



OFFICE OF THE OMBUDSMAN

FINAL REPORT ON THE COMPLAINT

BY

SISILIA TOKAI

CASE NO. CPR 1/15

Table of Contents

Executive Summary	3
Background	6
The Ombudsman's role	6
Response from the Ministry of Foreign Affairs	15
Additional Review with Ministry of Foreign Affairs	16
Summary of Total Recommendations	17
Annexures	19

EXECUTIVE SUMMARY

1. On or about the 14th of August 2006 Mrs. Sisilia Tokai (“the complainant”) was transferred to the post of Assistant Secretary, Ministry of Police from the Ministry of Justice. Annexed marked **Annex 1** is a copy of the decision. Whilst working for the Ministry of Justice the complainant had accrued 180 days of earned leave days (“accrued leave days”). The Police Commander was advised of the complainant having reached the maximum days of 180 earned leave days by the Public Service Commission. Annexed marked **Annex 2** is a copy of the letter.
2. On 16th of April 2009 the complainant was appointed through Cabinet decision number 291 (“the appointment”), to be Second Secretary, Diplomatic Officer, Tonga High Commission’s Office, Wellington, New Zealand to be effective from 1st of May 2009. Annexed marked **Annex 3** is a copy of the decision. The complainant was accompanied by her husband and 3 children and they resided with her during her term of appointment in New Zealand.
3. Due to the appointment the complainant entered into –
 - a) A fixed term tenancy agreement with Hutt City Limited to rent a house for herself and her family to reside in. This fixed rental agreement commenced from the 27th of May 2011 up to 26th May 2012. Annexed marked **Annex 4** is a copy of the agreement and clarification from the agency regarding the breaking of the fixed term agreement. There was a clause in the agreement that stated that if the complainant terminated the agreement prior to the completion date which was the 26th of May 2012, the complainant is required to pay a penalty fee of NZD\$230 + GST (15%) ; and that the complainant will have to pay rent until new tenants are to move into the house; and
 - b) An agreement with Telecom New Zealand to set up broadband internet for herself and her family. The agreement she entered into commenced from June 2011 through to June 2012. A clause in the agreement stated that if the complainant terminated the agreement early, there was a penalty fee of NZ\$199.00 that she will have to pay. Annexed marked **Annex 5** is a copy of the invoice.

4. On 30th of September 2011 a Cabinet decision number 849 ("the Cabinet decision") stated that the diplomatic services from Wellington Office ceases with effect from the 1st of October 2011. Annexed marked **Annex 6** is a copy of the decision. The Cabinet decision further stated that the diplomatic staff of the Wellington Office be recalled to the Ministry of Foreign Affairs and Immigration ("MFA"), this included the complainant to take effect from the 15th of October 2011.
5. Upon receipt of the Cabinet decision, the complainant applied to the Secretary for Foreign Affairs ("the Secretary") to take annual leave for four months from 17th October to 17th February 2012. Annexed marked **Annex 7** is a copy of the application. This was to use up her accrued leave days. The Secretary granted the complainant's application for leave. Annexed marked **Annex 8** is a copy of the approval.
6. Whilst the complainant was on leave she was never paid any salary from the period commencing 17th of October 2011 up to the 23rd of February 2012 ("unpaid period"). The complainant was stressed during the unpaid period because she was not paid any salary or paid leave.
7. During this period the complainant sought family and church member friends to assist her financially whilst she was in New Zealand up to the 31st of December 2011. In particular rental payments regarding the house which amounted to NZ\$430.00 per week and having not received any salary or earned leave pay for the period from 27 October 2011 through to 8 December 2011, friends and relatives of the complainant paid for rental payment of NZ\$3,010.00.
8. The complainant had repeatedly raised verbally whilst in New Zealand with the MFA and Ministry of Finance ("MOF") as to why she was not receiving any salary during the unpaid period and was advised that they are waiting for directions from the Public Service Commission ("the Commission").
9. When the complainant enquired with the Commission they informed her that they are waiting for the matter to be referred to them from the MOF.
10. Due to the frustration that the complainant with none of the Government Ministries imparting her any information about her employment status she met with the Solicitor General seeking advice. On 10th February 2012, the Solicitor General emailed the Secretary that the complainant should be provided with a salary and a position in the MFA as soon as possible. Annexed marked **Annex 9** is a copy of the email.

11. It was the complainant understands that she was still a civil servant during the unpaid period and according to the Cabinet decision, she was recalled to the Ministry of Foreign Affairs and although she was on leave for four months she is still entitled to receive her pay.
12. On or about the 10th of February 2012, the complainant resumed duty with MFA with the understanding that she will be re-deployed to the Ministry of Labour and Commerce commencing on the 20th of February 2012. On the 23rd February the complainant wrote to the Secretary bringing to his attention her leave entitlements and redeployment issue. Annexed marked **Annex 10** is a copy of her letter.
13. On the 8th of March 2012 the complainant was finally paid for her unpaid leave for 115 days. However the complainant claims that she is still owed from her accrued leave days, 65days.
14. The complainant was eventually re-deployed to the Ministry of Labour and Commerce through the Commission decision dated 6th of March 2012. Annexed marked **Annex 11** is a copy of the decision.
15. I am recommending six things in this Report pursuant to *section 18(3) of the Ombudsman Act 2001* –

That MFA reimburses the complainant the amount of -

1. That MFA reimburses the following amounts to the complainant's New Zealand bank account (details to be provided) -
 - a) NZ\$503.17.00, the penalty fees for breaking the housing and telecommunications agreements; and
 - b) TOP709.76 which is the outstanding balance owed to the complainant from her accumulated leave in 2011.
2. That the MFA ensures that an internal policy is established that any complaints raised with the Ministry is considered by the Ministry and the outcome communicated to the complainant within seven days from the date of receipt of complaint.
3. That the MFA issues the complainant an official apology letter indicating the Ministry's shortfall in undue delay of dealing with her leave matter.

4. That MFA had partially complied with Cabinet decision no. 849 dated 30th September 2011 to the extent that the complainant had been duly paid for her accumulated leave from the period 16 October 2011 until 16 February 2012 (back paid in March 2012), albeit not as a staff member of MFA.
5. That the MFA ensures if there is a public officer who was employed in a Mission and that public officer is directed by a Cabinet decision to be employed at a Ministry, MFA shall promptly ensure to consult with Public Service Commission according to the Policy Manual to process and bring into effect the Cabinet decision and the steps taken to be communicated to the public officer.
6. That MFA report back to me within one month of the date of this report is finalized to provide a follow up report on the recommendations.

BACKGROUND

1. The complaint was received on the 3rd of August 2015.
2. I assigned the investigation to my Investigation Team who undertook the investigation and discussions were held with staff from the MFA, MOF and the Commission.
3. Further to the discussions held with the Ministries referred to in paragraph 17, we also received documents and information relating to the decisions made regarding this complaint.
4. I declared my conflict of interest in this matter because the complainant is my secretary and I delegated my powers to the Chief Executive Officer of this Office.

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 a Department. This applies to the Department which is a Government Ministry under the Act. (Section 18(1) and (2) of the Ombudsman 2001.

2. 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 the MFA, and then form an opinion as to whether the act or the decision and the procedures followed by MFA was properly arrived at and was one that MFA could reasonably make.
3. My role is to consider the administrative conduct and decisions of MFA and to form an independent opinion on whether that conduct was fair and reasonable.

ISSUE I

WHETHER IT IS FAIR AND REASONABLE FOR THE COMPLAINANT TO PAY FOR THE PENALTY FEES FOR EARLY TERMINATION OF HOUSING AND TELECOMMUNICATION RENTAL AGREEMENTS DUE TO THE EARLY CLOSING OF THE TONGA NEW ZEALAND HIGH COMMISSION OFFICE?

1. When the complainant was appointed to the position of Second Secretary, Diplomatic Officer, Tonga High Commission's Office ("the Mission"), Wellington to commence from 1st of May 2009. She took her family to New Zealand to reside with her and rented a house for accommodation. There was an expectation from the complainant that her posting would be for at least two and a half years so she entered into a fixed term tenancy agreement with Oxygen Housing agency, Hutt City to reside in their house from 16th May 2009 until 26 March 2012.
2. Due to the complainant's and her family internet needs she signed an agreement with Telecom New Zealand for the internet connection from June 2011 until June 2012. This was based on the expectation that the complainant will be posted in New Zealand up to at least 2012.
3. On the 30th of September 2011, the Government decided to close the Mission in Wellington, New Zealand. The complainant was directed by Cabinet to be recalled to the Ministry of Foreign Affairs and Immigration to be effective from the 15th of October 2011.
4. The effect of the decision to close down the Mission affected the complainant financially in that she had to pay fees for the sudden breaking of the fixed term

tenancy agreement and the cancellation fee for the internet connection. The amount paid by the complainant was as follows –

i)	Fee for breaking the housing agreement -	\$264.50 + 15% = \$NZ304.17
ii)	Cancellation of internet connection -	<u>199.00</u>
	TOTAL	<u>\$NZ503.17</u>

5. There have been numerous consultative meetings facilitated by this Office with the MFA, MOF and the Commission regarding this complaint. There were long delays in progressing this investigation as MFA needed time to retrieve documents from the New Zealand consulate Office, Auckland to confirm leave documents and payments relating to 2009-2011.
6. It was agreed by CEOs' of the MFA and MOF that it is fair and reasonable for the complainant to be reimbursed in full the amount of \$NZ304.17, which is the fee of breaking the housing agreement. The government had not specified to the complainant how long she was to be posted in New Zealand however there was the perception that the Mission will be permanent and it was a reasonable expectation for staff to remain in post for at least 2 years.
7. The MFA held the view that the cancellation of the internet connection should not be borne by the Government because this is the complainant's personal needs and use and outside Policy 22 of the Policy Manual 2006.
8. However the view from the MOF is that these are agreements entered into by the complainant to services which are essential to the complainant and her family in assisting her children's studies and to some extent to the performance of her duties if and when required to be carried out from home. It was also expressed from the CEO of MOF that it would be only fair because the cancellation of the internet connection was consequential effects of the Cabinet decision to close the Mission.

OPINION

1. That the complainant was appointed to be posted to work in the Mission, Wellington, New Zealand by Cabinet. There was an expectation that the Mission will be permanently in Wellington, New Zealand.
2. The complainant was permitted to take her family and there is an expectation that they will lead a comfortable life in New Zealand. This includes having a house

and internet connections. Contractual agreements were made in writing between the complainant and various agencies to enable the complainant to lead a comfortable life in New Zealand. This included entering into an agreement with the housing agency and Telecom New Zealand (for telephone and internet purposes). These contracts specified that there are fixed terms and if the contracts are cancelled prior to the completion dates, the complainant will be penalized.

3. The decision made by Cabinet in September 2011 for the Mission to close impacted on the agreements entered into by the complainant. The consequential effect was that the complainant had to end the agreements effective from the 15th of October 2011 therefore there is a breach of contracts and early severance fees must be paid because the housing and telecommunication agreements did not expire until March and June 2012.
4. It is only fair and reasonable that the Government reimburses the complainant the amount of NZ\$503.17 which is the penalty fees that she had to pay to the housing and telecommunication agencies for breaking the fixed term agreements early.

RECOMMENDATION

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

1. That MFA reimburses the complainant the amount of NZ\$503.17, the penalty fees for breaking the housing and telecommunications agreements.

ISSUE II

WHETHER THE DELAY OF 4 MONTHS BY THE MINISTRY OF FOREIGN AFFAIRS TO PAY THE COMPLAINANT FOR HER 165 DAYS ACCUMULATED LEAVE FAIR AND REASONABLE?

1. After the complainant was advised that the Mission will be closed by the 15th of October 2011, she applied for four months leave from the 17th of October 2011 until 17 February 2012. This was because her children were still at school and to avoid any educational disruptions from moving them to Tonga before the academic year was completed, she requested for leave to remain back with her children to complete the 2011 academic year.

2. The four months leave was from the complainant's old calendar leave which had accumulated over the years when she was still working for the Ministry of Justice. The Secretary approved her leave. The leave form did not indicate whether this accrued leave days is to be taken with or without pay. It was the complainant's assumption that the leave is to be taken with pay. —
3. The complainant returned back to Tonga on or about 31st of December 2011. However from the period of 17th October until 17th February 2012 the complainant did not receive any salary from the MFA or any payment for her accrued leave of four months. //
4. It has been confirmed from the Commission that the complainant had earned 180 accrued leave days up to the period of August 2006. On 14th of August 2006, through Cabinet decision no. 198, the complainant was transferred to the Ministry of Police and then later through Cabinet decision no. 291 of 16 April 2009 she was appointed to the Mission
5. When the complainant moved from the Ministry of Justice to the Ministry of Police she moved with her 180 accrued leave which were accumulated local calendar leave days. At the Ministry of Police the complainant was not paid for the accrued leave period because that leave was not accrued under their Ministry so they were of the view that they are not obliged to pay for it.
6. Arrangements could have been made for the complainant's local leave to be paid off prior to posting to the Mission. It is not clear why the complainant had not pursued payment from the Ministry of Justice of her accrued leave before joining Ministry of Police.
7. It has been confirmed from the MFA that the complainant's accrued leave was not immediately en-cashed by their Ministry because her accrued leave was not accrued under her employment period with the MFA but with Ministry of Justice.
8. According to the Commission they stated that the complainant was misconceived that the leave she was taking of four months from her accrued leave was leave on pay. At the time the complainant lodged her leave application, the complainant did not hold a position with MFA. If there was a post within MFA, it would have been easy for the MFA to process a leave with pay for those four months subject to the Public Service Commission's ("the Commission") approval.

9. There was a Savingram issued to all Heads of Department from the Chairperson, of the Commission dated 20 July 2009 stating the following –
- (a) That there will be a change to the leave policy and staff who have outstanding leave are encouraged to clear their leave however if due to Ministries not being able to clear earned leave there was a 2 years transition period between 1 July 2009 to 30 June 2011 for staff to clear outstanding leave from the current leave system.*
 - (b) That a new leave policy comes into effect on the 1st of January 2010 which allocates 20 annual leave days which will not be carried forward but will be utilized at the end of each calendar year. Annexed marked **Annex 12** is a copy of the Savingram.*
10. There was a further Savingram issued from MPS dated 28th of March 2012 to all Ministries that all outstanding leave must be cleared by 30th of June 2012. Annexed marked **Annex 13** is a copy of the Savingram.
11. In Cabinet decision no. 222 dated 11th of May 2012 the deadline was again extended to 31st December 2012. Annexed marked **Annex 14** is a copy of the Cabinet decision. The effect of these correspondences was that every public officer was to utilize their leave prior to 31st of December 2012.
12. Under the Commission's policy in 2010, there is no policy that allows for an employee to receive payment on a leave that exceeds 20 working days. Further the Commission's policy does not allow for leave without pay for a period of four months except for study leave and leave to accompany spouses on study leave. During the period from 2010, the Commission does not allow for paid leave for 4 months and would require its approval because this was from the old calendar leave days (2006).
13. In February 2012 the MFA paid the complainant her annual leave for 115 days for accumulated days. In other words the complainant was encashed for the 115 leave days and the remaining 65 leave days was utilized by the complainant when she was working at the Ministry of Labour and Commerce. The complainant stated that she took the 65 days leave because of the long delay of the payment.
14. The payment was carried out by MFA on the basis that a position was established for the complainant and accordingly her accumulated days should be paid out.

15. The payment that the complainant received was for her outstanding leave encashment of 115 days. It was confirmed from the Commission that the complainant was misconceived that the complainant was taking leave with pay (for four months). The delay in the MFA to pay out to the complainant her leave days was because they needed time to sort out what the complainant's status was in relation to MFA.

OPINION

1. It has been confirmed by the complainant that she has received payment of 115 days in February 2012 from MFA and that she had taken the 65 days whilst she was working at Ministry of Labour and Commerce. However, even though the payment has been provided to the complainant the issue of the long delay of the payment from October 2011 to March 2012 (four months) is unreasonable.
2. The complainant had to raise the complaint with four different Ministries, MFA, the Commission, MOF and the office of the Attorney General's. Work did not commence about the complaint until the Solicitor General wrote to the Secretary, this was four months later.
3. The Ministries should have been more transparent with their processes regarding the non- payment of the paid leave to the complainant, especially when she had to go and enquire several times and no response was afforded to the complainant.

RECOMMENDATIONS

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

1. That the MFA ensures that an internal policy is established that any complaints laid with the Ministry is dealt with by the Ministry and the outcome communicated to the complainant within seven days upon receipt of the complaint.
2. That the MFA issues the complainant an official apology letter indicating the Ministry's shortfall in in undue delay of dealing with her leave matter.
3. That MFA report back to me within one month of the date of this report is finalized to provide a follow up report on the recommendations

ISSUE III

WHETHER THE DECISION BY THE MINISTRY OF FOREIGN AFFAIRS NOT TO PAY THE COMPLAINANT FROM 17 OCTOBER 2011 – 8 MARCH 2012 A SALARY FAIR AND REASONABLE?

1. It has been confirmed by the MFA and the Commission that the complainant did not have a post under the MFA when the Office closed in October 2011. It is the MFA and the Commission's view that the Cabinet decision which stated that the complainant be recalled to the Ministry of Foreign Affairs and Immigration with effect from 15th of October 2011 is misconceived because the power to process a post is not with Cabinet but with the MFA and the MPSC.
2. According to MFA, it was practice under Public Service policy 22.2 that it was only officers of MFA that were called to work at a Mission that returned and continued working with the Ministry in the position that they had temporarily vacated.
3. In relation to creating a new position at MFA to enable the complainant to take up duty, according to the Commission, it was the responsibility of the MFA to forward a submission to the Commission attaching a Cabinet Decision for the purpose of seeking assistance in finding a place for an officer (like the complainant) who had not originally worked with MFA prior to being posted at the Mission.
4. It is the Commission's view that the complainant was not entitled to a salary for her four months leave. During the period of October 2011 up to February 2012, the complainant did not have a post and there is no policy to approve leave with pay in the nature of four months during the period of 2011-2012. Although the complainant was perceived to be an employee under the Commission but the complainant had not been posted to any Ministry yet therefore is not entitled to pay.
5. It must be noted that the Commission confirmed that there was no Commission decision for the re-deployment or transfer of the complainant to the MFA prior to posting and no post or budget to accommodate the complainant's return to the MFA.
6. It was not until the 4th of January 2012 that the MFA submitted a submission to the Commission enquiring about the status of the complainant and efforts to re-deploy her because the MFA did not have a post to accommodate her nor the budget to create a post for her. This was due to the fact that there was no Commission decision on a redeployment of the complainant prior to posting.

7. On the 17th of January 2012 the Commission advised MFA to liaise with other Ministries in order to find a position suited for the skills of the complainant and to ensure delays are avoided. The Ministry of Labour and Commerce engaged the complainant on or about the 20th of March 2012.
8. It is further confirmed by the Commission, MOF and MFA that the complainant was not entitled to be paid a salary during the period from October 2011 until March 2012 because this would have required a Commission approval based on an approved position.
9. It is the view of the Commission that MFA dealt rather sluggishly with the matter by not contacting the Commission immediately after the close down of the Wellington Mission in order to process a post for the complainant.
10. Contact was only made by MFA to the Commission about the complainant's situation in the month of January 2012 which was 3 months after the Missions had closed down. Prior to this, the Commission was unaware of the complainant's situation and consequentially the complainant did not receive a salary from the period of October 2011 – February 2012.
11. Even though there was a Cabinet Decision no. 849 stating that the complainant resumes with the MFA, the effect of this decision does not automatically make the complainant become a staff of the MFA.
12. The Cabinet Decision meant the recall and repatriation process for staff who had been employed at the Mission was to be undertaken according to Government policy. The Cabinet decision specifically stated that the recall and repatriation were to be conducted according to "Government Policy". This means that the processes stipulated under the Policy Manual 2006 and 2010 must be adhered to. It was the Commission's and MFA's views that the complainant misconceived the Cabinet decision as to be the final decision but there were actions to be undertaken by the Commission to enable and facilitate the decision made by Cabinet..

OPINION

Upon review of the documents before me I hold the following opinion-

1. It is clear from Cabinet Decision no. 849 that Cabinet's broad view was that the complainant and others (named therein), were to remain in Government employment therefore Government had the obligation to act accordingly. The effect of this Cabinet decision was that relevant ministries were obliged to regulate the situation which was beyond the control of the complainant.
2. Cabinet decision no. 849 specifically stated that the complainant's employment with MFA would take effect from 15th of October 2011. Again Government had the obligation to regulate the situation and ensure that the complainant commencing date as a government employee is from the 15th of October 2011.
3. Although a position was not identified for the complainant pursuant to government policy, on or about 20th of February 2012, the salary owed to the complainant should be backdated to the date specified by Cabinet for the complainant to commence as an employee of government at MFA which was the 15th of October 2011.
4. The long delay in implementing Cabinet Decision no. 849 was unreasonable and unfair on the complainant.

RECOMMENDATIONS

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

1. That the MFA ensures if there is a public officer who was employed in a Mission and that public officer is directed by a Cabinet decision to be employed at a Ministry, MFA shall promptly ensure to consult with Public Service Commission according to the Policy Manual to process and bring into effect the Cabinet decision and the steps taken by all relevant ministries to be communicated to the public officer.
- ✓ 2. That the MFA effectively implements Cabinet decision no. 849 by backdating the complainant's salary as an employee of Government to commence from the 15th of October 2011.

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3. That MFA report back to me within one month of the date of this report is finalized to provide a follow up report on the recommendations

THE MFA RESPONSE

On the 16th of March 2017 the Provisional Report was delivered to the MFA setting out my findings, opinions and recommendations. On the 9th of May 2017 I received a letter from the Secretary for Foreign Affairs which stated the following –

1. In relation to comment 1: “Following further internal discussion with relevant staff of the Ministry, I agree that Mrs. Tokai be paid the internet and housing penalty fees of NZ\$503.17 and that this is to be carried out as possible. Our sincere apology is conveyed here with.
2. Recommendations 2, 3 and 4 were noted.
3. Recommendation 5: MFA disagreed with the complainant being backdated as per Cabinet decision No. 849 of 30th September 2011 because she had taken leave from 17th October 2011 until 17th of February 2011. She was paid her salary payment from the time she took approved leave.

A copy of the MFA response letter is attached as **Annex 17** pursuant to section 18(5) of the *Ombudsman Act, 2001*

ADDITIONAL REVIEW

Upon receipt of the MFA response in particular to Recommendation 5 and further review of the information obtained by our investigation on this point, I accept that the complainant was still employed with Foreign Affairs until 16 October 2011. From 16 October 2011 the complainant had taken her accumulated leave until 16 February 2012. Therefore is not required to be provided backdated payment from 30th of September 2011.

Further discussions were carried out with MFA Officer, Telesia Fakava Kaitapu on 13 June 2017 and Acting Secretary to Foreign Affairs on the 14 August 2016⁷ regarding any outstanding amount the complainant is owed taking a holistic view of the facts that have been established and the following was agreed upon –

1. The total amount owed to the complainant for her accumulated leave was \$TOP8, 919.13;

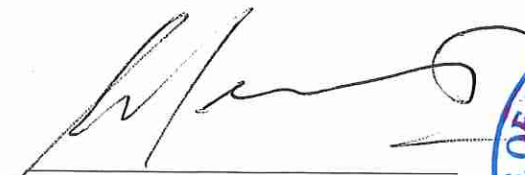
2. 8/3/2012 the complainant received \$4,162.42 and \$4,756.71 was deducted by the Ministry of Finance due to allegations from MFA that complainant had been overpaid for container costing for complainant's return from New Zealand Office;
3. 10/10/2012 the complainant received \$567.72 from voucher No. 11766 to settle payment of reimbursement of overcharge of container;
4. 30/06/2014 the complaint lodged first complaint to Commissioner for Public Relations Office against the Ministry of Finance and MFA for deducting \$4,756.71 without her consent;
5. 2/03/2016 the Investigation was carried out by this Office and agreed actions (with MFA and Ministry of Finance) were finalized. This agreement inter alia recommended that the complainant is reimbursed TOP\$2,884.94 immediately and no later than the 9th of March 2016;
6. There is an outstanding balance owed to the complainant which is TOP\$709.76
7. That payment owed by MFA to the complainant under this Report can be paid directly to her New Zealand bank account. Details to complainant's bank account to be obtained from the complainant.

SUMMARY OF TOTAL RECOMMENDATIONS

Taking into the totality of the information before me I am recommending in this Report pursuant to *section 18(3) of the Ombudsman Act 2001* –

1. That MFA reimburses the following amounts to the complainant's New Zealand bank account (details to be provided by the complainant) -
 - a) NZ\$503.17 the penalty fees for breaking the housing and telecommunications agreements; and
 - b) TOP709.76 which is the outstanding balance owed to her from her accumulated leave in 2011.
2. That the MFA ensures that an internal policy is established that any complaints raised with the Ministry is considered by the Ministry and the outcome communicated to the complainant within seven days from the date of receipt of complaint.
4. That the MFA issues the complainant an official apology letter indicating the Ministry's shortfall in in undue delay of dealing with her leave matter.

5. That MFA had partially complied with Cabinet decision no. 849 dated 30th September 2011 to the extent that the complainant had been duly paid for her accumulated leave from the period 16 October 2011 until 16 February 2012 (back paid in March 2012) albeit not as a staff member of MFA
6. That the MFA ensures if there is a public officer who was employed in a Mission and that public officer is directed by a Cabinet decision to be employed at a Ministry, MFA shall promptly ensure to consult with Public Service Commission according to the Policy Manual to process and bring into effect the Cabinet decision and the steps taken to be communicated to the public officer.
6. That MFA report back to me within one month of the date of this report is finalized to provide a follow up report on the recommendations.


Aisea H. Taumoepeau SC
Ombudsman
31st August, 2017




Linda S. Folaamoetu'i
Chief Executive Officer
31st August, 2017

ANNEXURES

1. Annex 1 - *A copy of Cabinet decision No. 198, dated 14 August 2006*
2. Annex 2 - *A copy of Savingram from Public Service Commission dated 2 March 2009*
3. Annex 3 - *A copy of Cabinet decision No. 291 dated 16 April 2009*
4. Annex 4 - *A copy of the tenancy agreement*
5. Annex 5 - *A copy of the cancellation invoice from Telecom*
6. Annex 6 - *Copy of the Cabinet decision dated 30th September 2011*
7. Annex 7 - *Copy of the application for leave*
8. Annex 8 - *Copy of the approval letter from Secretary for Foreign Affairs*
9. Annex 9 - *Copy of the email from Solicitor General to Secretary for Foreign Affairs*
10. Annex 10 - *Copy of Letter dated 23 February 2012 from complainant to Secretary for Foreign Affairs*
11. Annex 11 - *Copy of Cabinet decision No. 77 dated 6 March 2012*
12. Annex 12 - *Savingram from Chairperson PSC dated 20 July 2009*
13. Annex 13 - *Circular Savingram from CEO of the Commission, 28 March 2011*
14. Annex 14 - *Copy of Memo from PSC dated 11 May 2012*
15. Annex 15 - *Copy of Voucher No. 11766 for \$567.72 to Mrs. Sisilia Toka*
16. Annex 16 - *Investigation report agreed actions for complaint by Mrs. Sisilia Tokai, dated 2 March 2016*
17. Annex 17 - *Copy of Response from Secretary for Foreign Affairs dated 8 May 2017*