenditure by the LCC must go through the Prime Minister's Office and then be directed to the Minister of Finance. This is a long and cumbersome process with no real accountability gains. Indeed, it could be perceived as a form of 'at arms length' control of the LCC as this scenario is often used internationally to highlight how lack of financial independence can curtail institutional independence. Certainly criticism was levelled at the perceived lack of independence of the LCC because of this relationship.

The LCC has two key tasks: to investigate possible infringements of the Leadership Code and to maintain records of business and financial dealings of all leaders. In initiating an investigation the LCC does not require that a complaint be made, and in undertaking their investigations the Commission has available to it all of the powers of a magistrate. The Commission is empowered to investigate and make binding findings of the charge of official misconduct which is defined as:

- the use of office for personal gain;
- the neglect of office to the degree of misconduct;
- the acceptance or solicitation of bribery;
- the presence of leaders in conflict of interest situation;
- non-disclosure of assets, gifts or business interests;
- the misuse of official information; and
- the possession by leaders of property or assets deemed to be acquired by misconduct.

As much of this conduct could also constitute a criminal offence, significant confusion and duplication has arisen in the past from the LCC and RSIPF dealing with the same conduct, but from different perspectives.

In terms of the policing of the Leadership Code the LCC has two main avenues available to it for punitive action: fines up to the value of SBD \$5,000 and the removal of a leader from political office for three years. The main power of sanction though is the 'two-strikes provision' such that if a leader is convicted twice of a leadership code violation they are then prevented from ever again holding political office. This power resides in the High Court on application by the LCC. No application has been made in the last three years. Apart from low-level fines none of the punitive provisions have been utilized since the passage of the new legislation in 1999.

In the wake of the legislative changes in 1999, where fines are paid their low absolute monetary value means that they are seen as being inconsequential. With the subsequent devaluation of the Solomon Islands currency and attendant inflation, fines in the order of a few hundred Solomon Islands dollars make no real impact on Leaders.

The LCC is composed of a Chairman and two Commissioners. The membership of the LCC is selected by a panel composing the Prime Minister, the Leader of the Opposition and the Attorney-General. Problems with the appointment process, for whatever reasons, meant that for a significant period from December 2007 (when the term of the previous two Commissioners came to an end) the LCC had to operate without Commissioners. This meant that the Commission was unable to convene and so investigations conducted by the Commission could not be concluded.

The LCC has received considerable support from RAMSI. The Commission has one RAMSI-funded advisor co-located within the Commission. And, in the wake of RAMSI the LCC has grown. In 2002 the office had a staff complement of six including one investigative officer. In 2008 this had grown to a staff of approximately ten, including five investigative officers. Four of these have a police background and one is from the public service.

Investigations are headed by the Director Legal Services in conjunction with the Chief Inspector. However, investigators are limited in the enquiries they can make and only the Commission itself can summon witnesses and require the production of documents. This has led to considerable delay because of the unavailability of the part-time Commissioners whether because of vacancy or unavailability driven by the fact that the remuneration for attendance is low and the two part time Commissioners are employed in other careers and have obligations to their own employment. A quorum of the Commission is two of the three members. At times there are in the vicinity of 13 cases ready to go to the Commission for formal inquiry.

The LCC has no guidelines for staff to enable them to make consistent decisions on what should be investigated by the LCC or referred to the commission for formal inquiry. Also, there are no guidelines, MoUs or protocols to deal with the situation that complainants often complain to the LCC, the Public Service Commission and the Ministry of the Public Service. As a result responses are not coordinated. One of the key limitations of the LCC is that the definition of leader used by the Commission is so broad that, if properly enforced, would mean that the Commission would have to monitor over 10,000 different individuals. The LCC has made a submission to the Constitutional Reform Commission (CRC) to reduce the ambit of the definition. Notwithstanding the very wide definition of leader the number of complaints made to the LCC has continued to

dwindle, only 10 having been received in the calendar year to date. This may reflect the general belief that there is no confidence in the LCC. In recent times most complaints do not allege that leaders have accepted financial benefits, and consequently no matters have been referred to the Police in the last three years. The Chairperson believes this type of complainant goes directly to the Police, although no information has been received from the Police for the LCC to take action where criminal charges did not result. The Chairperson confirmed that where the conduct alleged was criminal in nature as well as raised the possibility of a breach of the Leadership Code both the RSIPF and the LCC would conduct investigations independent of each other and without consultation. There is no formal process for the LCC and the police to exchange information. Although a memorandum with the RSIPF was drafted in 2007 and provided to the RSIPF it is yet to be finalised.

The Chairperson believes that the legislation which allows applications to the High Court needs clarification to assist the process, and cites this deficiency and delay before the courts as the main reason for reluctance to make application to the High Court.

The Chairperson's expressed concerns arise from the fact that the current LCC Act and draft amendments to the Act do not make any specific reference to how a matter can be referred to the High Court. Some consideration was given to creating another tribunal, presided over possibly by magistrates. It is difficult to see the benefit of introducing another step in the process, where an appeal would be available to the High Court in any event. This is especially the case when there is no suggestion that the superior courts are less efficient than other courts or tribunals. Indeed anecdotal evidence is to the contrary. Of course, the reluctance to refer matters to the High Court is interpreted outside the LCC as a lack of will, and adversely affects its general standing.

Another factor contributing to the poor perception of the LCC is that although fines can be imposed by both the LCC and the High Court there is no means to enforce payment. This not surprisingly leads to an undermining of the regulatory scheme which requires leaders to provide details of financial and business dealings. Not only are the fines inconsequential, they cannot be enforced.

So too, another key issue in the operation of the LCC is that outside of Honiara few people understand the role of the LCC. This is especially the case in the Provincial Governments. In fact,

even within Honiara many senior public servants and leaders do not appear to understand the role and function of the LCC, notwithstanding some awareness work. This awareness work included a one-day workshop in February of this year for MPs and Permanent Secretaries. Also, when investigators tour the provinces to conduct investigations they take the opportunity to explain the functions and role of the LCC. The LCC has conducted 10 three day workshops since 2003, which they describe as “anti-corruption workshops”. The chairperson explained no other educative work has been done and cites limited resources as the primary reason. He foreshadowed that the LCC was to embark on a series of one-day workshops for department and one hour awareness talks to schools in the future.

The LCC traditionally has a good relationship with the Ombudsman Office. This relationship will be consolidated further when LCC is co-located with the Ombudsman Office in a building funded jointly by RAMSI and the Solomon Islands Government. However, the LCC has not furnished any information to the Ombudsman (or the OAG) in recent times. The LCC currently can only obtain information from the OAG after its reports are tabled in parliament.

The Chairperson did not consider that the LCC had an anti-corruption function, and believed that there was a general misunderstanding of its role. Almost universally, the LCC is seen as ineffective in changing errant behaviour or punishing persons who breach the Leadership Code.

## **Supreme Audit Institution**

The Solomon Islands Office of the Auditor General is established under section 108 of the Constitution of the Solomon Islands. Independence of the office is guaranteed by section 108 (5) of the Constitution which states “*In the exercise of his functions under this section, the Auditor-General shall not be subject to the direction or control of any person or authority.*” However there is no legislated guarantee of funding for salaries of auditors and other operating costs of the Office. At present the Auditor-General has strong support from the Public Accounts Committee and key Members of Parliament, which ensures the budget bid by the Auditor-General is passed through Parliament in the Appropriation Act. In the years between Independence and prior to the commencement of RAMSI, the budget for the Office of the Auditor-General was diminished to the point where there were only two auditors and the Office could not perform its mandated functions. There is currently no legislative protection to prevent this happening again. However, the proposed

new Audit Act intends to address the issue of independence. It is proposed that funding will be submitted to parliament by a National Audit Parliamentary Committee, providing both accountability and a greater degree of financial independence.

The selection panel for the auditor-general's position consists of a panel of the Attorney -General, the Secretary of the Prime Minister's Department, the Permanent Secretary to the Ministry of the Public Service and Chairman of the Public Accounts Committee. They make a recommendation to the Public Service Commissioner, which recommends appointment to the Governor General. The new Audit Act seeks to include the NAPC in any future appointments. This will further bolster the Office of the Auditor-General's actual and perceived independence.

Since 2004 a large number of special investigations have been undertaken in mainly the central government Ministries, but also in some of the provincial governments. Initially these were focussed on identifying the problems, revenue losses and wasted or inappropriate expenditure which occurred during the ethnic tension period. The biggest frustration is the unpreparedness for the Public Accounts Committee to consider reports from the Office of the Auditor-General, and particular reports involve Public Accounts Committee members who do not see any conflict in their sitting on the Public Accounts Committee to debate the reports.

Although the office has 30 local staff and 5 expatriates its establishment is 40. Currently it does not have the resources to train recruits who come from so low a technical base. On current estimates there are not enough accounting graduates available to be able to service the country and won't be able to do so for 20 years. This is reflected in the agencies and provinces where there are few chief administration and chief finance officers. There is not enough expertise in any other offices which require any sort of, even rudimentary, financial capability. This continues to effect the issue of record-keeping, although it has improved considerably from 2007 where there was 27% non-compliance of records not being submitted by Solomon Island's Government agencies for audit.

Due to privacy and confidentiality requirements (natural justice, civil rights, human rights considerations apply) the information flow during an investigation by OAG is limited. The new bill should allow release of information to police and other agencies at a much earlier stage. However, delay is seen as a huge issue even after information is passed on. Also the question of feedback on

information generated by the OAG, although not formally communicated, is almost non-existent. Information communicated to the LCC remains a “mystery” to the OAG.

The OAG is universally highly regarded and seen to be operating independently and effectively.

## **Financial Intelligence Unit**

The Australian Government’s Anti-Money Laundering Assistance Team (AMLAT) has worked closely with the Central Bank of Solomon Islands (CBSI) to implement anti-money laundering systems, including comprehensive support to establish what is now a fully operational Financial Intelligence Unit (FIU) within the CBSI. Future assistance priorities include building the FIU’s capacity to supervise reporting entities, and supporting Customs authorities in preventing money laundering, including trade-based laundering.

The FIU reports to the Anti-Money Laundering Commission which is headed up by the Attorney-General. The other members of the Commission are the Governor of the CBSI, the Permanent Secretary of Finance and the Commissioner of Police. Administratively it reports to the Governor of the Central Bank, who also sits on the Commission. The FIU reports on a quarterly basis (and on as needs basis as well) to the Commission.

The Commission has no office so the FIU acts as their secretariat. The FIU is currently located under the auspices of the Central Bank. This is understandable as under current legislation the only source of information is banks. Recent and forthcoming amendments will require lawyers and, accountants and customs amongst others to provide information of suspicious transactions to the FIU. Members of the public will also be required to submit cross border currency reports via Customs. In light of this wider source of information the Central Bank is no longer the obvious home of the FIU. Indeed, the Director was of the opinion that the FIU could go into any law enforcement agency. Currently the unit has three staff – two employed by the central bank and seconded to the unit have a financial background, while the third officer is a seconded police officer with the rank of Detective-Sergeant who has criminal investigation experience. The director believes that there is funding to recruit two further officers to the unit.

Funding for the FIU is provided by RAMSI but they have been funded at points by Solomon Island's Government. Their funding through SIG comes through the office of the Attorney-General. However, with the passage of the Money Laundering and Proceeds of Crime Amendment Act the Director believes any the funds will come direct from Parliament.

The unit's financial officers have no authority to investigate. They are limited to intelligence work but the coming amendments will seek to address this issue. For this reason the Director sought the secondment of a police officer to provide investigative capacity to the unit. He acknowledges that at times it is difficult to distinguish between the intelligence gathering function that the unit has and the investigative function – which it currently does not have. There seems to be no sound reason to differentiate between the two.

The Director indicated that the unit has had significant trouble trying to convince the law enforcement agencies such as police and customs of the value and importance of money laundering investigations and chasing the proceeds of crime. He considers that historically law enforcement agencies are only interested in the predicate offence and not the subsequent money laundering or proceeds aspect.

In an attempt to address this issue the unit has entered into MoUs with the Police, Customs, and the Central Bank. At the moment there is no MoU with LCC, IRD or OAG, however, these are proposed. The Director believed that some improvement had been generated by the MoUs with respect to the cooperation between the agencies, however concern continues with respect to whether any use has been made of information provided to the Police. Currently the FIU can only pass intelligence to a law enforcement agency. However with the coming amendments this will be extended. Although their major function is intelligence they try to do compliance work as resources committed. This means going around to banks and explaining the role of their unit, the legislation and reminding them of their obligations. Where possible they also do workshops in the Provinces and access the media (radio and television) to sell their message. The director noted the relationship between corruption (as a predicate offence) and money-laundering as well as acknowledging that "corruption is a vehicle for money-laundering." The Director stated that from his experience it was difficult to investigate money laundering without looking at the predicate offence, and consequently

it would be difficult to investigate money-laundering involving corruption without also considering the corruption offence.

## **Other groups**

The key Solomon Island NGO concerned with accountability anti-corruption issues is the local chapter of Transparency International – Transparency Solomon Islands (TSI). With approximately 90 members they are engaged in a range of activities supporting increased accountability and transparency in the public and private sectors. One of their key activities for 2009 is the establishment of an advocacy centre for those unable or unwilling to lodge complaints through the normal processes. The rationale for the establishment of the centre is that many Solomon Islanders do not feel comfortable going to a solicitor's office or cannot afford a solicitor's services and so many complaints never surface. By providing this centre TSI hopes to increase access to complaints mechanisms. They are also active in promoting electoral reform and education about UNCAC. TSI was pivotal in bringing together a loose coalition of Solomon Islands NGOs and several influential individuals which helped lead to Julian Moti being pushed from Office as Attorney-General.

The Solomon Islands media includes TV, radio and newspapers and remains heavily concentrated in Honiara and actively reports on matters of corruption. The government owned national broadcaster Solomon Islands Broadcasting Corporation is the only broadcaster with a close to national coverage<sup>25</sup>. It is also the main carrier of "public service" broadcasting, with the several FM radio stations concentrating on the peri-urban youth market via primarily music. The mainstay of the print media is the Solomon Star newspaper, with occasional entrants such as Solomon Express and the Island Sun. Online media now has a larger presence particularly amongst the expatriate Solomon population.<sup>26</sup> The two main constraints are a general lack of trained reporters due to few graduates and a lack of investigative reporting capability. Another constraining issue is the role that powerful interests play in gagging the country's media.<sup>27</sup> The Media Association of

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<sup>25</sup> Although even SIBC does have a number of broadcast "black spots" due to geographical features and distance.

<sup>26</sup> [www.solomontimes.com](http://www.solomontimes.com), [www.solomonstaronline.com](http://www.solomonstaronline.com)

<sup>27</sup> A topical instance of this was the attempt by the PM's office to control media coverage of the upcoming Constitutional Convention:

[http://solomonstarnews.com/index.php?option=com\\_content&task=view&id=3596&Itemid=45](http://solomonstarnews.com/index.php?option=com_content&task=view&id=3596&Itemid=45)

Solomon Islands (MASI) could provide a useful coordinating role in any attempt to strengthen the ability of the Solomon Islands media to report on anti-corruption. As an internal initiative they recently established a Press Club where issues of accountability, transparency and anti-corruption have been discussed.

The main vehicle for the Solomon Islands' private sector in terms of the fight against corruption is the Solomon Islands Chamber of Commerce and Industry (SICCI). With around 1900 members, SICCI is well organized and quite vocal. They have recently publicly cautioned the Solomon Islands Government against intervening in the affairs of the National Provident Fund (NPF) Board and have been outspoken on issues relating to the Parliamentary Entitlements Commission (PEC). They are supportive of the creation of an agency to more effectively combat corruption within Solomon Islands.

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## **Recommendations on the establishment and implementation of an effective anti-corruption agency in the Solomon Islands**

The environmental scan has shown that, in terms of a model for an Anti-Corruption Agency (ACA) in Solomon Islands, the current situation is one where:

- financial resources in Solomon Islands are already stretched, especially in the current global recession, and that any model must reflect the fact that additional resources are unlikely to be significant;
- current expertise in the investigation and prevention of corruption and serious misconduct is confined to a small number of persons in distinct and uncoordinated units across the public sector, and that any model must reflect that there is limited capacity to introduce further expertise into the pool in the initial stages;
- no agency sees itself as dedicated to anti-corruption work, and the public has little or no confidence in any agency properly being able to address what is seen as a deep-rooted and pervasive problem;
- there are statutory and administrative barriers which prevent or discourage the proper transmission of relevant information between agencies;
- significant delays occur in bringing matters which are ultimately investigated to final conclusion because of a lack of multi-disciplinary resources within the various units;
- duplication of effort is occurring where the very same conduct is, or may be, investigated or dealt with by more than one body, albeit from a different perspective;
- significant training, development and education is required before any model will make significant in-roads; and
- further delay in attempting to address the issue of corruption will inevitably lead to a situation where the problem is so grave that public and international confidence will reach such a low level that any measures that could be introduced will have little or no prospect of succeeding.

As such it is our opinion that a fully fledged ICAC body such as that found in Hong Kong or New South Wales is judged as not being feasible given the various human, physical and financial capacity constraints present in the current Solomon Islands environment. However, we do think that an Anti-Corruption Agency (ACA) is a feasible proposition given current Solomon Islands capacity but this agency would be best implemented through a progressive three-stage process of reform. The lack of communication, coordination and cooperation currently found in the system means that a single-agency ACA would be most appropriate in Solomon Islands. The following proposed stages are recommended as practical and workable in the Solomon Islands context.

All steps rely on the initial and on-going support of Parliament, without which there is no road forward. Much cynicism has been expressed as to any willingness that Parliament may have to make the necessary changes. This cynicism could be largely overcome by the *tone at the top* shown by Parliament in passing the laws and if necessary amending the constitution to allow the introduction of the measures recommended. Fundamental in setting the *tone at the top* is a preparedness of Parliament to adequately fund the fight against corruption and maintain that funding. Also fundamental is the ultimate setting up of a body which is not only independent but is seen to be independent of government, although fully accountable to the public it will serve through Parliament.

## **Stage One**

Initially and largely without any further expenditure the measures set out below if implemented would result in providing the foundation for increasing coordination and collaboration and for a more effective response to the issue of corruption and serious misconduct. Indeed, the adoption of these measures will result in a reduction in time taken in dealing with allegations of suspected corruption and serious misconduct and provide greater transparency, and consequent confidence, in the on-going fight against corruption.

In doing this, these reforms will require a preparedness on the part of the relevant agencies to work together to maximize the outcomes of the combined resources which are brought to bear upon the issue of fighting corruption and serious misconduct.

Legislation is required to both enable but also impose the obligation on public sector bodies to work collaboratively and co-operatively with other public sector bodies in order to achieve optimal use of available resources.

### **DISSEMINATION OF INFORMATION**

Overriding legislation to authorize:

- the Office of the Auditor-General;
- the Office of the Ombudsman;
- the Leadership Code Commission;
- the Royal Solomon Islands Police Force;
- the Office of Inland Revenue;
- the Financial Investigation Unit of the Central Bank of the Solomon Islands;
- Customs; and

- other government departments and authorities as required.

to disseminate at any time information and intelligence to each other for the purposes of that body's powers and functions. Administrative arrangements, such as by way of a Memorandum of Understanding, should require those who receive the information to provide outcome information to the body that provided the information, including reasons for the outcome. This will increase transparency and go some way to redressing the significant issue that exists where there is a universal lack of feedback between the various public sector bodies in Solomon Island who are involved in the fight against corruption which is breeding mistrust and is leading to a lack of confidence between agencies.

## **PROTECTION OF INFORMANTS**

Overriding legislation to provide protection for public officers or other informants who may be subject to a duty to maintain confidentiality to enable them to give information to the:

- the Office of the Auditor-General;
- the Office of the Ombudsman;
- the Leadership Code Commission;
- the Royal Solomon Islands Police Force;
- the Office of Inland Revenue;
- the Financial Investigation Unit of the Central Bank of the Solomon Islands;
- Customs;

notwithstanding this duty.

Legislation to protect informants from actions for defamation or civil suit to ensure full and frank disclosure, coupled with provisions which enable the prosecution of informants who give knowingly false information to the any of the bodies referred to in the previous dot point.

## **INCREASE IN PENALTIES FOR CORRUPT OFFENCES**

The penalty provisions for corruption offences should be increased.

There is a generally held perception that the current penalties do not act as a deterrent. An increase in penalties would send a powerful message to the public that parliament is serious about tackling corruption. Coupled with an increase in penalties for corruption offences, a mandatory period for disqualification from holding a seat in parliament or position on a government board, would also send a very powerful message that corruption will no longer be tolerated. The mandatory period could be set in the order of three to five years.

## **AMENDMENTS TO LEADERSHIP CODE COMMISSION**

Legislation requiring the Leadership Code Commission to provide detailed reasons to the informant (whether another public official or not):

- if no action is taken by the Commission on the complaint or action to deal with the complaint is discontinued by the Commission – the reason for not taking action or discontinuing the action; or
- if action is taken on the complaint by the Commission the action taken; and the reason the Commission considers the action to be appropriate in the circumstances; and any results of the action that are known at the time of the response.

This will go some way to making the decisions of the Leadership Code Commission more transparent and build greater confidence in it.

To address the concern within the Leadership Code Commission that the process to the High Court is uncertain it is recommended that legislative amendments be made to provide for a specific and detailed statutory means of referring matters to the High Court.

Furthermore it is recommended that the legislation be amended to provide for a specific and detailed statutory means for recovering fines. Also, fines should be increased to a level which would have some genuine deterrent effect. It should be a mandatory requirement that these fines are subject to public report. These amendments would also greatly assist the transparency of the Leadership Code Commission and build confidence in it.

As the environmental scan demonstrated, significant difficulties have been experienced in the past where positions remain vacant and no delegations or acting provisions have been in place. In order to overcome this lack, legislation of a general nature should be adopted to provide for the appointment of persons who can act in a statutory office holder's position in that person's absence, whether by retirement, illness or expiration of their contract.

We recommend the appointment of a panel of Leadership Code Commissioners (on a staggered basis) to enable sufficient numbers at all times to constitute a quorum. The Leadership Code Commission has suffered from an inability to constitute a quorum because vacancies have not been filled. This would also ameliorate the problem of having insufficient numbers to constitute a quorum where commissioners have a conflict of interest or are unavailable because of their obligations to their own private sector employment. These provisions would have a great impact on reducing delays. Any further appointments of commissioners should be made with the transition to stage three in mind.

Legislation to provide the Leadership Code Commission with more powers at the investigation stage. Currently, the more formal inquiry stage allows witnesses to be summoned and produce documents. This must be conducted by the commission itself and is dependant on the availability of a quorum, which at times is problematic as two of the three commissioners are from the private sector and are not able to attend because of business commitments. The power available at the investigation stage should include:

- the power to hold hearings and summon witnesses to give evidence and produce documents. Importantly a witness should not be allowed to refuse to answer questions on the basis of the privilege against self-incrimination or most other privileges, but if directed to answer after claiming a privilege the answer could not be used against them in any subsequent criminal, civil or disciplinary matter;
- the power to require the production of documents held by third parties such as financial institutions, public sector agencies and the private sector; and
- the power to enter public sector agencies to inspect and seize any record or other things that may be relevant to an investigation.

Importantly, information obtained under these powers should also be made available to the RSIPF Corruption Squad for use in any criminal investigation arising from the alleged or suspect corrupt conduct or serious misconduct (if it could constitute a criminal offence).

In an attempt to improve the transparency and public perception of the LCC there should be a requirement to furnish an annual report to parliament on its activities and outcomes. Bodies upon which the public rely to maintain and improve integrity and administrative standards, such as the LCC and the Ombudsman benefit greatly by publishing their achievements. They are more likely to gain public support through such exposure.

Combined, these four pieces of reform would enable Solomon Island's existing integrity system to more effectively work together to combat corrupt behaviour.

## **Stage Two**

### **CREATE EXECUTIVE OFFICER POSITION**

During the next stage preparation should commence to enable the required resources within the respective agencies to be brought together as a single stand-alone independent anti-corruption body. This will require a person with a sound understanding of anti-corruption issues and familiar with the local environment to be appointed to a dedicated position to oversee the implementation of the next two stages. This person should report to the Prime Minister through the Prime Minister's Office. Having the person report to the Prime Minister will give the person appointed the status and support that this person will require to oversee the reform process.

It is essential that the person appointed does not have or is seen as having any vested interests or political partisanship as the success of the next two stages will depend on whether there is general confidence that the process will lead to genuine and significant reform. For this reason it is recommended that a selection panel be established which is seen to be as independent and free from political manipulation as is practicable. It is recommended that the panel include the Prime Minister, who must trust and work closely with the appointee. It should also include the Attorney General, the Auditor General and the Speaker of Parliament. To maintain momentum and impetus the appointment should be made as early as possible and not necessarily at the completion of stage one.

In view of the extensive range of crucial activities which will fall upon the Executive Officer to undertake and arrange, the appointee will require assistance. The appointee should be able to engage assistance as resources permit and activities necessitate.

Ideally the appointee would subsequently hold an executive position within the stand-alone body to assist the chairperson in the formative stages of the organisation. The person holding the executive position appointment would largely have administrative responsibility for the organisation, allowing the chairperson to concentrate on operational and strategic issues. This person could also provide valuable strategic assistance to the chairperson.

### **FUNCTIONS OF EXECUTIVE OFFICER**

During stage two the appointee (hereinafter called the executive officer) will perform the following functions:

- coordinate and, with the authority of the Prime Minister's Office, direct all available resources to assist in training and increasing the expertise of those public officers who will transition to the stand-alone body in stage three. This will necessarily require preparation of job descriptions, duty statements and competencies against which officers can be assessed, and their skills improved. Importantly, there will be a capacity building phase for those who will transition to the stand-alone body
- ensure the preparation of necessary guidelines for the stand-alone body, which can be ultimately published when adopted by the stand-alone body to increase accountability and transparency. These guidelines would include:
  - Criteria for commencing an investigation;
  - Criteria for determining whether a matter should be referred to the Director of Prosecutions for consideration of prosecution action;
  - Criteria for determining whether a matter should be referred to the High Court for action with respect to a possible breach of the Leadership Code;
  - Criteria for determining whether a matter should be referred to another body, such as a department, for consideration of action with respect to a possible breach of a code of conduct;
  - Publication guidelines to set out whether reports should be made public;
  - Criteria for issuing notices to discover and to enter (and preparation of appropriate statements in support to record the reasons for issuing the notice);
  - Criteria for issuing summonses (and preparation of appropriate statements in support to record the reasons for issuing the summons); and
  - Criteria for seeking search warrants.

During the second stage the guidelines developed could be adopted, and if necessary adapted, by existing agencies as part of capacity building. It is understood from our interviews in Solomon Islands that guidelines on such matters within existing agencies are not common.

## ENVIRONMENTAL SCAN

Conduct an environmental scan of the disparate resources dedicated to the prevention of corruption and serious misconduct (and to education with respect to corruption issues) with the view to its coordination and ultimately the optimisation of resources committed to prevention. As part of this scan the Executive Officer would:

- Make the necessary arrangements for the transfer or secondment of officers to the stand-alone body;
- Make the necessary arrangements for the transfer of relevant records and data-bases, and determine the record and data base requirements of the stand-alone body. Special emphasis will be required to ensure a secure system is introduced, without which an anti-corruption body cannot survive;
- Make the necessary arrangements for the transfer of resources currently utilised by the officers who will be transitioned to the stand-alone body;
- Make the necessary arrangements for the transfer of the budget already dedicated to anti-corruption efforts within Solomon Island's various integrity institutions;
- Make the necessary arrangements for vetting employees of the stand-alone body. The appointment of persons who have been subject to significant disciplinary action or prosecution (whether successful or not) may undermine the body. Apart for vetting for integrity, it will be crucial to recruit capable and suitable people who have the appropriate motivation to make the stand-alone body succeed. This may require during the second stage finding suitable employment elsewhere in the public sector for those who do not fit this description. Some hard decisions may well have to be made but the recruitment of the best available staff is fundamental to the stand-alone body succeeding. Consideration should be given to recruiting a small number of high achieving graduates who are prepared to take direction and have no preconceived ideas. Consideration should also be given to paying salaries at a premium, say 10% over equivalent levels in the public sector, at least in the difficult initial stages. Certainly, employees of the stand-alone body should not be public servants subject to the Public Service Act. Appropriate legislation will be required to allow detailed vetting to occur;

- Assisting in the process of appointing a chairperson for the stand-alone body;
- Locating suitable secure premises for the stand-alone body; and
- Ensure the preparation of Memoranda of Understanding between the stand-alone body and other relevant agencies.

## **MANDATORY REPORTING SCHEME**

Develop and implement a limited mandatory reporting scheme requiring a small number of the most senior public servants to report to the Leadership Code Commission corrupt conduct and serious misconduct by other senior public servants and politicians. This limited regime would not place unnecessary burden upon the Leadership Code Commission or the public sector generally because of its application to only the most senior public servants and the most egregious conduct. International experience shows that mandatory reporting schemes provide support for those who wish to report misconduct who can assert that they were under a statutory obligation to report. International experience also shows that a mandatory reporting scheme acts as a very strong deterrent to those public officials who may be inclined to misbehave because of the fear of having their conduct reported by other public officials with a statutory obligation to report misconduct. The prevention aspect of mandatory reporting cannot be overstated. Legislation would need to underpin the regime.

Upon the receipt of the reports the Leadership Code Commission in consultation with the RSIPF Corruption Squad would then determine who would do the initial investigation, if any, of the matter reported. This would go some way to reducing the problem that currently exists where the Leadership Code Commission and the RSIPF Corruption Squad are investigating the same conduct, albeit from different perspectives.

In performing the functions set out above, it would be expected that the executive officer be able to call upon the assistance of RAMSI officers who are already in-line or advisors to the Leadership Code Commission, Royal Solomon Islands Police Force, Director of Prosecutions and any other agency to which RAMSI is giving support. This may require some realignment of advisory

assistance with the view to bringing as many resources currently dedicated by RAMSI to bear upon the proposed reform process.

## **POLICE OVERSIGHT**

International experience shows that in any society police officers, with their exceptional powers and authority, are at the higher end of the risk spectrum with respect to possible corruption and serious misconduct. Accordingly, independent oversight of complaints against police is considered to be best practice. There was universal agreement both within and outside the RSIPF that an independent oversight capacity was necessary to enhance the integrity, accountability and transparency of the RSIPF, and would be welcomed.

Currently in some jurisdictions, there is a call for an independent agency to investigate all complaints against police. These calls normally follow upon a review of individual matters investigated internally which were so inadequately dealt with that the whole system of internal investigation is automatically condemned. Unfortunately, such cases will continue to occur, but experience has shown that these are usually the exception rather than the rule. Integrity cannot be imposed from outside an organization it must be instilled from within. A proper functioning police service must be able to investigate the majority of the complaints against its members and send the appropriate message to and set the appropriate standards for their organization. An effective oversight capability can be achieved by reviewing and auditing matters dealt with by the police service and retaining the right to investigate those serious or endemic complaints which must be dealt with by an external body to maintain public confidence in the process.

Currently there is no independent body in the Solomon Islands empowered or capable of fulfilling this police oversight function. The investigative skills required to investigate corruption, especially in a police service are considerable. Eventually when stage three is introduced it is hoped the skills then available will enable this function to be performed by the anti-corruption body. Legislation, including amendments to the Police Act, will be required.

In preparation for stage three, one of the functions of the executive officer will be to work with the RSIPF to make recommendation as to how different complaints should be dealt with. In many jurisdictions such as NSW and Queensland in Australia there are detailed policies and procedures which govern how complaints against police are to be dealt with. For example, in the interests of an expeditious resolution for less serious matters, such as poor customer service and minor

workplace conduct issues, the police service can continue to act immediately to appropriately deal with the complaints. This would be subject to the monitoring role of the independent body, which could for example audit the complaint sometime in the future, but would not be subject to direct oversight.

More serious complaints alleging bribery, police action or inaction resulting in death, or attempting to pervert the course of justice would be reported to the independent body to determine how the complaint should be best dealt with. This category is sometimes called “notifiable complaints”. Once again, most matters would be referred to the police service to deal with, but with appropriate direct oversight. This could take the form of regular reports, provision of investigation plans, or review after investigation. The maintenance of public confidence would be paramount in determining the level of over-sight with respect to each case. The independent body would maintain the right to call for the matter and deal with it itself if circumstances required such a response. Of course, the independent body would have the authority to determine that it should investigate particular matters, often from the perspective of maximizing the educative and preventative outcomes possible from the matter.

Much work has been done on the categorization process in other jurisdictions, but each jurisdiction is different and different emphasis will be necessary in the Solomon Islands context, including consideration of the particular cultural and geographical environmental characteristics. The work already undertaken by the RSIPF with respect to the interface between the police districts and the Professional Standards and Internal Investigations Division will also be of assistance in the categorization process.

### **Third stage**

The third and ultimate stage envisages the co-location and bringing together of existing human and other resources as set out below to create a stand-alone independent body with a “critical mass”, that is, the level of resources required below which there can be no efficient and effective anti-corruption agency. The new body will bring together the LCC and the RSIPF Corruption Squad as well as a seconded officer from the DPP to create the new anti-corruption agency. The FIU will also be co-located within the new agency. The resources financial, physical and human currently allocated to these groups would be transferred to this new body (with the exception of the FIU which would remain autonomous). It would be established to directly report to Parliament with its budget being appropriated through a specific Parliamentary Committee established at the creation of the body.

The bringing together of the different resources will to a certain extent introduce a multi-disciplinary approach to this body along the lines of other successful anti-corruption bodies. It is essential that such a body operates with recourse to officers who have investigative, financial, legal, prevention and other varied experience to maximise the outcomes of the organisation.

The combining of the investigative capacities of the LCC and the Corruption Squad will bring substantial efficiencies. It will eliminate the inefficient current practice of having different investigators considering the same conduct from different perspectives. There will also be a capacity building benefit as all investigators will have a dual focus on both criminal and disciplinary outcomes. At the end of an investigation a decision will then be made whether any further action is possible, whether down the criminal or disciplinary path.

The body will have a significant prevention and educative focus, although in its incipient stages much emphasis will be on coordinating existing resources in bodies such as the Office of the Auditor-General, Ministry of Public Service, Public Service Commission and Office of the Ombudsman.

Although the exposure of corrupt individuals through the investigation process can serve as a preventative measure by acting as a deterrent for further corrupt behaviour, a dedicated prevention function leverages investigation outcomes. It can provide assistance and direction to the wider public sector, in an actual rather than theoretical context, to develop processes to reduce corruption within a framework of risk management. In this regard the prevention focused resources can research and provide best practice advice to enable agencies not only to recognize risks but also develop internal mechanisms for reducing the risk.

Inextricably interwoven with the prevention focus is the educative role of an anti-corruption body. Although some work is being done in this area currently it should be more coordinated and focused. It should have two primary aims:

- o to increase understanding by public officials about ethical issues, conflicts of interest and corruption prevention, thereby embedding a greater culture of integrity; and
- o to raise awareness about the anti-corruption body itself, and to promote confidence in it. This will encourage public officials and members of the public to come forward with relevant information and also to seek assistance with respect to corruption prevention.

This body although incorporating the LCC should be given a new name reflecting its anti-corruption role. It is important that the actuality and perception is that there is a new independent anti-corruption body, fully supported and resourced by Parliament, which without fear or favour will tackle corruption wherever it may occur.

The body will be headed by a chairperson who should have extensive experience in an anti-corruption body at a senior level. This person must have the highest standing and be seen to be independent and free from any political partisanship. It may well be that an expatriate will be necessary for the initial appointment to develop the “know how” in the organisation and establish its credibility as an independent body that achieves results. A deputy, preferably a Solomon Islander, should be appointed with the intention that this person act as chairperson from time to time and take over the reins from the chairperson in due course. The deputy must also be a person of high repute and be seen to be independent and fearless.

The appointment process for the chairperson and the deputy should mirror that for the selection of the executive officer to minimise the possibility of any perception that they are political appointments. These office holders should have security of tenure and conditions of employment, subject to appropriate dismissal provisions for proven misconduct.

The importance of making the best possible appointments for the initial chairperson and deputy cannot be overstated. Apart from the issue of perceived independence, international experience shows that setting up these organisations and responding to vested interests in the formative period is extraordinarily difficult and taxing. In all probability, the long-term reputation of the body and its standing in the community will depend on the success of the first chairperson and his or her successor.

In making this final transition the resources from the two current standalone agencies will be brought together to create a single anti-corruption agency. This shift would require the movement bringing together of:

- All the functions of the Leadership Code Commission and the transfer of all its resources. This would include the five investigator positions, those positions which are involved in the educative role of the LCC and the RAMSI advisor positions;
- All the positions currently in the Corruption Squad, including the five Solomon Islands police and the five PPF advisors, and the logistics or non-human resources which are currently provided for by RAMSI would in the foreseeable future need to be committed to the new body;
- Experience shows that nearly all corruption involves money-laundering therefore aligning the FIU closely with the functioning of the independent anti-corruption body will harness the intelligence available from the obligation to report and will bring a measure of financial analysis and investigation expertise. In terms of this, the FIU will be co-located within the secure premises of the anti-corruption agency. The FIU will remain as an autonomous authority under its act reporting to the Anti-Money Laundering Commission as it currently does. The information of the FIU will remain the information of the FIU until it is formally disseminated in accordance with its act. The head of the Anti-Corruption Agency will take a seat on the Anti-Money Laundering Commission;
- As part of the multi-disciplinary approach it is envisaged that a Crown Prosecutor be dedicated to advise on investigations emanating from the body. Currently, substantial delays

are reported after briefs of evidence are completed by the Corruption Squad and forwarded to the Director of Public Prosecutions. There are several reasons cited for this, including workloads, the relative inexperience of some prosecutors and the fact that often more than one prosecutor considers the brief of evidence before it is ready for trial. This requires the familiarisation of the case by more than one prosecutor when they are already stretched. It also sometimes results in inconsistent advice about charges and what further evidence is required. Clearly, this is undesirable. It is understood that there is currently sufficient work within the Director of Public Prosecutions to occupy one prosecutor solely on corruption work. A dedicated resource, at least in the short term, will not only deliver savings in time but also develop experience in an area which does require some specific expertise. The Crown Prosecutor should be co-located at the body's premises to enable further efficiencies as on-going advice could be given to investigators to assist and direct their investigation. It would also provide greater and earlier familiarisation of the brief by the Crown Prosecutor. It may also result in a truncation in the investigation on the basis that the evidence does not support any further investigative action. Whether co-located or not, the Crown Prosecutor would not be an employee of the body, but remain an officer of the Director of Public Prosecutions. This will ensure that the final criminal prosecutorial discretion remains in the hands of the independent Director of Public Prosecutions.

Turning now to the powers available to the new body. It would inherit the combined powers of the LCC (as extended in stage one) and of the RSIPF Corruption Squad. It would also be able to access information provided by the FIU through the seconded position. There is insufficient infrastructure and resources to provide listening device and telephone intercept capacity. However, telephone subscriber details will be available through the Notice to Discover power that it is proposed will be conferred on the LCC in the meantime.

The independent stand-alone anti-corruption body's effectiveness will depend on the following:

- Ability to engage directly suitable staff. After the initial transfer of those officers determined suitable, and following the creation of the anti-corruption body, it will be necessary to employ staff. It is essential that the selection of staff is undertaken within the anti-corruption body and without any external influence.

- The requirement that it not be subject to direction either with respect to what or how it investigates matters;
- Ability to publish the results of any work it undertakes within its remit to the public and other stakeholders at its discretion;
- Proper accountability to the people it serves through regular reports to parliament. This includes proper oversight of its activities by parliament through a cross-party parliamentary committee. A statutory obligation should be imposed on the Chairperson to report any suspected misconduct by the body's officers to the parliamentary committee.
- Experience has shown that a statutory oversight committee is at a significant disadvantage when it does not have the capacity to make effective enquiry with respect to allegations against the officers of the anti-corruption body. Consequently, in many cases the committees have been provided with a parliamentary commissioner (or parliamentary inspector) to undertake enquiries on behalf of the committee. Accordingly it is recommended that a part-time or casual position of the Office of Parliamentary Commissioner be created to assist the parliamentary committee in its oversight role of the body. It is critical that this appointment also be independent and seen to be independent and it is recommended that the same selection process recommended for the executive officer, the chairperson and deputy chairperson be adopted for this appointment. The parliamentary commissioner would be tasked by the committee, to which he or she would report. To minimise the possibility of politicization of the position and to reduce the real risk of personality clashes between the chairperson of the anti-corruption body and the parliamentary commissioner, it is strongly recommended that the parliamentary commissioner have no own motion capacity and all reports be required to be made to the committee. The committee can then consider any report and seek the anti-corruption body's response to it. It can then determine whether any further action, including publication of its findings, should occur. The parliamentary commissioner should also have the statutory responsibility to conduct annual audits of the anti-corruption body's powers and report on those to the committee;
- Budgetary independence and support to ensure unfettered operation. We recommend that a separate cross-party Parliamentary Committee be established which will oversee budget allocations to the Solomon Island's Anti-Corruption Agency. Initial monies freed up from bringing together the range of currently separate agencies in the creation of the anti-corruption agency (cost-savings will come, for example, from reduced administrative costs as previously separate administrative units are brought together) will be able to be utilized

to create the necessary policy procedures and protocols required to establish the anti-corruption agency as a stand alone agency which reports directly to Parliament and does not report through a Ministry or other government agency;

- The ability to conduct own motion enquiries and investigations, and otherwise operate proactively;
- Protection for informants who may be subject to a duty to maintain confidentiality to enable them to give information to the body notwithstanding this duty;
- Protection for informants from actions for defamation or civil suit to ensure full and frank disclosure, coupled with provisions which enable the prosecution of informants who give knowingly false information to the body;
- Whistleblower protection legislation to give confidence to those who have evidence and information to provide it. Although there is general whistleblower legislation in all states, there are also specific provisions under the Crime and Misconduct Act which are designed to protect those who assist the commission and provide information to it;
- Protection for officers from the body for carrying out their duties. In the Solomon Island context a specific criminal sanction should apply to anyone threatening or prejudicing an officer of the body to address the great apprehension held by public officials who investigate or report corruption;
- Mandatory reporting by the most senior public servants of corrupt conduct by other senior public servants and politicians;
- The power to disseminate information and intelligence to law enforcement bodies and public sector bodies for the purposes of those bodies powers and functions;
- The obligation to work collaboratively and co-operatively with other public sector bodies to achieve optimal use of available resources;
- The requirement that information provided to the body is to be treated confidentially; and
- The ability to second or access human and other resources from other Solomon Islands Government Agencies as agreed and negotiated between the head of the Anti-Corruption Agency and the head of the other agencies. This should be possible for individual investigations, project work or for longer periods subject to the conditions agreed. This is subject always to the obligations of confidentiality attached to the anti-corruption body's operations; and

- Specific offences for corrupt behaviour by officers of the anti-corruption body and for attempts to bribe those officers.

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## **Appendix One:       Sequenced Implementation**

### **STAGE ONE**

(This can commence immediately)

#### **WORKING COLLABORATIVELY**

1. Introduce legislation to enable and impose the obligation on public sector bodies to work collaboratively and co-operatively with other public sector bodies in order to achieve optimal use of available resources.

#### **DISSEMINATION OF INFORMATION**

2. Introduce overriding legislation to authorize:
  - the Office of the Auditor-General;
  - the Office of the Ombudsman;
  - the Leadership Code Commission;
  - the Royal Solomon Islands Police Force;
  - the Office of Inland Revenue;
  - the Financial Investigation Unit of the Central Bank of the Solomon Islands;
  - Customs; and
  - other government departments and authorities as required.

to disseminate at any time information and intelligence to each other for the purposes of that body's powers and functions.

3. Introduce administrative arrangements, such as by way of a Memorandum of Understanding, to require those who receive the information to provide outcome information to the body that provided the information, including reasons for the outcome.

#### **PROTECTION OF INFORMANTS**

4. Introduce overriding legislation to provide protection for public officers or other informants who may be subject to a duty to maintain confidentiality to enable them to give information to the:
  - the Office of the Auditor-General;

- the Office of the Ombudsman;
- the Leadership Code Commission;
- the Royal Solomon Islands Police Force;
- the Office of Inland Revenue;
- the Financial Investigation Unit of the Central Bank of the Solomon Islands; and
- Customs

notwithstanding this duty.

5. Introduce legislation to protect informants to any of the bodies listed in point 4. from actions for defamation or civil suit to ensure full and frank disclosure.
6. Introduce legislation to enable the prosecution of informants who give knowingly false information to the any of the bodies listed in point 4.

#### **INCREASE IN PENALTIES FOR CORRUPTION OFFENCES**

7. Introduce legislation to increase the penalty provisions for corruption offences.
8. Introduce legislation to require a mandatory period for disqualification from holding a seat in parliament or position on a government board for a conviction for a corruption offence.

#### **AMENDMENTS TO THE LEADERSHIP CODE COMMISSION**

9. Introduce legislation requiring the Leadership Code Commission to provide detailed reasons to the informant (whether another public official or not):
  - if no action is taken by the Commission on the complaint or action to deal with the complaint is discontinued by the Commission – the reason for not taking action or discontinuing the action; or
  - if action is taken on the complaint by the Commission the action taken; and the reason the Commission considers the action to be appropriate in the circumstances; and any results of the action that are known at the time of the response.
10. Introduce legislation to provide for a specific and detailed statutory means of referring matters to the High Court.
11. Introduce legislation to provide for a specific and detailed statutory means for recovering fines.

12. Introduce legislation to increase the level of fines to a level which would have genuine deterrent effect.
13. Introduce legislation to require the mandatory public reporting of fines.
14. The creation of a panel of Leadership Code Commissioners (on a staggered basis) to enable sufficient numbers at all times to constitute a quorum.
15. Introduce legislation to provide the Leadership Code Commission with more powers at the investigation stage:
  - the power to hold hearings and summon witnesses to give evidence and produce documents where a witness is not able to refuse to answer questions on the basis of the privilege against self-incrimination or most other privileges.
  - the power to require the production of documents held by third parties such as financial institutions, public sector agencies and the private sector; and
  - the power to enter public sector agencies to inspect and seize any record or other things that may be relevant to an investigation.
  - the power to make available to the RSIPF Corruption Squad for use in any criminal investigation arising from the alleged or suspect corrupt conduct or serious misconduct (if it could constitute a criminal offence) any information obtained by the use of the other powers listed in 15.
16. Introduce legislation requiring the LCC to furnish an annual report to parliament on its activities and outcomes.

#### **LEGISLATION ENABLING ACTING**

17. Introduce legislation of a general nature to provide for the appointment of persons who can act in a statutory office holder's position in that person's absence, whether by retirement, illness or expiration of their contract.

## STAGE TWO

### CREATE EXECUTIVE OFFICER POSITION

(the appointment should be made as early as possible and not necessarily at the completion of stage one.)

18. The creation of an executive officer position.

19. The appointment of the selection panel to fill the position of executive officer.

20. The appointment of an executive officer.

activities of the executive officer

21. The executive officer shall coordinate and direct all available resources:

- to assist in training and increasing the expertise of those public officers who will transition to the stand-alone body in stage three.
- to prepare job descriptions, duty statements and competencies against which officers can be assessed, and their skills improved.
- to ensure the preparation of necessary guidelines for the stand-alone body to increase accountability and transparency. These guidelines would include:
  - Criteria for commencing an investigation;
  - Criteria for determining whether a matter should be referred to the Director of Public Prosecutions for consideration of prosecution action;
  - Criteria for determining whether a matter should be referred to the High Court for action with respect to a possible breach of the Leadership Code;
  - Criteria for determining whether a matter should be referred to another body, such as a department, for consideration of action with respect to a possible breach of a code of conduct;
  - Publication guidelines to set out whether reports should be made public;
  - Criteria for issuing notices to discover and to enter (and preparation of appropriate statements in support to record the reasons for issuing the notice);
  - Criteria for issuing summonses (and preparation of appropriate statements in support to record the reasons for issuing the summons); and
  - Criteria for seeking search warrants

- to conduct an environmental scan of the disparate resources dedicated to the prevention of corruption and serious misconduct (and to education with respect to corruption issues) with the view to its coordination and ultimately the optimisation of resources committed to prevention.
- to assist in the process of appointing a chairperson for the stand-alone body.
- to make the necessary arrangements for the transfer or secondment of officers to the stand-alone body.
- to make the necessary arrangements for the transfer of relevant records and data-bases, and determine the record and data base requirements of the stand-alone body.
- to make the necessary arrangements for the transfer of resources currently utilised by the officers who will be transitioned to the stand-alone body.
- to make the necessary arrangements for the transfer of the budget already dedicated to anti-corruption efforts within Solomon Island's various integrity institutions.
- to make the necessary arrangements for vetting employees of the stand-alone body.
- to locate suitable secure premises for the stand-alone body.
- to ensure the preparation of Memoranda of Understanding between the stand-alone body and other relevant agencies.
- to develop, introduce legislation for and implement a limited mandatory reporting scheme requiring a small number of the most senior public servants to report to the Leadership Code Commission corrupt conduct and serious misconduct by other senior public servants and politicians
- to work with the RSIPF to develop a police oversight model suitable to the jurisdiction.
- introduce legislation to under-pin the appropriate police oversight model
- introduce legislation creating the anti-corruption body and setting out its powers, functions and responsibilities
- determine an appropriate name for the anti-corruption body
- to undertake any other administrative function required for the commencement of an anti-corruption body

### **STAGE THREE**

(this may overlap with the second stage if so desired)

22. The co-location and bringing together of the relevant human and other resources to create the stand-alone independent body will be co-located within the new agency

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