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NEWS RELEASE

“Ombudsman releases report on Own Motion Investigation (OMI) on Public Enterprises”

1. The Ombudsman, Mr. 'Aisea H. Taumoepeau, SC, today releases the results of his Own Motion Investigation (OMI) carried out on a series of allegations of maladministration in the Boards of Directors of the Public Enterprises (PE).
2. The OMI was based on a newspaper article (the article) published in the *Kele'a* Newspaper Vol 34 No. 52 of Monday, 24th December, 2018, under the heading ***“Pau'u 'i he ngaahi Poate, Ngaahi pisinisi 'a e Pule'anga.” (attached)***
3. Of the six (6) complaint issues investigated based on allegations in the said article, only the Fourth Complaint issue relating to the purchase of the MV Niuvakai in 2014 by FISA, was recommended that due diligence work should have been conducted prior to purchasing the vessel.
4. The Office of the Ombudsman and the Ministry of Public Enterprises (MPE) had worked in partnership on this OMI.
5. **Findings** - The Ombudsman has set out the details of his opinions, as the followings:
 - (i) First complaint issue – ***“PE Boards do not follow the same procurement process as Government ministries, and can spend in excess of \$1million without utilizing the procurement process.”***

Based on information gathered, the Ombudsman holds the opinion that public enterprises do have the power to create rules and procedures to govern their procurement processes pursuant to Regulation 3(3) of the *Public Procurement Regulations, 2015*. The allegation raised by *Kele'a* newspaper does not provide specific names or details to prove the allegation. The Office of the Ombudsman provided the *Kele'a* newspaper with the opportunity to come forth and provide us with the information. To date, this has not been done. The Ombudsman holds the opinion that

public enterprises in carrying out their procurement processes according to their rules and procedures do not breach the Procurement Regulations.

(ii) Second complaint issue – **“Board members are taking loans from Board funds.”**

In a meeting of the Ombudsman with *Kele’a* publisher, Mr. Siaso Pohiva, in February 2019, he confirmed the allegation was pointing to the Ports Authority Tonga Ltd (PAT), and alleged to have taken place on or about 2011 or 2012. Upon investigation, PAT confirmed that there were no loans granted to any Board members during the FY 2011/12. PAT also confirmed that they do not have a policy in place to allow for personal loans to be granted to any of its employees or Board members. It also confirmed that there was no Board resolution that allowed the Authority to grant loans to any of its employees or Board members. However, PAT suspects the allegation may be referred to a loan facilitated by PAT from its funds to Waste Authority Limited (WAL) in the 2011/12 FY. CEO of PAT confirmed that the loan account was audited and disclosed in PAT’s Annual Report of the same year and subsequent years. The loan amounted to \$500,000 which was advanced to WAL. Cabinet was informed of this loan agreement and it was endorsed by the Minister of Public Enterprises and the Ministry of Public Enterprise. The Ombudsman then holds the opinion that there is no evidence to support the allegation that Ports Authority Tonga (PAT) had been providing loans to its Board of Directors.

(iii) Third complaint issue – **“Board members being paid gratuity.”** The allegations against the Board members may be summarized as follows – Board members are paid tens of thousands, with some paid a bonus of \$60-thousand each (*Santa Claus had visited some Boards well before Xmas.*)

In relation with this complaint issue, the Ombudsman holds the opinion after investigations that there is no evidence to prove that there has been payment of bonuses to Board of Directors of PEs. The MPE has reported to the Ombudsman that no public enterprise pays bonus payments to their Board of Directors. All PEs are following the remuneration and meeting fees set by Remuneration Authority and approved by Cabinet. Additionally, Ports Authority Tonga (PAT) has confirmed that there were no Christmas bonuses paid out to former Board members which amounted to \$60,000. Instead, payments paid out only related to gratuity paid to Directors of PAT Board members. Since the establishment of the Board, all directors were entitled to 20% gratuity on all their

earnings and only to be paid out at the end of their services with the Board. However, this gratuity practice of paying 20% was discontinued in mid-2018 and was amended that gratuity to consist of only their annual director's fees and meeting fees. Both the Ministry of Public Enterprises and PAT had denied any knowledge of any PE Board of Directors being paid \$60,000 bonuses. The Ombudsman had requested the editor of *Kele'a* newspaper to provide relevant information to assist with the investigation but to date, nothing has been provided, therefore this allegation is unfounded.

- (iv) Fourth complaint issue – ***“FISA purchased Niuvakai for \$1million dollars however its real value was much less.”***

In February 2014, Pacific Royale Shipping sold the vessel to the Friendly Island Shipping Agency (FISA) for NZ\$936,500. The vessel was then renamed MV Niuvakai. In April 2017, three (3) years after the purchase of the vessel, New Zealand Marine Brokers inspected and evaluated the MV Niuvakai as worth NZ\$350,000. Following the investigation, the Ombudsman holds the opinion that FISA Board had failed to conduct a proper evaluation of the 35-year old vessel despite a criteria assessment report by FISA Board Chairperson and a survey report made by a marine cargo surveyor and assessor Dunsford Marine. Taking into account the survey report by Dunsford, and the Criteria Assessment, the vessel's true value should have been significantly lower. The fact that FISA had upgraded the vessel shortly after the purchase, and three years later was valued to be worth NZ\$350,000 supports the Ombudsman's view that the vessel's real worth was much lower before the sales in 2014. The Ombudsman recommends that FISA and its Board of Directors must ensure that due diligence work is carried out in purchasing of any vessel of this magnitude and value.

- (v) Fifth complaint issue – ***“One of the Board of Directors of a Public Enterprise had a Board meeting in Barcelona.”***

In 2017, a delegation of the Tonga Airports Limited (TAL) was confirmed by its Board of Directors to travel to Barcelona on two (2) purposes – to attend World Routes 2017, and to finalize requisite documentation and verification to complete process for a security bank guarantee due to TAL for breach of contract by a Spanish contractor, GECL. World Route 2017 is an annual event attended by TAL for the first time, was viewed as crucial for the commercial and marketing strategies for route development. It was also an

opportunity while in Spain to discuss, develop and plan network strategies on a global scale. Members of the Board who travelled were also required to sign a Deed with legal counsel for GECl that was engaged by TAL to carry out construction work at Fua'amotu airport. TAL had engaged the services of Spanish lawyers to assist with legal matters relating to GECl breaching contractual obligations. Remedial action was sought against GECl who were represented by Bankia lawyers. The investigation holds the opinion that the Board members attending the World Route 2017 and in attendance at legal negotiations between GECl and TAL to pursue the release of reimbursement to TAL of US\$69,993.19 were crucial to the future development of TAL as a PE.

- (vi) Sixth complaint issue – ***Some Board Members paid overtime, when it is normally for low earners (not including CEOs and other higher paid employees).***

The allegation was in regards with Tonga Power Ltd. (TPL). In 2018, the Board of Directors of TPL approved a Sub-committee for due diligence of the Enterprise Resource Planning System (ERP). ERP is a business process management software that allows an organization to use a system of integrated applications to manage the business and automate many office functions related to technology, services and human resources. The Board approved the Sub-committee to be chaired by Director, 'Aisake Tu'iono and Director, Fuiva Kavaliku, to work with Mr. Tu'iono for the Due Diligence of fact finding of identifying and solving problems for ERP system. The Board also approved that members in the committee provide a full report to the Board with recommendations. TPL confirmed the work carried out by the Sub-committee members were paid by way of consultant fees and not overtime. This is work outside of their normal duties of Directors of TPL therefore required special rates. It was clear from the evidence that works required of the Sub-committee were authorized by TPL resolution of April, 2018, permitting Mr. Tu'iono and Mrs. Kavaliku to carry out the work crucial to the development of TPL. Following the investigation, the Ombudsman holds the opinion that the process used to nominate the Directors of TPL to carry out work outside their normal Directors functions justifies special rates to be paid to them. The decision made by TPL Board was not unreasonable.

(Released by the Office of the Ombudsman, Nuku'alofa, Monday, 24th June, 2019. For further information, please email to – investigation@ombudsman.to or telephone 26980 or 26982)