
Annual Report 2013 – 2014

Office of the Commissioner for Public Relations

Foreword

This report covers the next 18 months as from July 1, 2013 to December 31, 2014. This is due to the change in the reporting period to Calendar year rather than Financial Year.

The founding of the office marked the birth of a new approach to handling problems people encounter in dealing with government. Even though we have waited 13 years to get the political will upon which to build an appropriate effective integrity system for Tonga.

Traditional mechanisms such as courts and members of parliament would remain, but the Ombudsman's Office would provide a new avenue, with distinct features. There would be no formality or charge for lodging a complaint; the office could look at issues arising in nearly all areas of government; investigation powers similar to those of a royal commission could be used where necessary; the size and continuity of the office would enable it to develop expertise and a special relationship both with the public and with government ministries, departments and organizations; and most importantly, the office is guaranteed statutory independence.

The Ombudsman's function encapsulates twin principles – people have a right to complain about government when things go wrong, and there is a duty on government to respond.

'Aisea H. Taumoepeau, SC
Commissioner for Public Relations

Office of the Commissioner for Public Relations

The Commission for Public Relations Office is an independent and impartial body setup in 2001 to promote and ensure quality service delivery, good administration (fair and responsive) and help ensure accountability and good governance within government.

Our job is to make sure government departments and organizations we watch over fulfils their functions properly. We help these agencies to be aware of their responsibilities to the public, to act reasonably and comply with the law and best practices of administration. We are independent of government and accountable to the public through His Majesty in Privy Council.

We operate an Ombudsman-like system for the Kingdom of Tonga. Our office was established by an Act of Parliament, the Commissioner for Public Relations Act 2001.

Like many other Ombudsman offices around the world, the office was modelled on the system created in Sweden in 1809. The primary purpose of that body was to investigate complaints about government administration. Loosely translated the term Ombudsman means “the citizen’s defender” or “representative of the people”. The Commissioner for Public Relations Act 2001 is based on the New Zealand Ombudsman Act 1975. Today, the Ombudsman concept has been adopted in every corner of the world. There are more than 200 Ombudsman like bodies affiliated to the International Ombudsman Institute (IOI).

Every member of the public has the right to complain to us. A major part of our work is generated by complaints. We believe that complaints are one of the best sources of client and staff feedback on how an agency is performing. This is why we encourage agencies to set up and maintain effective complaint handling systems so they can use the information in complaints to improve the way we function.

“Our key aim is to improve the delivery of services by government agencies to the public and our corporate goals reflect this objective.”

Our Vision

Fair, accountable and responsive administration in government departments and organizations in Tonga.

Our Mission

To promote efficient and well-structured departments, and organizations with the qualities of good governance and accountability.

Our goals

- (a) To assist government departments and organizations remedy deficiencies and improve service delivery
- (b) To be a cohesive and effective organization
- (c) To be accessible and responsive
- (d) To be a leader in the standards of service to the public

Our values

In everything we do we will;

- (a) Act fairly, with integrity and impartiality;
- (b) Treat individuals and government agencies courteously and sensitivity;
- (c) Use resources efficiently and effectively, and;
- (d) Ensure that we are accessible to everyone.

The key elements of the approach of the Ombudsman can be summarised as follows:

Public Interest

The public interest is the paramount consideration in the work of the Office. This includes public interest in individuals being treated reasonably by Ministries, Departments or organisations.

The ‘People’s Defender’

The role of the Ombudsman has traditionally been seen as the ‘People’s Defender’. However, this should be read as referring to people in general rather than people as individuals.

Where complaint is investigated and considered to be justified, the Ombudsman will recommend action to fix the problem. This may involve some action that will help the individual, who complains, but more often will focus on changing the system or ensuring a misconduct issue is properly addressed by the government Ministry, Department or organisations . Sometimes it means the changing of a law or procedure making things more workable and fair. Other times it may be about recommending improvements in service delivery and practice. This approach ends up helping many other people, not just the person who complains.

Impartiality

One of the essential characteristics of the Ombudsman is impartiality. This necessarily means that the Ombudsman is not the advocate of complainants, public authorities or officials the subject of complaint, or the government.

The only circumstances in which the Ombudsman can appropriately be described as an advocate is in relation to the public interest. This is normally evidenced through advocacy and support of recommendations made in reports, or suggestions made for the purpose of resolving complaints.

Independence

Independence of the office from the executive is paramount. Equally important is that the restrictions and limitations of the legal system should not burden the office of Ombudsman, which otherwise could be dragged into interminable process, such as injunctions, legal niceties and technical points of law. Given the slowness of the judicial system it risks entangling the Ombudsman in interminable judicial procedures which in turn prevent him from achieving the tasks that have been set for him. The safeguarding of the Ombudsman processes should therefore be specifically provided for in the legislation.

Transparency

Any community that values fairness in administration, transparency and the exposure of improper practices needs to have an appropriate oversight body

independent of the executive, and untrammelled in its capacity to research, investigate and report objectively about the facts found in from the investigation. For this reason, the majority of countries which share these values of openness have set up or are setting up Ombudsman offices. The office may have different names but essential ingredients are very similar.

Confidentiality

The Ombudsman is required to conduct investigations in the absence of the public and the Ombudsman and all staff of his office are subject to stringent secrecy requirements.

Accountability

The CPR office has just started to embark and intend to spend considerable resources encouraging public authorities and other relevant organisations to handle complaints better and that offices places great emphasis on being a model in its own practices.

The work of the CPR (Ombudsman) is often scrutinised intensively by Members of Parliament, and the media.

The appointment of the CPR incumbent Commissioner has empowered the legislation after lying dormant-mode for almost seven years.

Responding to complaints not only allows the Office concerned a second chance to provide service and satisfaction where its initial attempts failed for whatever reason, but by recording and analysing complaints the Offices uses this as a source of feedback to identify areas that need improvement.

Reasonable conduct & outcomes

The Ombudsman's focus is on what is reasonable – on what is the “right” thing to do in the circumstances. In this regard, the Commissioner for Public Relations Act 2001 and the Ombudsman Amendment Act of 2014, upon its enactment empowers the Ombudsman to find action legal but nevertheless wrong, because it is unreasonable.

Positive outcomes

In reviewing the conduct of general public authorities, public officials and other persons and bodies within jurisdiction, the primary focus of the Ombudsman is not to apportion blame. The Ombudsman considers that the effectiveness of the Office should be measured by the results that are achieved. In other words, emphasis should be on rectification, not retribution. This, of course applies primarily to the general jurisdiction of the Ombudsman and not so much in the police jurisdiction which is more disciplinary oriented or in the women & child protection jurisdiction (family protection legislation) which has a protective focus of ensuring agencies identify and manage risks.

Realistic Recommendations

Given that the Ombudsman has no power to enforce compliance with recommendations or suggestions, it is of vital importance to the effectiveness of the Office that any recommendations or suggestions made for the purpose of resolving complaints or addressing issues raised in notifications are:

- Justified (by the available evidence)
- Practical and realistic (including that the costs and difficulty of implementation are proportional to the seriousness of the problem or the importance of the agency's obligations)
- Effective and achievable (that the measures recommended will achieve the desired results)
- Cautious (prudent)

Accessibility

The Ombudsman provides a vital public service to the people of Tonga. It is therefore essential that all people are aware of the Office's functions and are able to access its services. To this end, CPR office has started reaching-out by way of radio and television programs, text messages and newspaper adverts, while designing an access and awareness program is underway to better target services to disadvantaged groups and to ensure that any barriers are identified and eliminated.

Our guarantee of service

We guarantee to give all matters referred to us proper consideration and attention. If we decide to investigate a matter we will do so as quickly as possible, acting fairly and independently. If we decide not to investigate, we will provide reasons for our decision. If there are alternative ways of dealing with a matter we will provide an explanation.

Our office does not confine itself to the Commissioner for Public Relations' jurisdiction only, however, our doors are open to those who seek our help and if we can help we will help.

Staff

The short leadership of Mr Sateki Hopoate 'Ahio, come to an end when he decide to end his service with Government on March 12, 2014.

On March 21, 2014, The Lord Prime Minister in Cabinet appointed 'Aisea Havea Taumoepeau, SC as Acting Commissioner.

The rest of the staff include Senior Investigation Officer, Pilimisolo L. Tamo'ua, Investigation Officer Ma'afu Tonga, Office Administrator Mo'onua Taufu, Computer Assistant Lea'asi Tonga, and daily paid assistant Takina Pupu.

Mrs Sisila P. Tokai, Assistant Secretary joined the CPR team on August 12, 2014 as Personal Assistant to the Commissioner. Nikola Fifita Pita was employed on July 18, 2014 as daily-paid driver.

Please refer to Appendix A for Organisation Chart.

Work

The duties undertaken by the Office of the Commissioner for Public Relations are very broad and include:

- Resolution, conciliation and investigation of complaints about all Government of Tonga's Ministries, departments, and organizations;
- Providing constructive advice and guidance to departments and organizations on issues relating to good administration and complaint-handling.

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- Assisting and referring people (both via communication on telephone, emails and/or visits) to the office to make enquiries
 - Providing training in conducting investigations and complaint management;
 - Conducting customer service audit.

Cabinet tasked Acting Commissioner to revise legislations

The appointment of the Commissioner brought in new dimension to the work of the office.

Already the powers of the CPR Act had been re-activated even though as Acting Commissioner, complaints from the public increased, which is the backbone of the work of the office, and likewise enquiries into our roles and functions.

In addition to his roles as Acting Commissioner, Mr Taumoepeau was also tasked to revise the CPR Act of 2001. This was done immediately. Submissions were made to Cabinet and approved under Cabinet Decision CD 296 of May 12, 2014, that the Office of the Commissioner for Public Relations is re-established as the Ombudsman Office.

The name of the Act was changed from “Commissioner for Public Relations Act” to “Ombudsman Act”, Commissioner for Public Relations to Ombudsman, likewise the name of the office.

Few more minor changes to section 3 with regard to the appointment of the Ombudsman (or acting capacity) to be made by Cabinet, and that the appointee to be a person who is legally qualified.

Another change specifies the Remuneration Authority to set the salary of the Ombudsman, and a few other amendments tidies up the provision so that divulging of information to be in accordance with the Act. Amendments were made to Section 11 and 29 with regard to the schedule and the regulation making power.

Perhaps the most significant of the changes were.

1. That, a new section 30 was introduced to enable the Ombudsman to publish reports (if in the public interest) of matters relating to its functions.

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2. And the Cabinet approved CPR's recommendations that a Good Governance Commission Bill and related legislation is withdrawn from Parliament.

Ombudsman Bill passed in Parliament awaits Royal assent

In July 2014, Parliament passed the Ombudsman Amendment Act 2014 which updated the CPR Act 2001 by changing the name of the Office to that of "Ombudsman", and allowed the Ombudsman to make public reports, updated a list of agencies within the Ombudsman's jurisdiction and made other minor amendments. The amendment is awaiting royal assent.

Review of Anti-Corruption legislation

The Acting Commissioner and the Public Relations' Office were also tasked to revise the Anti-Corruption Act 2007. It should be noted that the CPR has been under-staffed since the beginning, and were not ready administratively. However, with the leadership and legal expertise of the Acting Commissioner a "draft" Anti-Corruption (Amendment Bill) 2014 was approved by Cabinet on CD 525 of July 25, 2014, to be processed in accordance with relevant procedures through the Law Committee and submission to Parliament.

Parliament passed ACC (Amendment Bill) 2014

Parliament passed the Anti-Corruption Commissioner (Amendment Bill) 2014 on August 5, 2014. The amendment updates the 2007 Act to reflect the 2011 Constitutional changes and makes minor amendments to matters, such as the remuneration of the Anti-Corruption Commissioner, to make the ACC workable. The amendment is awaiting royal assent.

Tonga wants to become party to UNCAC

Work is under way on the request of Cabinet (CD 525 of July 25, 2014) that the Acting Commissioner review the Anti-Corruption Commissioner legislation in order to advise:

1. Whether the current legislation creates an effective and appropriate integrity body and IF NOT, how the legislation could be amended
2. Review the legislation with a view to the Kingdom of Tonga becoming a party to the United Nations Convention Against Corruption (UNCAC).

It should be noted that the CPR office does not have the human resource and expertise other than the Acting Commissioner. However, the CPR Office, a founding member of the Pacific Ombudsman Alliance (POA) has successfully engaged assistance from POA and the Centre for Asia-Pacific Pro Bono.

Investigative approaches

Ombudsman

- The primary role of the Commissioner (Ombudsman) is to investigate and resolve complaints brought to the office by the public. The principles of an Ombudsman's offices are that is **free, fair, impartial and independent**. The Ombudsman can improve administrative conduct and decision-making in the public sector using the information from public complaints and the subsequent investigations.
- Successful Ombudsman offices build strong and supportive professional relationships with agencies, encouraging and helping departments to set up and maintain effective complaint handling systems to better handle complaints about themselves and use the feedback to improve the way they do things. This approach emphasises resolution of issues rather than enforcement. Ombudsman offices operate in an environment of openness, accountability and transparency. They make changes by making well-reasoned suggestions and recommendations, and where necessary, bringing significant public interest issues to light through reports to Parliament (through) the Prime Minister, that may encourage appropriate actions and decisions by and within agencies.

Anti-Corruption

- Anti-Corruption Commissions (ACC) work much more in an environment of enforcement and prosecution. Interaction with the public tends to be focussed upon gathering intelligence, rather than resolving complaints.
- ACCs may use tools such as telephone intercepts and covert operations. They therefore tend to be more closed and secretive organisations than Ombudsman offices.

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- An investigation by ACC tends to draw on criminal investigative and evidence skills in order to secure prosecutions. Investigations that focus on prosecutorial results may be more resource intensive than traditional Ombudsman investigations, as there is a requirement to reach a higher evidential threshold to secure criminal prosecution.

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Resourcing Issues

- There is also resourcing issues whereby Ombudsman institution tend to be fairly low cost with most cost relating to staff. The focus upon resolution means that many cases can be resolved in an informal and low key manner.
- ACCs can be extremely expensive as they require dedicated buildings, phone lines and other state-of-the-art technologies/equipments.
- Tonga with its small population and limited resource availability needs to be mindful of having too many publically funded institutions competing within the budget. As the CPR (Ombudsman) already exists, have office premises and staff in place, adding an Anti-Corruption Commission as additional role to that of the CPR (Ombudsman) should not place an excessive additional resource load upon the Government of Tonga. However, anti-corruption investigations have the potential to be resource intensive given the sensitive issues around handling evidence leading to prosecutions.

A combined Ombudsman Anti-Corruption Commission ‘desirable’

It may be undesirable to have multiple agencies in a country with a small population. It is possible that a single office may be better understood and therefore more utilised by the public, as complaints about either maladministration or corruption can be directed to the one organisation. The organisation can divide its work internally to keep processes for handling maladministration and anti-corruption matters distinct. A single agency may be better able to ensure that individual complaints do not fall between the cracks.

Overseas Conferences

There were a number of meetings paramount to keeping the office and its staff abreast with the global trend of the Ombudsman line of work.

1. UNDP invitation to celebrate a new role for the Samoa Ombudsman on Human Rights, November 7 – 14, 2013

Sateki Hopoate 'Aho, who was Acting Commissioner at the time was invited by the Pacific Ombudsman Alliance (POA) to the celebration of the anniversary of the Samoa Ombudsman which coincided with the office taking on a new role on Human Rights.

2. Ombudsman Induction, September 1 – 12, 2014, Wellington, NZ

In accordance with normal Pacific Ombudsman Alliance (POA) practice, the Alliance' Board agreed to fund two placement in the Office of the New Zealand Ombudsman. The new Acting Commissioner, Mr. 'Aisea Taumoepeau joined the induction program in Wellington, New Zealand.

This was so that new Ombudsman might become more familiar with the regional and international Ombudsman network, and learn more about how neighbouring Ombudsman's offices operate.

3. National Investigation Symposium, November 5–7, 2014, Sydney Australia.

POA also funded the participation of the new Commissioner (Ombudsman) and Senior Investigator who also act as Deputy Secretary for the CPR in the National Investigation Symposium. This was very useful in terms of sharing the experiences of expert investigators throughout the Ombudsman family of Australia, New Zealand and the Pacific.

There were pre-conference workshops, too.

The two Commissioner and Investigator/Acting Deputy Secretary were able to set up side meetings with Ombudsman counterparts from the Commonwealth and NSW Ombudsman Offices and discussed matters of common interest as to the development and strengthening of the Tonga office. These meetings drew up further opportunities for on-going assistance with regards to frontline customer service, training for staff, technical assistance, and providing expert advice.

Further, the Commissioner and Senior Investigator/Acting Deputy Secretary with the help of the POA Secretariat was able to successfully engage the services of

prominent lawyers and legal drafters to inch ahead the work tasked by Cabinet to review the Anti-Corruption legislation with a view that Tonga may become a party to the international convention against corruption (UNCAC).

Role and Function of the Commissioner for Public Relations

The primary role of the Commissioner for Public Relations has been to provide impartial investigation on behalf of the people who feel they have suffered injustice through the action or inaction of government ministries, departments, and organizations (listed in the Schedule to the CPR Act 2001). It also fosters good public administration by recommending remedies and ways these errors may be rectified amicably.

All investigations carried out by the Commissioner are held in private unless there are information that need to be released due to the investigation.

Good decision-making for Government – fact finding

Administrative decisions within Government are mostly reached after a process of preparatory fact finding. As to some factual issues there may be no uncertainty or disagreement – a client’s sex, age or occupation, for example. But on other issues the facts may be unclear or disputed. A choice must then be made as to which version of the facts to be preferred as the basis for the decision.

Public confidence in the integrity of government decision-making hinges on whether there has been proper and defensible fact-finding. This is also a core concern of administrative law review agencies – the courts, tribunals and Ombudsman. Courts, undertaking judicial review of the lawfulness of government administrative action, do not second guess the merits of a decision-maker’s factual findings, but do pay attention to whether fact finding errors have undermined the legal integrity of government administrative decisions. Ombudsmen and administrative tribunals can generally go further, and substitute a different view or version of the facts as the basis for a recommendation or new decision.

Mode of Complaints

Complaints may be made by telephone, in person or in writing.

Complaint investigations are carried out impartially and independently, and are handled in private.

Complaints and Enquiries

The year 2014 saw a dramatic increase in complaints received, to a total 48 complaints and enquiries, and 125 visits.

Eighteen complaints were decided by the Commissioner that warranted full investigation. 13 cases that were investigated were successfully dealt with to the satisfaction of the complainants and parties involved, while 5 of the cases were still outstanding and/or require further information and/or response and will be completed in 2015.

A number of complaints received were outside our jurisdiction. Most of these complaints were issues regarding private companies, and/or individuals outside the jurisdiction of the CPR. We also received complaints of political in nature, and still others can be regarded as serial complainant, of which is in the increase who do not accept any finality in their complaints unless the matter is dealt with according to what they are demanding. However, we open our doors for any complaints to be referred to us for assistance or advice, in such cases, in regards to our jurisdiction and further point them to the appropriate avenue for redress.

However, CPR looks forward with great enthusiasm for the work cut out for 2015. Moreover some good results to be achieved as work is carried out with the public and the Government ministries in 2015.

Enquiries about complaints and full investigations

Many complaints to the Office of the Commissioner for Public Relations are resolved promptly – a stage in our complaint-handling process that allows us to determine whether a complaint is within our jurisdiction, whether a full investigation is required or whether the complaint can be resolved by informal inquiries. Where a complaint involves complex or multiple issues, we conduct a more full investigation. The decision to investigate a matter fully can be made for a number of reasons:-

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- The need to produce information from records that are kept in ministries or departments of Government ;
 - The nature of the allegations made by a complainant
 - The time required by the ministries or departments of Government to respond to the request for information or evidence by the Commissioner;
 - The likely effect on other people of issues complained by the complainant

Public Education

We conducted one public awareness program during the Anti-Corruption Week (November 2014) via Radio and TV Tonga. This attracted a number of enquiries, complaints and comments, paramount to the development of the work of the office.

A visit to Niuatoputapu

The Senior Investigation Officer visited the northern island of Niuatoputapu on December 3-10, 2014 to complete investigations on complaint against actions taken by some Government officials. The officer met the Government Representative Mr Sione Feingatau 'Iloa and the small team of staff and daily-paid labourers in the Government offices at Hihifo.

Further visits of outreach and awareness were also conducted to the three villages of Falehau, Vaipoa and Hihifo, and include specific visits to Tonga Telecommunication Commission premises at Hihifo, and the Health Centre at Falehau.

Regional and International Assistance

The Office is privileged and greatly appreciates all the assistance and support that this office gains from the Australasian-Pacific countries (APOR), the Pacific Ombudsman Alliance (POA) and being a member of the International Ombudsman Institute (IOI).

In particular sharing expertise and advice, and much-needed training for staff of the office, especially investigators, in various areas of complaint-handling.

Tonga has continued to receive much needed support over the years from POA, a support network for small Pacific island countries established in 2008. Tonga is a founding member.

The commitment of Government in the re-development and strengthening of the office has drawn further support of POA to the tune of T\$170,000 (in technical assistance, provide expert advice, education and public awareness assistance, and as well staff training) through to 2015.

Conclusion.

We are encouraged by the support Government has provided in 2014. The withdrawal of the Good Governance Commission Bill from Parliament speaks volume of the commitment and recognition Government has taken toward an appropriate and independent integrity institution for Tonga.

The appointment of the Commissioner was vital. The Commissioner for Public Relations Act 2001 and the CPR Amendment Act 2014 can only be empowered by the Commissioner otherwise the legislation is only a document, and the office a watchdog without teeth.

Equally important for that matter is to acquire the royal assent for both the Commissioner for Public Relations Amendment Act 2014 and the Anti-Corruption Commissioner Amendment Act 2014, sooner rather than later.

High in our organization goals and values are accessibility and responsiveness. Both Amendment Acts are vital for that regard and in particular the overall performance of our role and functions to the public.

We are building the capacity even though progress is slow. Our under-staffed office works extra-hard to cover for certain skills and man-power we do not have at present.

We are confident of the effectiveness of our work, and hope that the ministries, department and organizations complained against, have learnt lessons and have taken crucial steps and extra care not to repeat the same mistake.

Complaint and enquiries are quickly increasing, so has the positive growth in our relationships with Government ministries, departments and organizations.

We aspire to achieve our organizational goals: to ensure that the administrative actions by public administrations and public officials are fair, accountable, has integrity and combats corruption, and contribute to the overall national outcome.

We cannot win this alone. We need your help and support.


