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**THE OMBUDSMAN'S FINAL REPORT ON  
THE COMPLAINT BY  
SAIA HELU**

**CASE NO. OMB 18/09**

**Whether or not the delays by Tonga Water Board and Revenue  
Department in processing Mr Saia Helu's tax refund claims for  
2012/2013- 2013/2014 was reasonable?**

**26 June, 2018**

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## EXCECUTIVE SUMMARY

1. The complainant Mr Saia Helu (complainant) was formerly employed by Tonga Water Board (TWB) as Senior Meter Serviceman and was dismissed from service on 4<sup>th</sup> December 2013.
2. In October 2017, the complainant requested his Form 4 (Tax Withholding Certificate) for 2012/2013 and 2013/2014 from TWB for his tax refund claims. The complainant returned again to TWB on the same day requesting for his Form 9 (Refunds) which was also filled out and given to him by the TWB Accountant.
3. The complainant lodged both forms with the Ministry of Revenue and Customs (Revenue Department) in October 2017 to claim his tax refund for those years.
4. In January 2018, the Revenue Department advised the complainant that there was an issue with his refund application. The complainant returned to TWB to clarify the issue on his Form 4 and was not happy with the advice given to him. This became the basis of his complaint to my Office.
5. I have referred the complaint to both TWB and Revenue Department for responses which I have included and determined in this report.
6. This report outlines my findings on the relevant administrative conduct and decisions of both TWB and the Revenue Department in relation to this complaint.

So I am recommending two (2) things in this Report pursuant to section 18(3) of the Ombudsman Act 2001-

Firstly – that Tonga Water Board note their mistake in this complaint when failing to fill out the complainant's tax form accurately and should work to improve its services.

Secondly – that TWB report back to me within 3 months of the date this report to provide a follow up report on the recommendations.

## **BACKGROUND**

7. The complaint was received on the 19 January 2018.
8. I assigned the investigation to my Investigation Team who undertook the investigation which involved meetings, telephone and email conversations with relevant officials from TWB and the Revenue Department.

## **THE OMBUDSMAN'S ROLE**

9. Under section 11 of the *Ombudsman Act 2001*, the Ombudsman has the authority to investigate the administrative acts, decision, omissions and recommendations of an officer of an organization in his capacity as an officer of that organization. This applies to TWB which is an organization under the Act. (Section 18(1) and (2) of the *Ombudsman Act 2001*).
10. 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 TWB, and then form an opinion as to whether the act or the decision and the procedures followed by TWB was reasonable and properly followed.
11. My role is to consider the administrative conduct and decisions of TWB and to form an independent opinion on whether that conduct was fair and reasonable.

## **COMPLAINANT'S REQUEST OF TAX FORM 4 & 9**

12. In or around October, the complainant visited TWB to request his Form 4 (tax withholding certificate, Income Tax Act 2007 for 2012/2013 -2013/2014. This was provided to him by Ms 'Anaseini Tautuiaki, the accountant.
13. Shortly after receiving his Form 4, the complainant submitted it to the Revenue Department for his tax refund claim and was advised to go back to TWB on 7 March

2018<sup>1</sup> and get his Form 9 (Tax Refunds, Income Tax Act 2007). The complainant obtained his Form 9 and submitted on the same day<sup>2</sup>.

#### QUERY OF THE COMPLAINANT'S TAX FORM 4

14. In January 2018, an officer from the Revenue Department contacted the complainant with a query on his Form 4. Revenue Department advised him that the tax deducted column of his Form was blank for the concerned period therefore he needs to take his Form 4 back to TWB for review.
15. The complainant returned to TWB with his Form 4 and had it corrected by the Accountant, Ms 'Anaseini Tautuiaki. In addition, Revenue Department also called TWB about the complainant's Form 4. The revised Form 4 containing his calculated paye tax for the said period was then submitted to the Revenue Department.
16. TWB acknowledged their mistake to the Revenue Department in overlooking to fill out the tax deduction column on the complainant's Form 4. This became the basis of the reconciliation by Revenue Department of the complainant's Form 4 and Form 8 in order to confirm the actual refund amount.
17. A meeting was set up with the TWB Accountant and Head of Corporate Services on 22 March 2018<sup>3</sup>. In this meeting, the Accountant orally admitted that there was a query from Revenue Department on the complainant's Form 4. She states that the substance of the mistake was two fold:
  - a. There was misunderstanding between Revenue Department and TWB as to the filling of TWB's Form 7 (Monthly Paye Tax Form). Form 7 shows the total amount of gross income for all staff and sum of paye tax deducted from their gross income on each month. TWB filled this form manually and apparently Revenue Department only filled the first half wages of the complainant and failed to file the second half pay for that particular month. This means that only the paye tax amount for the first half wages of the complainant was recorded by Revenue Department and none for the second pay.

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<sup>1</sup> Makitalena Fifita, Acting CEO, MORC, *Complaint by Mr Saia Helu – Case No. OMB 18/09* (ref:tsd011/2018) dated 7 March 2018.

<sup>2</sup> Saia Helu, *Complaint Form* dated 19 January 2018.

<sup>3</sup> 'Elisiva Lui, *Meeting Notes* dated 22 March 2018 at TWB Board Room.



19. TWB acknowledged its mistake in this complaint and committed to improving its services by computerizing its system to avoid further misunderstanding in the records and ensure that form filling is done accurately.
20. TWB confirmed that this issue was the first complaint of its kind and that no other employee had raised any issues with their tax refund.
21. In their response to the complaint received on 7 March 2018, the Revenue Department explained its process in relation to this filling of paye tax from TWB. TWB will submit the following Income Tax Forms
  - a. Form 4 every month, this form shows the gross income and paye tax deducted from an individual staff's income.
  - b. Form 7, is filed monthly, and it shows the gross income and amount of paye tax deducted for all of the staff employees (see Figure 1).
  - c. Form 8 would be a summary of the Form 7 which contains the amount of payee tax deducted from all staff employees in a year.
  - d. Form 9 is the tax refund form which is submitted to Revenue Department for refund claims.
22. Once all of these relevant Forms are filed in a fiscal year, Revenue Department will screen and review to ensure that it is correct before it is passed and filed away.

#### **RECONCILIATION OF TAX FORMS AND REFUND CONFIRMED**

23. Upon receiving the complainant's revised Form 4, Revenue Department conducted a reconciliation of the TWB Form 8 for 2012/2013 and 2013/2014 (Annual Withholding Tax Statement, Income Tax Act 2007) with the complainant's Form 4 by abstracting his tax deductions to confirm whether he was owed a refund or not. This process involved retrieving the TWB file for the concerned fiscal years which had been passed and filed away to pull out the relevant forms (Form 4, Form 7 and Form 8) with the revised Form 4 and Form 9 submitted by the complainant. This comparison verified any inaccuracy between the two records kept by both TWB and the Revenue Department. The outcome of the comparison matched and thus the refunds was confirmed for approval.

24. When the reconciliation was complete it was found that the complainant's initial Form 4 which he submitted in October 2017 had been filled out incorrectly by TWB, however the revised Form 4 was correctly reconciled to the TWB's Form 8. The result was that the complainant was owed a tax refund of \$360.73 for the years 2012/2013 and 2013/2014. The complainant received his refund in March 2018.

### OPINIONS

25. That Revenue Department is to be highly commended for the responsiveness to the complaint and for taking further steps to reconcile the inaccuracy in the complainant's Forms in order to facilitate his refund claim.
26. That having reviewed TWB's response I am satisfied that there was an administrative failure in the part of the Accountant when filling the complainant's Form 4 which was picked up by Revenue Department and referred back to the TWB.
27. That it appears the delays in processing the complainant's refund was partly the fault of the complainant. It is noted that the complainant had left TWB in 2013 and only went forward to claim his refund for the concerned period in 2017.
28. I further note that TWB initially denied receiving any query from the complainant and Revenue Department in relation to his Form 4 and later on admitted that they had during a meeting on 22 March 2018. I form the view that this is not a good reflection on TWB and that they should accept when there's flaw in their services and act to correct those mistakes as a way forward.

### RECOMMENDATIONS

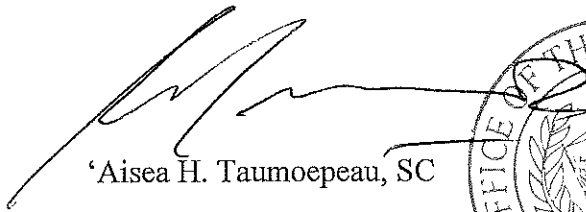
29. Firstly – that TWB note their mistake in this complaint when failing to fill out the complainant's tax form accurately and should work to improve its services

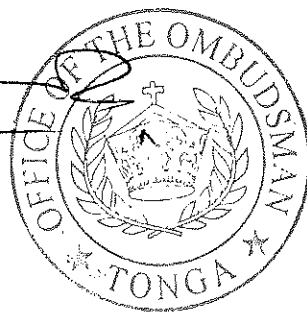
Secondly – that TWB report back to me within 3 months of the date this report is finalised to provide a follow up report on the recommendations.

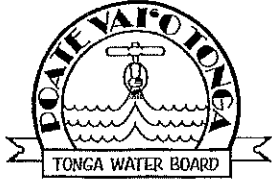


**TWB'S RESPONSE to PROVISIONAL REPORT – 11<sup>th</sup> June 2018**

30. On the 01<sup>st</sup> June 2018, I delivered my Provisional Report to TWB setting out my findings, opinions and recommendations. On the 11<sup>th</sup> June 2018, I received a letter of response letter from TWB and a copy is attached to this report as Annex 1 in pursuant with section 18(5) of the Ombudsman Act 2001.

  
'Aisea H. Taumoepeau, SC  
Ombudsman





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11<sup>th</sup> June 2018

Mr. 'Aisea Taumoepeau  
Ombudsman  
Ombudsman Office  
Nuku'alofa  
Tonga.

Dear Sir,

**Reply to Provisional Report under the Ombudsman's Act - Case No. OMB 18/09**

Thank you for your letter on the 1<sup>st</sup> June 2018, regarding to the above stated matters.

Tonga Water Board have no further comment on the above stated matters and noted the recommendations provided by the Ombudsman.

Yours faithfully,

*[Signature]*

Mr. Sione T Finau  
Chief Executive Officer  
Tonga Water Board.  
Nuku'alofa,