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OMBUDSMANS FINAL REPORT ON THE COMPLAINT via OWN MOTION

CASE NO. CPR16/59

**For the implementation of safeguards and regulations
by the appropriate authorities to ensure public safety
on public roads against excessively packed haul tracks
lacking safety mechanisms in its operations**

5th July 2017

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EXCECUTIVE SUMMARY

1. The subject matter was initially raised by a complainant by the name of 'Ofa Pepa. Mr. Pepa who lives along Taufa'ahau Road at Vaini. Mr. Pepa noticed haul trucks driving past his residence packed beyond its capacity without any safety measures posing great danger particularly to his grandchildren who live there.
2. The complaint was lodged with our Office but was reverted back to Mr. Pepa with the recommendation that Mr. Pepa should take the matter directly to the Ministry responsible for regulation and compliance of the transport sector which meant that the complaint was closed with our Office.
3. Shortly after the complaint was closed, excessively packed haul trucks were ever so evident on public roads with no safety guards on the trucks themselves to cater for the excess material. This also appeared on both media and social media raising concerns regarding these trucks on public roads.
4. Rather than re-open the Mr. Pepa complaint, I decided to use my statutory powers under section 11 (2) of the *Ombudsman Act 2001* to launch an own motion investigation regarding the subject matter.
5. During the course of the investigation, the Ministry of Infrastructure ("Ministry") identified the Traffic and Safety Task Force (TSTF) as the appropriate authority to address the subject matter. The investigation then turned from the Ministry to TSTF for response.
6. With correspondence from the TSTF, I am confident that the Ministries represented in TSTF would work in unison to implement safety measures to ensure all haul trucks transporting natural resources are regulated and comply with safety standards. It is also important that TSTF show a commitment to enforcing and regulating this sector.
7. I am recommending four things in this Report pursuant to section 18(3) of *Ombudsman Act 2001*-
 - i) That TSTF actively work together to implement safety regulations to ensure private haul trucks comply with safety measures whilst operating on public roads;
 - ii) That TSTF illustrates their commitment by providing a timeline of activities such as TV awareness programs;
 - iii) Recommend that TSTF addresses transport safety related clauses in the upcoming amendments for the Traffic and Road Acts; and

- iv) That the Ministry report back to me within **3 months** of the date this report is finalised to provide a follow up report on the recommendations.

BACKGROUND

- 8. The own motion investigation was launched on 24th February 2017.
- 9. I assigned the investigation to my Investigation Team who undertook the investigation into the matter.
- 10. The team requested, received information from the Ministry and TSTF to ensure that the appropriate authority is held accountable.

THE OMBUDSMAN ROLE

- 11. Under section 11 of the *Ombudsman Act 2001*, the Ombudsman has the authority to make any such investigation either on a complaint made to the Ombudsman by any person or on his own motion relating to a matter of administration by any department or by any officer of any such department. (Section 18(1) and (2) of the *Ombudsman Act 2001*).
- 12. My investigation is not an appeal process. I would not generally substitute my judgment for that of the decision maker. Rather, I consider the substance of the act or decision and the procedure followed by Ministry, and then form an opinion as to whether the act or the decision and the procedures followed by Ministry, and then form an opinion as to whether the act or the decision was properly arrived at and was one that Ministry could reasonably make.
- 13. My role in an own motion is to improve public administration in areas that requires administrative attention for the benefit of the general public.

THE ADMINISTRATIVE ACTION

- 14. Recent attention surrounding the use of haul trucks on public roads was initially raised in the complaint lodged to our Office by Ofa Pepa on 21st September 2016. Initially, the matter was closed with the recommendation for “complainant to raise matter with the Ministry responsible first”.
- 15. The prevalence of such vehicles on the public roads pose immediate risk to the general public and therefore required urgent attention to avoid possible accidents and to ensure that the responsible authority addresses this risk factor.

16. Rather than re-open the original complaint by Mr. Pepa, I decided to pursue the matter under section 11(2) of the *Ombudsman Act 2001* which states: “*that the Ombudsman may make such an investigation either on a complaint made to the Ombudsman by any person or on his own motion*”. This own motion was referred directly to TSTF on 27th February 2017.
17. At the beginning of the investigation, much attention was referred to the Ministry as the ministry responsible for transport regulation. According to the Ministry, once a complaint regarding transport issues is received, then the TSTF is responsible for rectifying the complaint.
18. TSTF comprises of representatives from the Ministry, Ministry of Police, Ministry of Health and the Attorney General’s Office.
19. The purpose of TSTF is to reduce the “*incidence and severity of traffic related incidents and accidents throughout the Kingdom of Tonga*”. With regard to the relevant legislations such as the Road Act, Transport Services Act, and Traffic Act – it is clear that there are mandates identified in the legislation for the adequate implementation of such safeguards regarding excessively packed haul trucks operating on public roads.
20. However, there is no specific regulations from each of these Acts that specifically set out compliance of haul truck operators on public roads. This has been acknowledged by the Ministry and TSTF and have shown their commitment to incorporate safeguard measures in the upcoming bill – Roads Bill. The Roads bill (once passed), will give the Ministry direct authority to directly regulate the safety and use of haul trucks including the issuance of permit for such operators.
21. In the meantime, TSTF has shown that they are committed to address the subject matter and to provide immediate solutions. These include:
 - a. Tougher enforcement by Tonga Police;
 - b. Awareness television programmes encouraging the public to report these incidences to Tonga Police;
 - c. Issuances of notices to haul truck operators to comply with safety concerns; and
 - d. Collaborate with the Ministry to incorporate making this an offence in the Roads Bill.

RECOMMENDATIONS

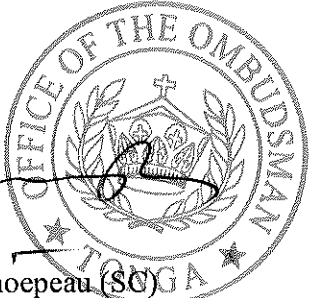
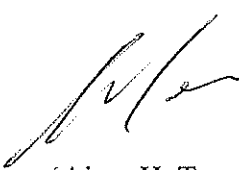
22. I am recommending four things in this Report pursuant to section 18(3) of *Ombudsman Act 2001*:

- i) That TSTF actively work together to implement safety regulations to ensure private haul trucks comply with safety measures whilst operating on public roads;
- ii) That TSTF illustrates their commitment by providing a timeline of activities such as television awareness programs;
- iii) That TSTF considers transport safety related clauses in the upcoming amendments to the Traffic and Road Acts; and
- iv) That the Ministry report back to me within **3 months** of the date this report is finalised to provide a follow up report on the recommendations.

MINISTRY'S RESPONSE JUNE 2017

23. On the 30th of May 2017, I delivered my Provisional Report to the Ministry setting out my findings, opinions and recommendations. On the 27th of June 2017, I received a letter from the TSTF accepting the recommendations of this Report and listing the action items the TSTF will undertake. As required under section 18(5) of the *Ombudsman Act 2001*, a copy of this letter is attached to this Report as Annex 1. A summary of the response is as follows -

- *the Ministry of Police request will provide a report to ensure private haul trucks comply with safety measures whilst operating on public roads;*
- *a TV awareness program held twice in a week and also on radio (ongoing);*
- *TSTF will liaise with the Ministry's legal unit to address and ensure that these safety concerns will be incorporated in the upcoming amendments for the Traffic Act.*



Aisea H. Taumoepeau (SO)

Ombudsman

5th July 2017

Annex 1

27 June, 2017

'Aisea Taumoepeau, SC
Ombudsman Office
Retirement Fund Building
Nuku'alofa
TONGATAPU

Dear Mr. Taumoepeau,

Re: Traffic and Safety Task Force (TSTF) response to provisional report re complaint from 'Ofa Pepa, Case No. CPR16/2016

We apologize for not meeting the deadline given to us to provide our response. This was due to Task Force monthly meeting being delayed.

Our June monthly meeting was held last Friday and this matter was raised. We submit our response to your provisional report dated on 30th May, 2017.

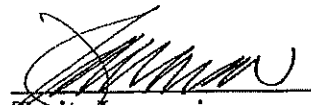
The table below is extracted from our meeting minutes and highlights our response to your recommendations.

8 Other Matters	8.1 TV Program- organize TV Program for next month. 8.2 OMBUDSMAN RECOMMENDATIONS I. Melenaita from the Ministry of Police request she will provide a report to ensure private haul trucks comply with safety measures whilst operating on public roads. II. The TV program held twice in a week and also on radio. (Ongoing) III. TSTF will liaise with the Ministry's legal unit to address and ensure that these safety concerns will be incorporated in the upcoming amendments for the Traffic Act.	
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Attached to our response is the meeting minute containing the table above for further reference.

Should you require further information please do not hesitate to contact me.

Respectfully,



Tevita Lavemai
Chairperson
Traffic & Safety Task Force

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