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OMBUDSMAN'S FINAL REPORT

CASE NO. CPR 16/38 & CPR 16/40

**The investigation into allegations of maladministration
against Mr Rizvi Jurangpathy, Chief Executive Officer of
Tonga Telecommunications Corporation, and whether his
conduct created a volatile work environment
for the TCC staff**

27th July 2017

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EXCECUTIVE SUMMARY

1. At the commencement of the investigation, this Office was statutorily known as the Office of the Commissioner for Public Relations under the *Commissioner for Public Relations Act 2001 (CPR Act)*. On December 2nd 2016, the Legislative Assembly passed amendments to the *CPR Act* which included repealing the words “Commissioner for Public Relations” and replacing it with the word ‘Ombudsman’ which in turn changed the CPR Act to the *Ombudsman Act 2001* (the “Act”). For all intents and purposes, Commissioner for Public Relations means the same as Ombudsman throughout this report.

2. On June 2016, a letter of complaint signed by 66 staff of the Tonga Communications Corporations (TCC) and addressed to the Minister for Public Enterprises was delivered to the Ministry for Public Enterprises. The letter was in Tongan and made seven (7) allegations with a general reference to allegations that is explored later regarding the Chief Executive Officer, Mr. Rizvi Jurangpathy (CEO).

On 15th July 2016, the matter was referred to me for investigation by the Prime Minister under powers pursuant to section 11(3) of the *Act*. On 27th July 2016, the TCC Board of Directors (TCC BOD) referred the matter to my Office for investigation. Although the Prime Minister has powers to refer any matter to my Office for investigation, (except that being of judicial review), I have to grant my consent to such referral. In this situation based on the allegations of the letter of complaint, I granted my consent and the investigation proceeded. The effect of the case being one referred from the Prime Minister meant that he could refer any matter except that regarding a judicial proceeding - to me for investigation, however I decide whether I accept the referral, which in this case I did.

3. In the early stages of the investigation, I declared my conflict of interest based on being related to one of the staff members at TCC that was featured throughout the letter of complaint. With reference to this particular investigation, I delegated my powers in writing under section 23 of the *Act* to Linda Folaumoetu’i, Chief Executive Officer of the Office of the Ombudsman (CEO OMB). This delegation of power enabled the CEO OMB to hear and obtain information from such persons and make inquiries relevant to the investigation. CEO OMB was assisted by Lepaola Vaea – Director of Investigations and Pilimisolo Tamo’ua – Acting Principal Investigation Officer.

- 4.

This investigation has taken approximately 11 months before its completion based on factors which contributed to the delay in completing the investigation and report. These are as follows:

- a) Seventy-four (74) people were interviewed which included two people whom are now residing overseas. These interviews were carried out from August to December 2016.;

- b) Proceedings against the Office by CEO in civil action *Jurangpathy v Commissioner for Public Relations*, (CV54 of 2016). CV54 of 2016.

Investigation halted until 9th March 2017 based on the withdrawal of CEO TCC appeal in Court of Appeal;

- c) Awaiting TCC BOD to carry out their own investigation in relation to the letter of complaint from TCC staff and other issues, which was completed on or about March 2017. It was clear from the Supreme Court decision that TCC must undertake their own internal investigation into the allegations separate to that of my Office (independent of each other). A decision was made to allow TCC BOD to complete their own investigations whilst we will proceed with our findings directly to the Prime Minister as this was a matter referred to my Office by the Prime Minister.
- d) Investigation Officers taking leave from period of December 2016 – February 2017 and attending international conferences; and or outreach programs in outer islands during the period of March-May 2017.

3. The complaint was unusual for four reasons –

- i) the mode of referral;
- ii) the number of complainants;
- iii) those directly affected by the allegations of maladministration by the CEO; and
- iv) it appeared that the nature of the complaint was regarding the conduct of the CEO alleging inappropriate conduct with staff of the TCC.
 - a) As the investigation progressed, it was apparent that the June 2016 letter of complaint was not the first-time staff of TCC had tried to have their voices heard. We heard evidence from a select few that they had released information to the local newspaper Kele'a¹ regarding their allegations and was published in 2015 but no action was taken by TCC BOD.

We heard issues that were not limited to that contained in the letter of complaint. Some issues dated back to over five (5) years. Complaints regarding decisions made by the TCC Board that the complainants were still not reconciled with.

During the course of the investigation, we encountered much resistance from the CEO where he and his counsel questioned the authority of my Office, the purpose of our investigation and insisted on treating my investigation as a judicial proceeding.

¹ Kele'a Articles dated the 29th June 2015, 6th June 2016

This challenge culminated in civil proceedings *Jurangpathy v Commissioner for Public Relations*, (CV54 of 2016) being brought against my Office in the Supreme Court seeking three outcomes To delay my investigation pending the outcome of a defamation case in the Magistrate Court;

- i. For a declaration that the investigation was vexatious; and
- ii. To compel me to disclose information provided to my Office during my investigation.

It was explained to the CEO and counsel that our actions were pursuant to the *Ombudsman Act 2001*. The point was reinforced when the CEO OMB was cross examined in the Supreme Court. She explained that the processes were distinctive, with different fact-finding rules and different outcomes. The CEO took the matter to the Court of Appeal but he withdrew his claim during the appeal.

We noted that there was marked resistance from certain staff at the TCC to the investigation process and declared their objection to this investigation by swearing affidavits in favour of the civil case that was brought against my Office by the CEO.

On the 21st November 2016, the Lord Chief Justice, O.G Paulsen handed down his ruling and in that ruling he unequivocally dismissed the CEO's action citing that my investigation was not a judicial proceeding. He stated that my Office has a wide discretion over the conduct of my investigations and questioned even the Supreme Court's jurisdiction to issue the Orders the CEO was seeking. The ruling reaffirmed our purpose and mandate to maintain independence and integrity in all aspects and at all times. We accepted the ruling regarding transparency of our investigation process.

After our investigation, it was clear that with regards to the allegations of inappropriate behavior with staff, there was sufficient evidence to support this, and regarding the other issues raised by staff regarding maladministration – there were specific practices that were authorised by the CEO that created and maintained a volatile work environment. We heard this from a cross section of the TCC staff that we interviewed including similar beliefs from the top management team.

It is noted that of the 74 persons we interviewed, 13 people extolled the virtues of the CEO while 61 relayed their long-time dissatisfaction with his leadership style and behavior. The numbers are unfortunately a conclusion in themselves.

BACKGROUND

1. The referral from the Prime Minister was received on the 15th July 2016. On 26th July 2016, we received the complaint from the TCC BOD.

2. I assigned the investigation to my Investigation Team who undertook the investigation and interviewed 48 of the TCC staff that had signed the letter of complaint were able to identify and 27 other staff of the TCC that had not signed the letter of complaint but were mentioned by the interviewees so we decided it was necessary to hear from them. Also included in this 27 were all of the TCC BOD, the TCC management team and the CEO. In total, we interviewed 77 persons over a period of 4 months. All formal interviews were recorded.
3. The team requested, received and reviewed documents from TCC, including the CEO's contract of employment with TCC², the TCC 2015 Staff Policy, emails, messages and photos. We interviewed the CEO on the 1st of September and again on the 15th of December. Initially, we started the interviews with the CEO and those who had provided sworn affidavits in support of the TCC staff letter of complaint, before focusing on the staff who had signed the letter of complaint.
Due to other issues raised by the staff interviewed it was necessary to recall the CEO and put to him the complaints raised. It was for this reason that we recalled him in December 2016. We note here that the CEO initially through counsel resisted the second summons, however it was made clear to him that we were required by law to give him the opportunity to be heard given that there were matters that had been raised that was averse to him. To his benefit, the CEO assented and attended the hearing.

THE OMBUDSMAN'S ROLE

1. 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 organisation subject to this Act, in his capacity as an officer of that organisation. This applies to the TCC which is an organisation under the Act. (Section 18(1) and (2) of the *Ombudsman Act 2001*).
2. My investigation is not an appeal process nor is it a judicial proceeding. 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 the CEO, and then form an opinion as to whether the act or the decision and the procedures followed by him, was properly arrived at and was one that TCC could reasonably make.
3. My role is to consider the administrative conduct and decisions of the CEO and to form an independent opinion on whether that conduct was fair and reasonable.

SUMMARY OF ISSUES COMPLAINED ABOUT

The complaints may be summarised into 14 main issues:

² Contract of Employment between the Tonga Communications Corporation Limited and Mr. Rizvi Jurangpathy dated the 28th of November 2014

- (i) Complaint made against immoral and indecent behavior by CEO which included kissing with staff member (first complaint issue);
- (ii) Complaint against CEO asking a female staff member if he could kiss her and that he wants her body (second complaint issue);
- (iii) Complaint against the CEO's decision to allow female staff to his office to eat and take photos (third complaint issue);
- (iv) Complaint against CEO texting indecent messages to female staff (fourth complaint issue);
- (v) Complaint against CEO lifting leg over female employee's head (fifth complaint issue);
- (vi) Complaint against CEO purchasing a female staff a car (sixth complaint issue);
- (vii) Complaint against CEO paying for female staff's friend to travel to New Zealand using TCC visa card (seventh complaint issue);
- (viii) Complaint against CEO removing sick bonus benefit yet still maintaining and/or raising management benefits, (eighth complaint issue);
- (ix) Complaint against CEO's decision to remove the 910 services from TCC (ninth complaint issue);
- (x) Complaint against CEO's decision to remove Altrabridge network from TCC (tenth complaint issue);
- (xi) Complaint against the appraisal system used by CEO (eleventh complaint issue);
- (xii) Complaint against decision by CEO for Chairlady of TCC Board to use company vehicle (twelfth complaint issue);
- (xiii) Complaint against decision by CEO and management not to deal with Staff council issues (thirteenth complaint issue).

SUMMARY OF TOTAL RECOMMENDATIONS

b) In regards to the first complaint issue

It is my recommendation that pursuant to section 18(3) of the Ombudsman Act 2001, the TCC Board of Directors consider whether the indecent and inappropriate behaviour carried out by the CEO and Suliana Mahe in kissing and touching her is befitting the role of Chief Executive Officer pursuant to the terms and conditions of his contract⁶³. –

In the CEO's contract⁶⁴, Schedule A, paragraphs titled-

- (a) *“Compliance, Risk management and Corporate governance”* which states that he should *“Maintain a high level of integrity work ethics and Corporate Governance standards”*,
- (b) *“Relationship management”* which states that he should *“Ensure effective communications and appropriate relationships are maintained with the shareholders of the company and other stakeholders such as customers...employees”*; and
- (c) *“Organisational effectiveness and leadership management”* which states that he should *“Empower, motivate and develop staff in order to achieve organisational goals and a high-performance culture”*.

c) In regards to the second complaint issue

It is my recommendation that pursuant to section 18(3) of the Ombudsman Act 2001, the TCC Board of Directors consider whether the indecent and inappropriate behaviour carried out by the CEO and Suliana Mahe in kissing and touching her is befitting the role of Chief Executive Officer pursuant to the terms and conditions of his contract⁶⁵. –

In the CEO's contract⁶⁶, Schedule A, paragraphs titled-

- (d) *“Compliance, Risk management and Corporate governance”* which states that he should *“Maintain a high level of integrity work ethics and Corporate Governance standards”*,

⁶³ Contract of Employment between the Tonga Communications Corporation Limited and Mr. Rizvi Jurangpathy dated the 28th of November 2014

⁶⁴ Contract of Employment between the Tonga Communications Corporation Limited and Mr. Rizvi Jurangpathy dated the 28th of November 2014

⁶⁵ Contract of Employment between the Tonga Communications Corporation Limited and Mr. Rizvi Jurangpathy dated the 28th of November 2014

⁶⁶ Contract of Employment between the Tonga Communications Corporation Limited and Mr. Rizvi Jurangpathy dated the 28th of November 2014

- (e) *“Relationship management”* which states that he should *“Ensure effective communications and appropriate relationships are maintained with the shareholders of the company and other stakeholders such as customers...employees”*; and
- (f) *“Organisational effectiveness and leadership management”* which states that he should *“Empower, motivate and develop staff in order to achieve organisational goals and a high-performance culture”*.

d) In regards to the third complaint issue

It is my recommendation that pursuant to section 18(3) of the Ombudsman Act 2001, the TCC Board of Directors consider whether the decision by the CEO allowing Setaita Hoko and others to eat at the work counters and at the CEO’s Office when it is contrary to policy and regulations is befitting the role of Chief Executive Officer pursuant to the terms and conditions of his contract. In the CEO’s contract⁶⁷, Schedule A, paragraph titled” Compliance, Risk management and Corporate governance which states that he should *“Maintain a high level of integrity work ethics and Corporate Governance standards”*

e) In regards to the fourth complaint issue

It is my recommendation that pursuant to section 18(3) of the Ombudsman Act 2001, the TCC Board of Directors consider whether the inappropriate text messages sent by CEO to Setaita Hoko is befitting the role of Chief Executive Officer pursuant to the terms and conditions of his contract⁶⁸. In the CEO’s contract, Schedule A, paragraph titled” Compliance, Risk management and Corporate governance which states that he should *“Maintain a high level of integrity work ethics and Corporate Governance standards”*

f) In regards to the fifth complaint issue

It is my recommendation that pursuant to section 18(3) of the Ombudsman Act 2001, the TCC Board of Directors consider whether the inappropriate act by the CEO when he was in the position of CFO and lifting his leg above Longovuka ‘Atelea’s head is befitting the role of Chief Financial Officer and now Chief Executive Officer pursuant to the terms and conditions of his contract⁶⁹. In the CEO’s contract, Schedule A, paragraph titled” Compliance, Risk management and Corporate governance which states that he should *“Maintain a high level of integrity work ethics and Corporate Governance standards”*

⁶⁷ Contract of Employment between the Tonga Communications Corporation Limited and Mr. Rizvi Jurangpathy dated the 28th of November 2014

⁶⁸ Contract of Employment between the Tonga Communications Corporation Limited and Mr. Rizvi Jurangpathy dated the 28th of November 2014

⁶⁹ Contract of Employment between the Tonga Communications Corporation Limited and Mr. Rizvi Jurangpathy dated the 28th of November 2014

g) In regards to the sixth complaint issue

I hold the opinion that the CEO did not carry out any unreasonable actions in relation to providing money to Fine Tukuafu to purchase a vehicle.

h) In regards to the seventh complaint issue

I hold the opinion that the CEO did not carry out any unreasonable actions in relation to purchasing an airline ticket for Setaita Hoko's cousin who turned out to be her boyfriend. CEO used his own private funds.

i) In regards to the eighth complaint issue

It is my recommendation that pursuant to section 18(3) of the Ombudsman Act 2001:–

- a. Pursuant to section 18(3) of the Ombudsman Act 2001, the TCC Board of Directors consider whether the actions of the CEO to negotiate his salary to be raised from \$90,000 to \$120,000 was appropriate pursuant to the terms and conditions of his contract. In the CEO's contract⁷⁰ Schedule A, paragraph titled "Compliance, Risk management and Corporate governance" which states that he should "*Maintain a high level of integrity work ethics and Corporate Governance standards*"
- b. TCC incorporates into its policy prior to the TCC Staff Management or the Board making a decision which will affect the welfare of TCC staff in relation to benefits the following approach must be designed –
 - i. A proper feasibility study must be carried out as to why such benefits are to be abolished;
 - ii. A consultative dialogue and approach must be carried out between TCC Management and the affected staff;
 - iii. Proper and transparent processes to be formulated and comprehensively explained to affected staff before a final decision is made.

j) In regards to the ninth complaint issue

It is my recommendation that pursuant to section 18(3) of the Ombudsman Act 2001: TCC incorporates into its policy the following considerations, prior to making a decision which will affect the employment status of staff or their wellbeing -

- iv) a strategy must be designed for a consultative approach to be taken between management/decision makers and staff that will be directly affected by such decision;

⁷⁰ Contract of Employment between the Tonga Communications Corporation Limited and Mr. Rizvi Jurangpathy dated the 28th of November 2014

- v) the consultative approach shall include all staff that will be affected by such decision must be given the opportunity to be heard and;
- vi) the decision arrived at or the new policy that will come into place shall be comprehensively explained to affected staff.

k) In regards to the tenth complaint issue

I hold the opinion that it was not unreasonable for the then CEO/Management team to make the decision to purchase the Alcatel Altrabridge System given the available information and expertise at the time. However, TCC should have documented the process for the investment and how it failed, so that lessons may be learnt from it, and for transparency purposes so such mistakes can be avoided in the future.

l) In regards to the eleventh complaint issue

I hold the opinion that the CEO and TCC management has not acted unreasonably in relation to the appraisal system they are applying to staff. TCC has a proper appraisal system, assessed by divisional supervisors, overseen by an audit committee, and then the CEO sets the benchmark, and the final score is emailed or announced to staff by way of email or announcement.

m) In regards to the twelfth complaint issue

It is my recommendation that pursuant to section 18(3) of the Ombudsman Act 2001 –

- i. The TCC Board of Directors consider whether the failure of the CEO to maintain a high level of integrity and work ethics is befitting the role of Chief Executive Officer pursuant to the terms and conditions of his contract. In the CEO's contract⁷¹ Schedule A , Job Description, paragraph 2 of his duties and responsibilities as CEO, particularly CEO's failure to "Maintain a high level of integrity work ethics and Corporate Governance standards" which is contrary to the principles of Corporate Governance.
- ii. That the Chairlady of the Board (2011), is strongly reminded that pursuant to the *Public Enterprises Act, 2002* she needs to uphold and maintain a high level of integrity in carrying out her duties as a Chairlady or Director in the best interest of TCC;
- iii. That the Board and Management of the TCC should incorporate into its policy a clear and transparent process in relation to the tendering of any TCC property.

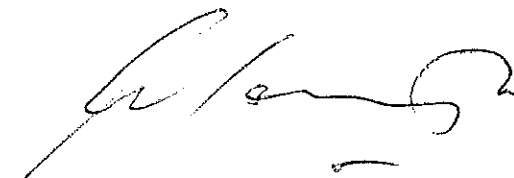
n) In regards to the thirteenth complaint issue

It is my recommendation that pursuant to section 18(3) of the Ombudsman Act 2001, -

⁷¹ Contract of Employment between the Tonga Communications Corporation Limited and Mr. Rizvi Jurangpathy dated the 28th of November 2014


1. The TCC Board of Directors consider whether the failure of the CEO to maintain a high level of integrity and work ethics is befitting the role of Chief Executive Officer pursuant to the terms and conditions of his contract. In the CEO's contract⁷² Schedule A , Job Description, paragraph 2 of his duties and responsibilities as CEO, particularly CEO's failure to "Maintain a high level of integrity work ethics and Corporate Governance standards" which is contrary to the principles of Corporate Governance.
2. (i) That the Board and Management of the TCC should develop and implement a robust internal communication strategy to maintain channels of open and effective communication with its staff at all times and that the Board monitor this on a monthly basis.

(ii) Further that this strategy is to be incorporated into their Staff Policy & Regulation Manual.


Aisea H. Taumoepeau, SC
Ombudsman

27th July 2017




Linda Folaumoetu'i
Chief Executive Officer

27th July 2017

⁷² Contract of Employment between the Tonga Communications Corporation Limited and Mr. Rizvi Jurangpathy dated the 28th of November 2014