
Annual Report 2012-13

Office of the Commissioner for Public Relations

Foreword

This is only the seventh annual report of the Commissioner for Public Relations even though it has existed for 13 years. During those past years, the Office saw only two Commissioners, three Acting Commissioners in short stints and three Officer-in-Chargers.

A special feature of this report covers the changes that have occurred since the office was established in 2001.

Significant time and effort to express our opinions in regards to building an effective and appropriate integrity institute for Tonga. In particular, reporting to various relevant Government bodies, Committees and Officials on public service structural reform, and finally to Parliament for purposes to assist government in the development of this office to become appropriate with its integrity roles and functions.

We cannot stress enough that is of paramount important that such an office should be independent of others control. Anything else including an umbrella ICAC-style body like the proposed Good Governance Commission to oversight the Commissioner (Ombudsman) would interfere with his/her independence.

Re-development of the structure of the Office of the Commissioner for Public Relations, and revise the legislation to become the Ombudsman Office is most appropriate for Tonga at this stage.

‘Aisea H. Taumoepeau SC
Commissioner

Office of the Commissioner for Public Relations

The Commission for Public Relations 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 fulfilled 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. It is an approach more responsive, and interact more with the public for resolution, rather than enforcement, however less expensive in dealing with the public complaints. 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 they 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.

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. We will also advise if there are other appropriate avenues for redress.

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

Staff

The Office continued under the leadership of Mr Sateki Hopoate ‘Ahio who was appointed Acting Commissioner on June 29, 2012, having joined the CPR on January 30, 2012 as Officer-in-Charge. Investigators include Messrs Pilimisolo L. Tamo‘ua and Ma‘afu Tonga and the administration consist of Mrs Mo‘onia Taufu, Lea‘asi Tonga and Takina Pupu.

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.
- 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.

However, the office has been left without adequate support for many years, and until an incumbent Commissioner – one with relevant qualifications and knowledge in the field, is appointed, the office will continue to be ineffective.

Overseas conferences

The Acting Commissioner Sateki ‘Ahio attended the International Ombudsman Institute conference in Wellington, New Zealand, November 8–16, 2012 which coincided with the commemoration of the 50th anniversary of the New Zealand Ombudsman Office. He was accompanied by Senior Investigation Officer Pilimisolo L. Tamo‘ua to assist the new Acting Commissioner during the meetings. The IOI also coincided with the APOR Meetings (Australasian Pacific Ombudsman Regional Conference), and the 4th Pacific Ombudsman Alliance (POA) Annual Meeting.

The conference provided an importance opportunity for Ombudsman from throughout the world to share perspectives, develop partnerships, and share practical experience to strengthen the systems the work we do for governments and citizens alike.

Decided to be heard

A decision of Cabinet to support a proposed new umbrella body to become the administrative authority on top of all other integrity body is just the opposite of an integrity office.

We felt that Government has not afforded adequate attention to the views provided by this office, and feared that all will be lost should the proposed new Good Governance Commission is allowed. We believe we have a duty to perform, and that is to voice our concern over the proposed new structure.

We set out to convey our views to senior government officials, ministers, CEOs, deputies, parliamentarians – noble and peoples’ reps alike and further to the public.

We were temporarily happy that upon deliberation on the Good Governance Bill, parliament decided that the bill be referred back to the people through public consultations.

We were very disappointed not being invited to be part of Parliament’s committee on the public consultations. It also went ahead without our knowledge. Upon returning from the IOI Conference in Wellington, the public meetings were in its final stages, but our Senior Investigation Officer was able to attend the one session at Nukunuku, and voiced our concern amidst heavy criticism and very indifferent views from a group of peoples’ MPs that were part of the parliamentary committee on the consultation and in the absence of any Minister of the Crown or the Crown Law Department representative.

The office is of the view that Members of Parliament had not done enough to contribute to effective legislations, even Government-sponsored ones. MPs had repeatedly moved in the House to close the office down, and for good, citing ineffectiveness, weak, and a waste of public money.

The involvement of Cabinet Ministers and Crown Law Office in the public consultations is of paramount importance. It should provide a balance in the discussions and engagement with the public. Their absence, for whatever good reasons, can only provide opportunity for public confusion and/or political campaign, especially opposition from MPs.

During the consultation at Nukunuku, the meeting was told that it was normal practice for the Parliamentary Committee to round up every meeting throughout Tonga with a show of hands – as of whether the meeting wish to support and/or do away with the propose bill/s.

However, the public consultation was a window of opportunity for us to report on the situation and our views directly to Parliament. Had it not for the further public consultation on the bill, we would not have had the opportunity to express our views and be heard.

Our report to Parliament's Standing Committee on Legislation is a milestone achievement – a first ever such report other than the usual annual report, and one which bear witness to the paramount importance for such an office to be independent of government influence and control.

Better things followed, as Parliament debate went tense and heated at times for a long time in the House deliberating on integrity schemes. The bill was finally withdrawn at the request of government.

We thought we're worth our existence!

Report to Parliament's Standing Committee on Legislation

A report was prepared in December of 2012 and submitted to Parliament in early 2013 where this office was of the view that the proposed Good Governance Commission cannot be allowed to overshadow the independence of any of the integrity institutions, but rather Government should strengthen the existing ones.

Following is our views tabled and debated in Parliament last year (2013).

February 6, 2013

Chairperson

Parliament's Standing Committee on Legislation

Parliament House

NUKU'ALOFA

Re. Preliminary Views and Comments by the Office of the Commissioner for Public on the two Bills – Ombudsman Bill 2012 & Good Governance Bill 2012

Introduction

On October 2012 the Government presented Parliament with three Bills that will complete a new integrity framework for Tonga. Unfortunately, those Bills, if passed, will, in my view, in combination with the other legislation relevant to the integrity scheme, significantly diminish Tonga's integrity system in a number of ways, including reducing the effectiveness and independence of the Office of the Ombudsman.

Before Parliament closed for 2012, the Bills went into public consultation. While the public did not approve of the newly designed Good Governance Commission, they did approve of the existence of the Ombudsman, provided it could be proven to be independent and therefore effective.

Such is the importance of the issue that we have prepared this report, even though we were not officially invited to present our views nor invited to participate in the national consultation rounds, to advise the Parliament and, in particular the Legislative Committee, of our concerns regarding the three Bills currently before the Committee so as to allow the Legislative Committee to make informed decisions when considering those Bills.

1. Ineffective integrity system

The scheme as drafted will lead to an ineffective integrity scheme that effectively abolishes the Ombudsman concept in all but name.

The new arrangements will hamper the exercise of the investigative and reporting functions of the Office of the Ombudsman.

Upon consideration of the two bills (Ombudsman Bill 2012 and Good Governance Commission Bill 2012) makes it clear that the Ombudsman would be an employee of a Government appointed body that is not only chaired by the Attorney-General but is also required to give effect to Government policy. The Ombudsman would have no independent authority with respect to the establishment of offices, the appointment or control of staff, or the obtaining or administration of a budget.

2. Tonga may no longer be eligible for IOI

Such proposals are the very antithesis of an Ombudsman's role which, in essence, is that of an officer appointed by Parliament to independently investigate the administrative conduct of government agencies. If enacted the Bills would reduce the Ombudsman's role in Tonga to that of a Government employee required to comply with Government policy and to exercise his or

her functions as directed by another Government agency. If the Bills are to be enacted as such, then the Tongan Ombudsman would no longer qualify as eligible for full membership of the international Ombudsman Institute. Refer to the IOI By-Laws on eligibility for such membership – particularly the provisions of Article 2. (Attached herewith is a copy of the IOI By-Laws).

3. Appointment issues

Other issues of concern include:

The appointment of Commissioners for the Good Governance Commission

Some of those Commissioners may be appointed from the Public Service, and may be eligible to become Ombudsman and/or Commissioner for Anti-Corruption. This will undoubtedly affect the perception by the public of the independence of the office.

The Ombudsman's three year term, against an elected Government term of four years

This may imply unnecessary pressure on the Ombudsman who can be pressured to depart from his/her integrity to please the Government-of-the-day for re-appointment and the like.

Most Ombudsman elsewhere may be appointed for a minimum term of 5 years, which may be renewed once. A few like in the State of Victoria, Australia is for a maximum of 10 years which is not renewable.

Three years is far too short a timeframe to optimize the leadership role of the Ombudsman and to establish continuity of management.

4. An Independent Ombudsman

We do not have to re-invent the wheel. There are many good models and examples that we can draw lessons from, including ones that we have repeatedly submitted to the former Government and relevant officials including, former Ministers of Justice, PSC and the Working Group on Government Structural Reform over the past six years.

What we have said is that an independent Ombudsman only reports to Parliament. To do anything else by having an umbrella organization (Good Governance Commission, chaired by the Attorney-General) or ICAC style body to oversight the Ombudsman would interfere with his/her independence. This is particularly important as an Ombudsman may only make

recommendations. He/she doesn't prosecute, nor can evidence obtained be used in proceedings other than on a very limited basis (e.g for perjury – in giving false evidence on oath during an Ombudsman enquiry).

At this time, no Ombudsman in Australia, New Zealand, Canada or the United Kingdom comes under the supervision or investigation by an integrity body. To do so is to be incompatible with the universally accepted model where the Ombudsman is appointed by the legislative body and reports directly to that body.

5. The Ombudsman can have additional role as Anti-Corruption Commissioner and Freedom of Information or Commissioner for Information

The Ombudsman can also play the role of Commissioner for Information. This has been normal practice with other Ombudsman jurisdiction including Australia and New Zealand. The Chief Ombudsman of New Zealand Dame Beverley Wakem has the equivalent role of an Information Commissioner in New Zealand, a role that has been with the Chief Ombudsman of New Zealand since the 1980s. In Australia, the Commonwealth Ombudsman had a similar role until Nov. 2010. At that time that parliament decided that demand for information from the public had increased to a level that it believed warranted a separate Commissioner for Freedom of Information alone. However, it appointed the Commonwealth Ombudsman (of that time) Prof. John McMillan to become the first Information Commissioner for the Commonwealth of Australia.

6. Sidestepping the issue

In discussion of this very important issue, we note there was and still are many, including legislation drafters, who appear willing to avoid the appointment of an independent Ombudsman by dwelling on the weaknesses of this office from the beginning.

This is no time for such finger-pointing. The office of the Commissioner for Public Relations has operated with limited funding and resources for a long period and has made repeated submissions concerning the need to strengthen the office and bring it into line with the international standard and the recognition of the rule of law, nationally and internationally. This included bringing a representative group of Pacific Ombudsmen to Tonga in recent years to discuss with government officials the establishment of a formal and properly constituted Ombudsman office.

We note that on top of the legislative weaknesses and limitations from the beginning, there was largely an absence of “political will” during the last six years to establish such an office.

We should learn from the experience of those that launched and operated the Anti-Corruption Offices (OACC) from its Mosimani Building location back in 2007, which was aired from the national television and almost straightaway went to oblivion and never heard of again, until now.

We hope that you may find this letter of some help to assist your Hon. Committee Members make informed decisions on this very important issue for all Tongans.

Attachments

Attached herewith are our preliminary views and comments on the proposed Bills with the following papers annexed for your considerations.

Annexure marked “A” highlighting certain weaknesses that will negatively impact on the integrity institutions in Tonga. It also makes special mention of the foundations that makes up an effective Ombudsman or integrity institution. Further, we attempted to propose some good ideas and models that we may draw lessons from.

Annexure Marked “B” is a paper on *Ombudsmen and Judges between law and politics* by Mats Melin, a colleague and former Swedish Ombudsman and former Vice and Acting President of the International Ombudsman Institute (IOI) speaking to a seminar (8th National Seminar of the European Network of Ombudsmen) in February 4, 2013 in Copenhagen, Denmark. It has some general comments about the roles, powers and independence of the Ombudsman that we thought you may find useful. Mr Melin is now the President of the Supreme Administrative Court of Sweden, having been appointed by the Swedish government on August 26, 2011 to his new post. He has been Ombudsman since 2004.

Annexure marked “C” is the IOI By-Laws;

Annexure marked “D” a proposal for amendments to the CPR Act 2001 – the subject of a submission to PSC and the Working Group on Government Structural Reform in August 2011. Similar documents were submitted to former and present Government and relevant government officials over and over during the last six years;

Annexure marked “E”: Models and Options for restructuring the Office of the Commissioner for Public Relations and creating an Anti-Corruption Office in Tonga;

Annexure marked “F”: the Ombudsman processes (inquisitorial powers vs the traditional courts adversarial process);

Annexure marked “G”: Forum Principles of Good Leadership – **Principle 1 (ii) g) Establish and empowering bodies, such as an Ombudsman Commission** to independently investigate public complaints against government’s actions.

Signed by

Sateki H. ‘Ahio (Acting Commissioner)

Tonga continue to get worldwide and regional support

The support that this office gained from being a member of the International Ombudsman Institute (IOI) and the regional conference for Australasian-Pacific countries – APOR was overwhelming. In particular sharing expertise and advice, and provided much-needed training for staff of the office, especially the investigators, in various areas of the complaint-handling business.

Tonga is also a founding member of the Pacific Ombudsman Alliance, a support network for small Pacific island countries established in 2008.

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.

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

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

The key values of the Office of the Commissioner for Public Relations are:

- Independence
- Impartiality
- Integrity
- Accessibility
- Responsiveness
- Fairness

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- Professionalism
 - Teamwork

Where, following an investigation, the Commissioner considers it warranted, he may recommend the agency to take such remedial action as he thinks appropriate. These are the functions of an Ombudsman-like office and the Commissioner is in fact a member of the International Ombudsman Institute (IOI). Like an Ombudsman, his functions allow him to address administrative problems that the courts, the legislature and the executive cannot effectively resolve.

In resolving complaints, the Office of the Commissioner for Public Relations attempts to establish some cordial relationship between the complainant and the authority complaint against, so that there is genuine reconciliation. This is our hope and the ideal situation that we have strived for, as was envisaged by the late king while then Crown Prince Tupouto‘a when he pushed government for the establishment of this office, having an Ombudsman-like jurisdiction as set out in the CPR Act of 2001.

Over the past years, we have tried to work closely with government ministries, departments and organizations to ensure that complaints handling has been recognised as a key consideration within customer service delivery. We are anxious that complaints structures should be accessible and user-friendly. We have raised concern with departments as to whether complaints handling was recognised as an issue at the appropriate stage. We hope that this is something the new re-organisation in government under the Public Service Reform Program is recognised and the appropriate complaint handling mechanism is incorporated to the new structure before it becomes too rigidly established to change.

The institution of the Ombudsman fosters confidence in systems of good governance. This contributes to social cohesion and public sector confidence.

Ombudsman activities go to the heart of addressing justice and strengthening institutional capacities. The Ombudsman institutions have a direct impact on improving administration in government agencies.

Legislation

The role of the Commissioner is performed under the Commissioner for Public Relations Act 2001.

Performance Report

The Office was provided with a budget of T\$134,100 for the 2012-13 financial year. Out of that total we used up T\$126,649. About 80 per cent of the budget goes into salaries and wages. The remainder goes into utility bills, equipments, office supplies and related expenses.

Preliminary inquiries and formal investigations

Many complaints to the Office of the Commissioner for Public Relations are dealt with as preliminary inquiries – a stage in our complaint-handling process that allows us to determine whether a complaint is within our jurisdiction, whether an 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 formal investigation. The decision to investigate a matter more formally can be made for a number of reasons.

- The need to gain access to agency records
- The nature of the allegations made by a complainant
- The time taken for an agency to respond to our requests for information
- The likely effect on other people of the issues raised by the complainant

Complaint received

We received 10 complaints during 2012 - 2013. We finalized three by way of preliminary enquiries. Two complaints were currently subject to court proceedings, and another five were outside our jurisdiction.

Look into the future

The office has been encouraged over the past years that government is supportive of strengthening and to further develop to become an appropriate integrity institute for Tonga, even though progress is slow. At the same time the active participation and support gained from IOI, APOR and POA has been a huge moral boost.

It is our intention to maintain that cordial working relationship that has been established in the form of exchange of staff to continue the learning experience and to steer the work towards international standards. Further to promote accountability and transparency in the process and decisions made.

This Office is able to obtain financial assistance for development work in this area. However the Government must endorse the setup and the features of such an Office that they would like

developed. POA has agreed to fund the outreach educational program which will in turn encourage the public, schools, organizations and the churches to know and set up a system for complaints and the related work that is required to resolve problems. However everything is on hold until the status of the Office is confirmed.

It is our wish to improve the Office by revising its legislation, recruit more staff so that the expertise is increased. In particular, the Office needs a Commissioner to be appointed and a budget to support the work according to the powers provided by law.

It is very important to appoint the right person as Commissioner, a person that has a vision about the work, and that person is appropriately remunerated for continuity purposes. At present the current staff are faced with various problems.

We have also made reports on our views, especially with regards to the future of the office as we see it. We have focussed on the Ombudsman concept as the most fitting for Tonga, while the Anti-Corruption Act needed revision. If it was to go ahead would need to be adequately funded and staffed otherwise it would not last for various obvious reasons.

On the other hand, the Anti-Corruption Commissioner's office can be revised and re-developed to become a 'complementary' role of the Ombudsman, thereby can be sustainable with its own separate set of professional staff, while sharing one administration.

Conclusion.

Looking into 2014 and beyond we could almost feel a strong current of change is sweeping-in – a vital change for the better in promoting good administration practices, transparency of the decision-making processes, and the service delivery within the machinery of government.

A revitalized office, legislation, structure and budget to become the Ombudsman Office would be very ideal.

We can become leaders in the promotion of good governance throughout the public service sector.

We need to have an appropriate and effective Ombudsman office. This is that office. It needs legislation, empowerment, and the financial backing of Government.

The Ombudsman's Office 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.

Office of the Commissioner for Public Relations
Organisation Chart

