



 **Ombudsman**
TONGA



ANNUAL REPORT

2017 - 2018

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1. Ombudsman's Overview



This report covers the period of 1st July 2017 to 30th June 2018 (2017/2018).

I am pleased to introduce the Annual Report for the Office of the Ombudsman for 2017/2018. This report is made in accordance with section 25 of the *Ombudsman Act 2001*, as amended.

The Annual Report provides an overview of our work throughout the relevant period. The achievement of targets that we have set is something we take pride in and happy to display such great work of our Office throughout this report. I continually stress the fact that our goal is to raise public awareness of our core functions and provide a professional complaint service to the people of Tonga.

The Office of the Ombudsman acknowledges the support from the Speaker and the Legislative Assembly and the Government of Tonga. It is an ongoing effort of our Office to strengthen good working relationships with our stake holders and the public. We recognize that the successful implementation of our function requires the support from all stakeholders within Government and the public.

My priority as Ombudsman will always be to provide a high quality and accessible complaint handling service for the people of Tonga. 2017/2018 has seen the Office of the Ombudsman continuing to work successfully towards those aims, as indicated in this report. In that regard, I am grateful to the CEO, Mrs Linda Folaumoetu'i, and all the staff for the hard work and unfailing efforts to carry out their duties.

The official seal of the Office of the Ombudsman, Tonga. It is a circular emblem with a blue border containing the text 'OFFICE OF THE OMBUDSMAN' at the top and 'TONGA' at the bottom, separated by two stars. The center of the seal features a crown atop a shield, flanked by two crossed spears and a laurel wreath.

'Aisea H. Taumoepeau, SC
Ombudsman

YEAR

AT

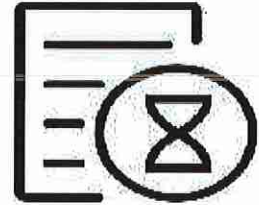
GLANCE

July, 2017 to
June, 2018



278

Total Cases Received



Year at glance



253

Total Cases
Closed

Total Complaints by Gender
July 2017-June 2018

73



Females



204

Males

- 1 OWN MOTION CASE



562

Total Phone
Calls



391

Office Visits

2. Our Office

2.1 OMBUDSMAN Purpose

The Ombudsman is an independent officer appointed by the Speaker of the Legislative Assembly, with the consent of the Legislative Assembly under the Ombudsman Act 2001 (formerly known as the Commissioner for the Public Relations Act, 2001).

The Office of the Ombudsman's main aim is to assist government ministries/departments and public enterprises remedy deficiencies and improve service delivery. Traditionally, the main mechanism is by investigating and reviewing government administrative decisions in response to complaints received by the Office from the public. The Ombudsman also has the power to look into a matter without having received a complaint, in cases where he considers a particular issue is in the public interest or is a problem that is systemic. In addition, the Prime Minister may with the consent of the Ombudsman refer any matter for investigation and report. The goal is that these interventions will address the grievances and improve administrative

2.2 Jurisdiction

The Ombudsman's jurisdiction covers government departments and its agencies which includes statutory boards and public enterprises.

The Office of the Ombudsman also has responsibilities in relation to protecting human rights in relation to those held in custody. This relates firstly to those under police custody, who have been sentenced to be imprisoned, those who have been ordered to be in custody awaiting sentencing or those held in custody for the purposes of completing police investigations. The second group relates to those who have been ordered to be detained at the Psychiatric Ward, at the hospitals. Where any person who is detained wishes to lodge a complaint against the administrative decisions made by the police or health authorities they are permitted to lodge a written complaint and such a complaint will be delivered unopened to the Ombudsman.

2.3 Vision and Mission of the Ombudsman Office



In everything we do, the Ombudsman Office gives assurance that we will strive to act fairly, with integrity and with impartiality. The Ombudsman staff will always strive to treat individuals and government ministries, departments and public enterprises courteously and with sensitivity. We will also use resources efficiently and effectively to achieve our goals. It is also important to ensure that we are easily accessible to everyone.

2.4 Legislations Governing the Ombudsman Office

Our office was established by an Act of Parliament, the *Ombudsman Act 2001*. The main laws governing the Ombudsman Office are (i) the *Ombudsman Act 2001* and (ii) the *Anti-Corruption Commissioner Act 2007*. Other relevant laws include the *Government Act, Public Service Act 2002* and all legislation conducive to the provisions of services to the people of the Kingdom of Tonga.

2.5 Highlights of this reporting period

- As of 18th of August 2017, our old email address domain of cpr.gov.to was changed to ombudsman.to. Emails begin with first name last name initial, for example our Systems Administrator Akuila Pohiva, akuilap@ombudsman.to; The Ombudsman's email is omb@ombudsman.to and CEO is ceo@ombudsman.to. Our website was also changed from www.ombudsman.gov.to to www.ombudsman.to.
- On the 10 – 13 October 2017, Judge Peter Boshier, Chief Ombudsman of New Zealand visited Tonga as part of a scoping exercise carried out to various Pacific Islands.
- 20th of October 2017, the Office organized the very first Inaugural Integrity March with the focus to promote transparency, accountability and principles of good governance in the public sector
- The Office applied to Office of the Commonwealth Ombudsman (OCO) Funding and was given AUD 16,000 to plan and implement the following projects by December 2017.
 - Set up mobile Office of the Ombudsman in Vava'u for 1 week
 - Good governance outreach programs to the outer islands of Ha'apai
 - Purchase promotional outreach products
 - Study tour for 1 week to the Office of the Ombudsman, Samoa

3 OUR WORK

3.1 INVESTIGATION DIVISION

Firstly, as a team we thank God for guiding us through this year and we acknowledge His ever present grace, love and mercy in our lives and our work. Secondly, we acknowledge the strong and expert leadership of the Ombudsman and the Chief Executive Officer and the steady support of the Corporate Services Division.

This is our first report based on the financial year period and the numbers show an overall increase of work by 65% from 2016/2017. The number of investigation staff however were the same (5 investigators and 2 support staff) and at times the weekly staff attendance for many weeks were in the 50% - 60% given staff leave. Looking at the numbers, all our main activities increased from new complaints, calls, visits to investigation reports and outreach.

We would like to acknowledge the support of the Ministries, Departments and Government Agencies (MDAs) and Public Enterprises (PEs) without whom we would not be able to provide resolution to those who seek our help. We also acknowledge the support from the Governors and Government Representatives in the outer islands, their staff and the District and Town Officers for assisting with our outreach programs in the effort to increase awareness of the work of the Ombudsman in Tonga.

Set out below are the statistics and brief explanations of the work achieved in 2017/2018 -

A. Overall performance

Statistics July 2017 – June 2018

Month	New cases	Closed cases	Phone Calls	Visits	Reports (as per month finalised)	Outreach programs
Jul-17	28	28	30	36	3	48
August	32	19	57	44	2	41
September	18	12	34	24	1	21
October	43	40	37	21	1	7
November	26	27	35	20	1	27
December	12	26	17	10	0	1
Jan-18	18	10	50	28	0	4
February	10	13	32	15	0	1
March	10	26	42	23	2	2
April	14	15	38	21	4	15
May	11	16	35	28	1	27
Jun-18	56	14	43	20	1	15
TOTAL	278	246	450	290	16	209

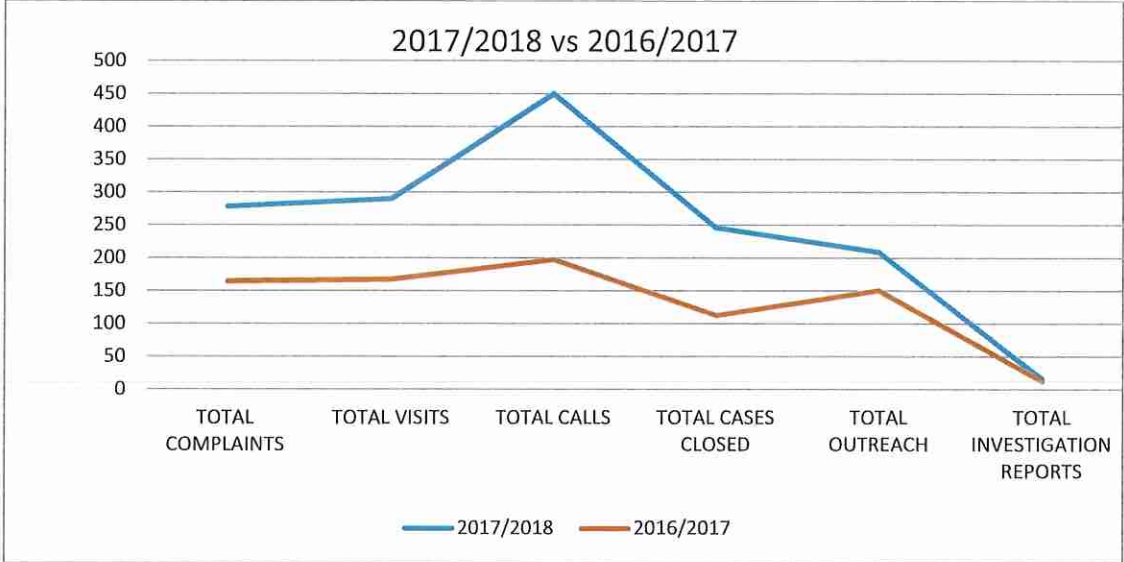
(figure 3.1)

The numbers show that the new cases fluctuated over the 12 month period peaking in October 2017 and June 2018. The table and graph below shows the statistics for the main investigative activities for 2017/2018 and for 2016/2017 for comparison.

	2017/2018	2016/2017	% Increase
TOTAL COMPLAINTS	278	168	65%
TOTAL VISITS	290	168	73%
TOTAL CALLS	450	198	127%
TOTAL CASES CLOSED	246	113	118%
TOTAL OUTREACH	209	151	38%

TOTAL INVESTIGATION REPORTS	16	13	23%
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(figure 3.2)



(figure 3.3)

The numbers show that there was an increase in all the main areas of investigative work and especially the phone queries received and the cases we closed during that period which exceeded 100% increase.

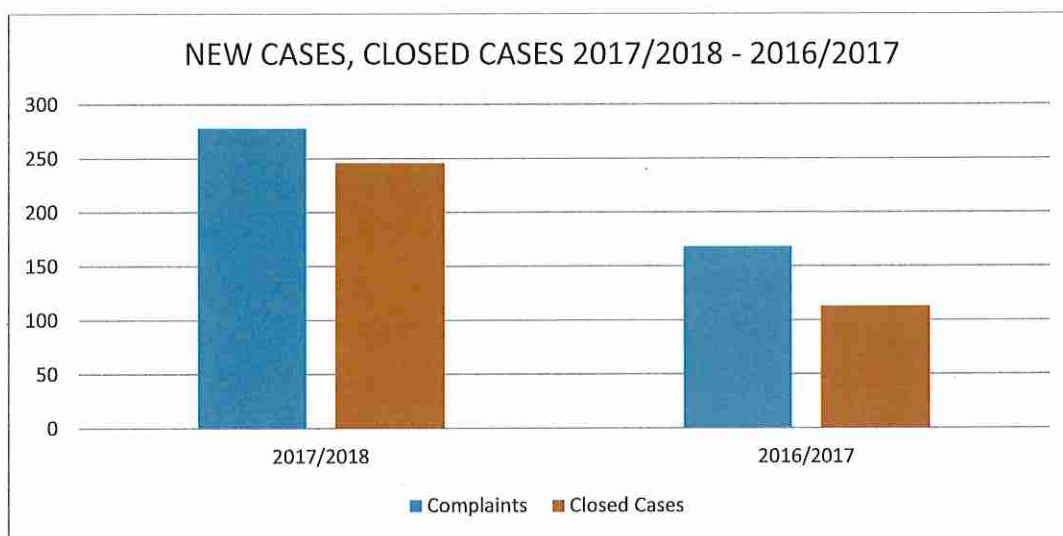
B. Case Management Data

(i) Comparison of new cases and closed cases for 2016/2017 and 2017/2018

Year	New Cases	Cases Closed
2016/2017	168	113
2017/2018	278	253

(figure 3.4)





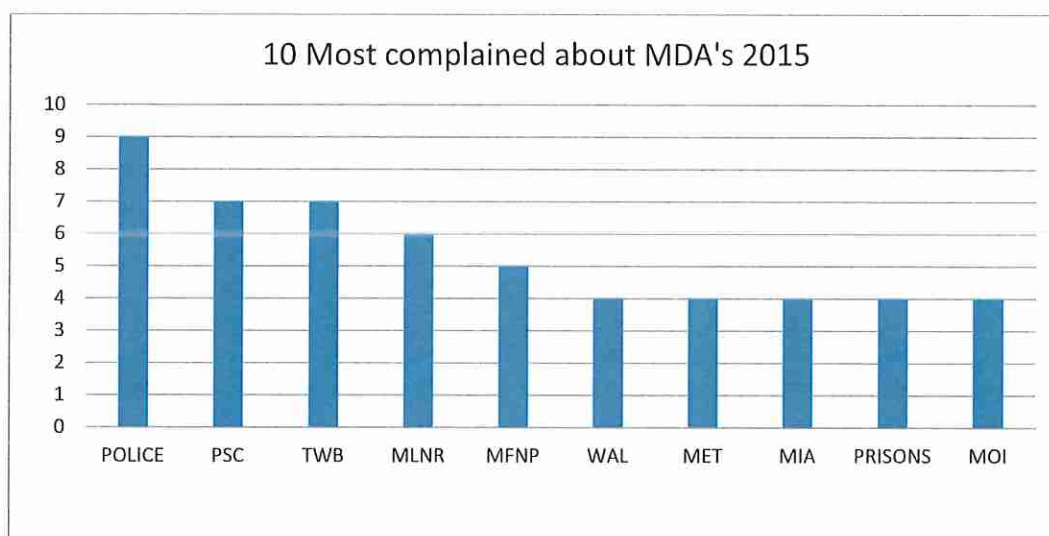
(figure 3.5)

The above table shows that even though the number of cases in 2017/2018 increased by 65% compared to the previous year, the number of cases that the team were able to close increased by 118% from 113 to 246. Every effort is made to action complaints in a timely manner no matter the substance of the complaint.

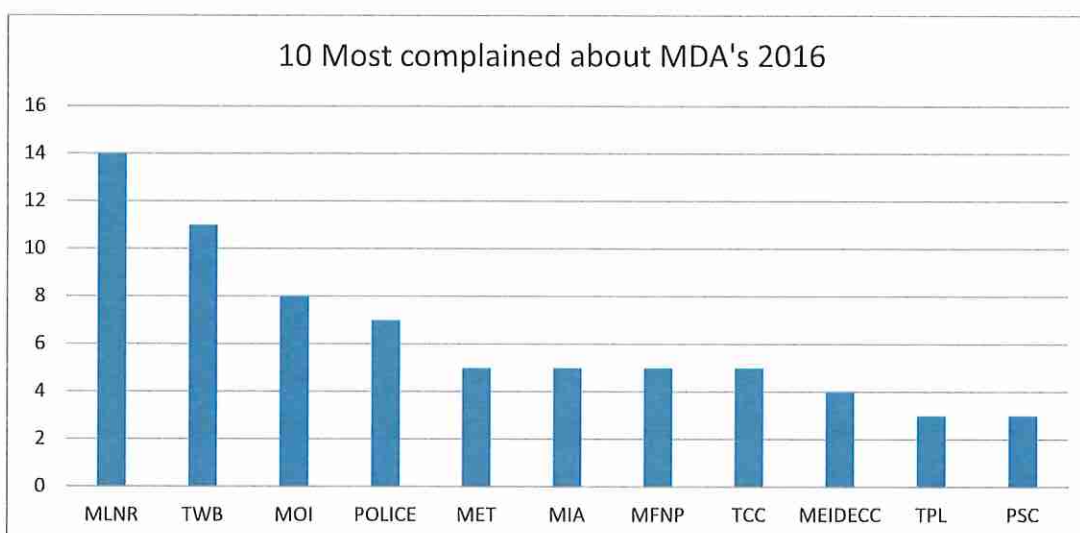
(ii) Ministries/Departments/Agencies most complained about 2017/2018

As the following charts will show, the most complained about MDA in 2017/2018 was the Ministry of Internal Affairs, 2016 was the Ministry of Lands & Natural Resources and the Police in 2015. The top 5 for each year has consistently featured the Ministry of Lands & Natural Resources and the Ministry of Police. The majority of these complaints is to do with unresponsiveness and the lack of timely response from these Ministries to the complaints from the public. We acknowledge that both these Ministries mandates are far reaching and have a direct link to judicial action so it is essential that reasonable time is given to officers to attend to the complaints. With these two Ministries we continue to have fortnightly meetings to follow up the complaints to the Ombudsman. These meetings are attended by the Chief Executive Officer in the case of the Ministry of Lands & Natural Resources and the Deputy Commissioner of Police for the Ministry of Police. The priority given to developing and maintaining good working relationships with these Ministries is much appreciated. Given the emergence of the

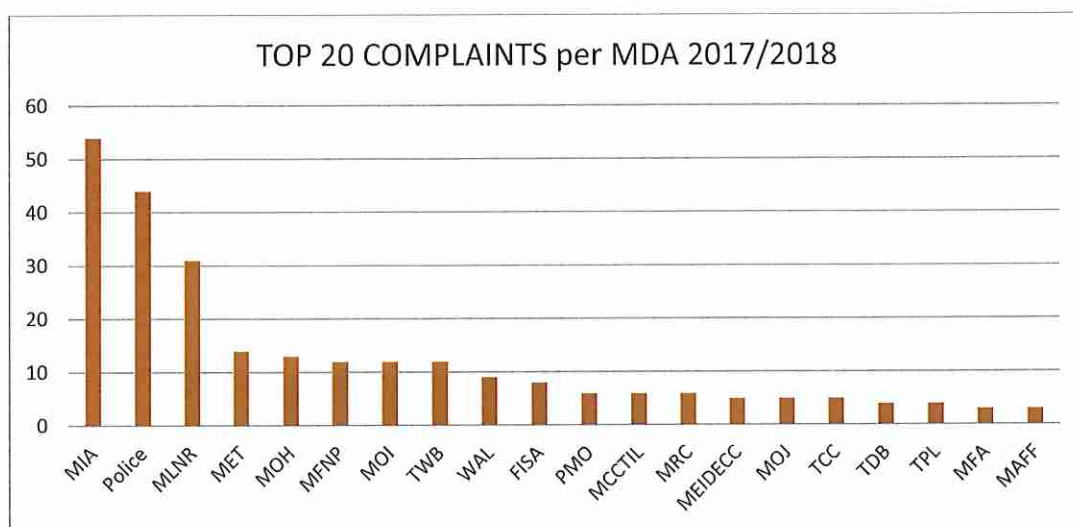
Ministry of Internal Affairs in the top 5 most complained about MDAs for 2017/2018 we have also started and continue to have fortnightly meetings with the Ministry's senior officials. All of the more complained about MDA's have identified specific contact persons within their organisations as a focal point for Ombudsman complaints, which has aided the attention given to these complaints.



(figure 3.6)



(figure 3.7)



(figure 3.8)

(iii) Common complaint issues

Set out below is a general analysis of the top 5 most complained about MDAs in 2017/2018 –

- a) MIA – most of the complainants were MIA staff and the second most complainants related to the Regional Seasonal Employment scheme.
- b) Police – the majority of these complaints related to dissatisfaction with Police process including their investigations and one of the common issues was the lack of updates to the complainants
- c) MLNR – there wasn't a main trend of complaints as the issues were varied and included staff receiving money for "services" but with no Government receipt issued and also unreasonable delays in conducting surveys which individuals had paid for.
- d) MET – the most prevalent issue involved claims against the Ministry for unpaid monies such as refunds, unpaid rent and taxi services.
- e) MOH – the issues were also varied but included complaints about the maintenance of pig sties and issues with public water access.

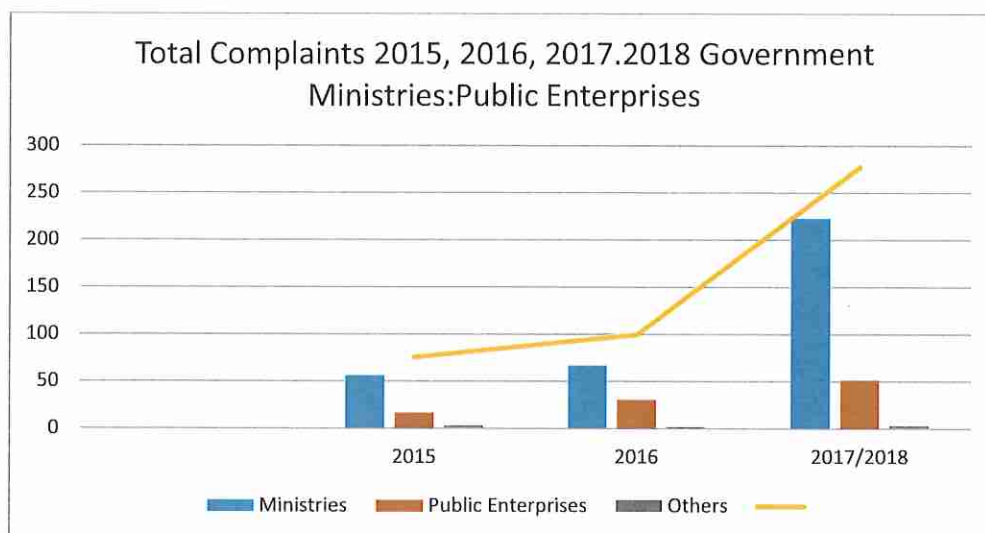
(iv) Ratio of complaints against Ministries vs Public Enterprises

Comparing the number of complaints regarding Government and Public Enterprises, the numbers continue to show that Government services receive the most complaints. In 2017/2018, we received complaints regarding 19 Government Ministries compared to 11

Public Enterprises. Given the number of complaints per Government. Public enterprise this is an average of 12 complaints per Ministry compared to 2 per Public Enterprise. Regarding complaints about Government Ministries we saw an increase of complaints relating to District Officers which is reflected in the Ministry of Internal Affairs complaints numbers for 2017/2018.

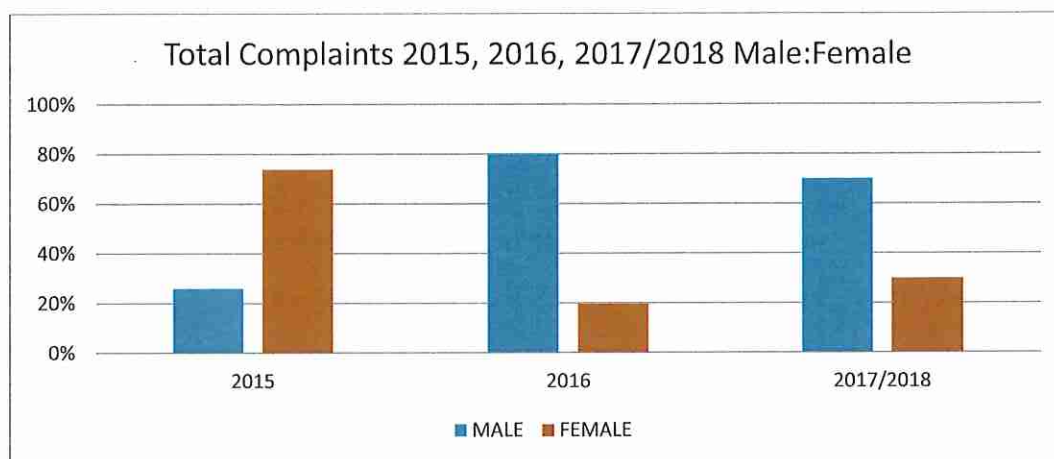
	2015	2016	2017/2018
Ministries	74%	67%	80%
Public Enterprises	22%	31%	18%
Others	4%	2%	2%
	100%	100%	100%

(figure 3.9)



(figure 3.10)

(v) Ratio of male to female complainants



(figure 3.11)

The numbers show that although there were more female complainants in 2015, for 2016 and the 2017/2018 the numbers have been predominantly male.

	MALE	FEMALE
2015	26%	74%
2016	80%	20%
2017/2018	70%	30%

(figure 3.12)

(vi) Time taken to complete investigations

Year	Shortest time	Longest time
2015	10 days	24 months
2016	5 days	11 months
2017/2018	7 days	2yrs 11 months

(figure 3.13)

Timeliness is the cornerstone of Ombudsman work to ensure investigations are effective and efficient. There are cases though because of factors like the nature of the complaint, the complexities of the issues, the difficulty in contacting the complainant, the delays from the

MDAs, the number of complainants and the multiple issues involved that take longer to complete. The Investigation Team have performance standards to ensure work is done within reasonable timelines including following up responses with MDA's and regularly updating the complainants.

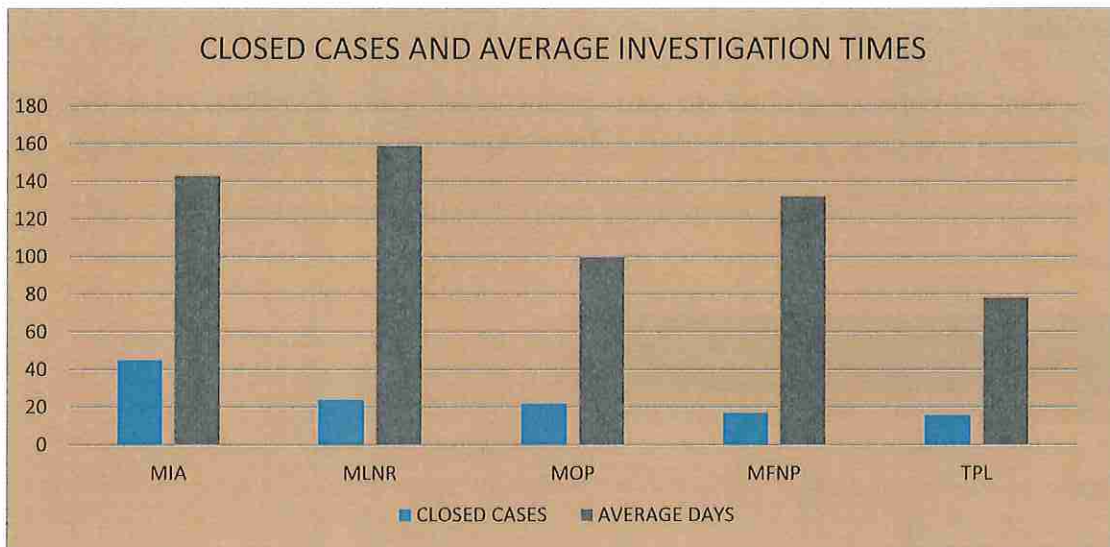
The case that took 2 years and 11 months was a claim by a public servant for reimbursement from Government and involved multiple Ministries. The complaint was justified and the payment received.

The Office investigated and closed 246 cases in 2017/2018, a total of 30,536 days resulting in an average of 124 days per case.

Set out in the table and graph below are the MDAs with the most closed cases (top 5) and the average time it took to complete each investigation.

MDA	# of closed cases	Average # of investigation days per case
MIA	45	143
MLNR	24	159
MOP	22	100
MFNP	17	132
TPL	16	78

(figure 3.14)



(figure 3.15)

(vii) Visits (drop in to the Office)

We received 290 visits or drop ins to the office during the year. Set out below is a table of the top 5 MDAs that were the reasons for these drop ins –

MDA	# of visits
MLNR	61
MOP	48
MOI	14
MIA	13
MET	11

(figure 3.16)

(viii) Calls

We received 450 phone calls over the year, greatly aided by the installation of our free call number (both for Digicel and Ucall customers) – 0800 662 or 0800 OMB. Set out below are the top 5 subject of these calls including general inquiry calls (non-specific assistance requests)–

MDA	# of calls
General inquiry	68
MLNR	46
MIA	35
MOP	33
Out of jurisdiction	19

(figure 3.17)

C. Published Investigation Reports

The 2016 amendments to the Ombudsman Act 2001 allowed the Ombudsman to “publish reports or other information relating to the exercise of his functions or to any particular cases or cases investigated by him.” In June 2018 the Ombudsman exercised this function and published 14 reports for the 2017 calendar year and 8 so far in 2018. For the 2017/2018 year however 16 investigation reports were published of which a few are summarized below.

1. *Ofa Pepa and the Traffic Safety Task Force Committee*

The complaint was instigated because of a concern for the heavy load truck that use the public roads for transporting soil, rocks and similar materials. The basis of the complaint was that some of these trucks were overloaded and often spilled parts of their cargo on the roadside and therefore a public safety issue to the pedestrians, public and other vehicles. The complaint was initially sent to the Ministry of Infrastructure who advised that the proper authority was the Traffic Safety Task Force Committee which consisted of the Ministry of Infrastructure and the Ministry of Police. The Committee accepted that this was an issue and agreed that the Police will ensure private haul trucks comply with safety measures while operating on public roads, that awareness programs will be run to highlight this issue and the Committed will ensure that these safety concerns are incorporated in the upcoming amendments to the Traffic Act.

2. Zigao Wang and the Ministry of Commerce, Consumer, Trade, Innovation and Labour (MCCTIL)

The complaint related to a Ministerial policy in 2014 which directed that any application for relocation of any existing business premises would not be approved. In the course of investigation it was found that the concerned 2014 policy was invalid as it was also done verbally thus failed to comply with statutory process in the Business License Act. The Ministry accepted all recommendations to cease the 2014 policy and ensure that all policies are formalised.

3. Makalita Tufui and the Ministry of Lands & Natural Resources

This investigation related to a Ministerial decision in 2016 allowing the complainant to fortify a town allotment in Popua while the complainant's grant application was still

pending. It was found that the said decision was made orally and should have been recorded for consistency purposes. It was also shown that the Ministry failed in some instances to follow its procedures in terms of site visits and in providing clear advice to public. Notwithstanding this, the Ombudsman viewed a flaw in the complainant's conduct in this case, while she claimed losses for relying on the decision by Ministry to fortify the land, it was evident that this decision was made at her own request to Ministry thus she acted to her own detriment. The Ministry responded to the Report by accepting all recommendations and advised for work practices to be improved.

4. Tonga Communications Corporation (TCC) and Rizvi Jurangpathy

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 made seven (7) allegations with regarding the Chief Executive Officer (CEO).

On 15th July 2016, the matter was referred to the Ombudsman for investigation by the Prime Minister under powers pursuant to section 11(3) of the *Act* and the Ombudsman gave his consent. 70 people were interviewed and the outcome was that there were overarching management issues at TCC resulting in a hostile and ineffective work place allowed complaints to fester. The TCC Board accepted the recommendations which included following TCC policies and better communication strategies with staff.

5. Tevita Tu'ipulotu Ma'u and the Ministry of Internal Affairs (MIA)

Tevita went on a MIA scholarship and when he graduated he returned to work for MIA but wasn't appointed to a graduate level post but to a lower post because it was the only

one available. Tevita performed at the post the duties of a graduate level officer but was not remunerated accordingly. MIA kept promising that his position would be remedied but after a year at the lower post, he complained to the Ombudsman. MIA admitted the failure to appoint Tevita to the appropriate post and took remedial action to upgrade him and pay his arrears for the difference of the post he started at and that that he should have started at.

6. Silia Tokai and the Ministry of Foreign Affairs

The complainant was appointed in 2009 by the Cabinet to be the secretary to Tonga High Commissioner in Wellington. She had thought she would be living there with family for at least 2 and a half years. She entered into a fixed term tenancy agreement with her landlord in relation to the house she would be residing in and one year agreement with the Telekom Company for internet purposes. On 30th of September 2011, the Cabinet decided to close down the Tonga High Commission's Office and complainant was called back by Cabinet to the Ministry of Foreign Affairs to be effective from 15th of October 2011. In the process of repatriation the complainant had made arrangements and payments from funds available to the High Commission's Office. Following an audit it showed that complainant and other staff members were overpaid \$3,297.08 for the repatriation purposes. The Ministry of Finance therefore directly deducted \$3,297.08 from complainant's bank account without any consultation or permission from the complainant. The complainant also had to pay penalty fees for breaking the agreements prior to the expiration of the 2 years agreement of the housing agreement and also the Telekom agreement. She claimed this to be unfair because she genuinely thought she would be staying in Wellington for two years. She also applied for 4 months earned leave from 17th October up to 17th February 2012 upon discovering that the office was closing. This request was approved by the Ministry of Foreign Affairs however during this leave period the complainant did not receive any salary. She had made multiple visits to the Ministry of Foreign Affairs and Ministry of

Finance regarding her grievances but no response was provided. The outcome was that the complainant was reimbursed for the amount deducted from her account with the understanding that this amount should have been apportioned amongst the relevant officers, she was also reimbursed the penalty fees that she had to pay in addition to receiving the salary that she should have received during her 4 months leave.

7. Complaints by Ministry of Internal Affairs daily paid staff

This was a joint complaint by 16 daily paid staff at MIA concerning their contractual arrangements and the definition of a daily paid labourer. The subject matter was the subject of considerable attention as this was raised in the Legislative Assembly for discussions. After extending their daily paid contract with the Acting CEO and Minister, the very next week – the substantive CEO assumed duty and cancelled these contracts. The Minister also changed. The focus of the investigation was on the nature of the daily paid staff, the definition and current application of this across the line ministries.

Despite the Public Service Commission initiating meetings with the MIA CEO for a resolution, the MIA CEO was unresponsive throughout the whole process. An apology was circulated to the daily paid staff involved in the process. Since then, the MIA CEO has resigned, and MIA has undergone divisional restructuring.

8. Pita Vi and the Tonga Power Limited

Pita Vi complained about the Tonga Power Limited (“TPL”) staff in Ha’apai cutting down his 8 coconut trees at his town allotment in January 2016 in preparation for the cyclone season. The investigation confirmed that he had not consented to the cutting of the trees and TPL compensated him for the loss of his trees. It was also noted that the TPL need to make clear in their laws under what circumstances do they have the authority to cut trees on private property without the owner’s consent.

9. Peng Liu and the Ministry of Police and the Ministry of Revenue & Customs

This complaint related to the loss of a gold chain that had been part of items seized from the complainant during a joint operation between Customs and the Police, relating to allegations of uncustomed goods. The items were seized under a search warrant and had been stored at the Customs office at Ma'ufanga. The investigation identified issues of chain of custody and the security of the storage which resulted in the loss of the gold chain. The Customs laws provide specific indemnities for Customs officers which was for the complainant to overcome. The Police responded positively to the report and advised that they had developed Internal Controls to monitor such activities.

10. 'Atelaite Tamoua and the Friendly Island Shipping Agency Limited (FISA)

This is a complaint arising from the dismissal of Mrs 'Atelaite Tamo'ua (the complainant) on 29 September 2015 from the Friendly Island Shipping Agency ("FISA"). The complainant was Personal Assistant to Mr Mosese Fakatou, Acting Chief Executive Officer ("Acting CEO") at the time of the complaint. It was clear that when the Acting CEO first joined FISA in early 2015 the complainant did not get along well with Ms Seini Fifita, FISA's Financial Controller ("FC") and there were some in-fighting between them including arguments over a conflicting cruise booking of the MV 'Otuanga'ofa. Both the complainant and the FC were told by Acting CEO to discontinue the resentments, as it will affect the work of FISA. It is alleged that the complainant continued these resentments including a letter stating that the FC was incompetent, questioning the FC calculation of overtime during public holidays. Her behaviour culminated in an email she shared with other employees of FISA on the 23 July 2015 about the overtime calculation where she also made disrespectful remarks about the Acting CEO. The complainant was then suspended without pay for two weeks on 3 August, 2015. The grounds was gross insubordination. The suspension was further extended on 10 September 2015. On 12 August 2015, the complainant responded to the Acting CEO's suspension letter contesting the reasons stated therein. The ACEO considered the complainant's response as stubborn and dismissed her on 29th September 2015. The complainant lodged her complaint with this Office on the 30th of

September 2016. She believed her suspension and eventual dismissal was based on her questioning the calculation of overtime. The Ombudsman found that FISA had followed its procedures and its decision to dismiss the complainant was properly arrived at and was reasonably made.

11. 'Amone Vaka'uta and the Ministry of Finance & National Planning and the Ministry of Health

The complainant was temporarily transferred from Vaiola Hospital to Likamonu Health Centre at Niuatoputapu by the Ministry of Health in February 2017 as a pre-caution as His Majesty was scheduled for a Royal Visit. During the Royal Visit, the passing of the Late Queen Mother prompted the Royal visit to be halted while HM travels back to Tongatapu for the procession. The complainant returned too.

The complainant assumed duty as per normal at Vaiola Hospital and management did not approach nor raise any concerns of his return. After the Royal procession HM returned to Niuatoputapu and continued his Royal visit and so did the complainant. At the conclusion of the Royal visit, the complainant returned when HM returned. Shortly after, he was required to reimburse the travel allowance for the nights he spent on Tongatapu during the Royal procession.

Importantly, the temporary transfer was never varied and did not end until the conclusion of the Royal visit. Ministry management failed to act and address his return during the procession despite being temporarily transferred. Policy Instructions and Treasury Instructions do not provide clauses for instances of reimbursement. The outcome was recommendations that (a) the Ministry of Health follow PSC Instructions regarding staff movement and put in place mechanisms to track staff movement, (b) that PSC review clauses 5B1 and 5B2 of its Policy Instructions to clarify situations of

reimbursement and lastly that (c) the MOH, PSC and MFNP discuss the complainant's obligation in light of the current PSC and MFNP Instructions.

12. Talita Helu and the Waste Management Authority

This complaint dealt with the issue of dismissal. The complainant was dismissed based on the allegations of leaking WAL information to parties that are not privy to the information and therefore breaking confidentiality. The complainant was notified of the allegations brought against her and her suspension from duty while the investigation ensued.

The WAL handbook which employees abide by does not explicitly state a process for dismissal. However, the WAL CEO was reasonable in that he afforded the complainant an opportunity to be heard at every stage of the investigation including the suspension and before arriving at the decision to dismiss her.

As part of the recommendations, WAL was to amend its current WAL Handbook to include provisions that explicitly state dismissal procedures to ensure that employees of WAL are aware of such provisions and the processes that they could expect if they become a subject of disciplinary process. WAL accepted the recommendations.

13. Solo Iketau and Salesi 'Iongi and the Ministry of Internal Affairs

The complainants had been employed on the Regional Seasonal Employment ("RSE") scheme in New Zealand. They had lodged a complaint with the Ombudsman seeking their superannuation payout and tax refund that they had been advised they could claim once they returned to Tonga. While that complaint was being investigated, they had an opportunity to return to New Zealand on a short term work contract. However, the Ministry of Internal Affairs refused to let them go on this work based on the fact that they had complained about the Ministry. The result of the investigation was that

the complainant's should not have been refused the work. The Ministry should have clear RSE policies as to grounds of refusing work and in addition, that there should be clear complaints process for RSE workers.

14. Own Motion Investigation in the billing and disconnection practices of the Tonga Water Board

This investigation was conducted under the Own Motion powers of the Ombudsman under

The Ombudsman Act 2001 and was considered necessary given the number of complaints received about the Tonga Water Board ("TWB"). The investigation began with the Ombudsman meeting with the TWB Acting Chief Executive Officer, Sione Tutulu Finau where the Ombudsman discussed his intention to begin this investigation. Mr. Finau welcomed this investigation as he noted that this investigation will possibly highlight areas for service improvement. The investigation involved requesting information from the Tonga Water Board, a review of their policies and processes. Interviews with staff also was warranted to understand their work. At the end of the investigation a provisional report was sent to Mr. Finau with specific recommendations for improvement. Mr. Finau accepted the recommendations and in his written response to the Ombudsman outlined remedial action that the TWB had done and would continue to do to address the issues that had been raised.

15. Simone Mailau and the Homegas Limited

The complainant Mr Simone Tufui Mailau, was employed by Homegas Ltd ("Homegas") since 2005. Homegas is the distributor of liquid petroleum gas ("LPG"), and is a subsidiary of Tonga Power Ltd. Mr Michael Lani 'Ahokava joined Homegas as its new General Manager ("GM") on the 9th January 2017. He alleged to have identified significant losses of LPG. He blamed the complainant for the losses. He believed it is the

complainant's role as Terminal Supervisor to monitor the movement of LPG, and to ensure daily sales are recorded and manage the staff on the platform. The complainant disagreed, and a dispute over the complainant's role started, and was never resolved. The GM suspended the complainant on 28th March for one month without pay for failing to understand his duties. He was dismissed on 22nd April for a total different reason – for poor performance. In between the suspension and dismissal the complainant was never charged against the disciplinary process and procedures provided in the Homegas Staff Administration & Procedures Manual. The complainant appealed to the Chairperson of Tonga Power Ltd, but was referred back to the GM. A report was finalised on 20 April to which the GM agreed with its recommendations; 1. That, Homegas Staff Administration & Procedures Manual were not followed by the GM in the disciplinary actions of the complainant; 2. Homegas to consider remedial measures which may include compensating the complainant as a way of resolving this complaint and if so to discuss with the complainant a Deed of Release and Indemnity to signify the conclusion of the matter; 3. That the GM report back to OMB within two months of the date of report to provide a follow-up on the recommendations.

16. Ma'unga Falevai and the Ministry of Education and Training

Mrs Ma'ungakoloa Falevai ("the complainant") was a Senior Lecturer, Level 7 with the Ministry of Education & Training ("the Ministry"). She was Acting Chief Education Officer ("ACEdo") at the Ministry's Education Management Information System ("EMIS") from 3 February 2014 until her resignation 18 November 2015. She was dissatisfied with a Ministry's Staff Board decision of 30 June 2015, which approved that Mr Hepeti Takeifanga, Chief Education Officer ("CEdo") be laterally transferred from the Procurement Division to head EMIS as ACEdo effective on the same day, even though he was on leave without pay and away overseas at the time of the decision. The complainant believed her placement at EMIS by the CEO (at the time) Mrs 'Emeli Pouvalu, and the Hon. Minister (at the time) Dr 'Ana Taufē'ulungaki, was not temporary. She contested the decision on 23 July 2015. Notwithstanding the Staff Board decision, ACEO Tupou approved the complainant's acting was to continue from 1

July through 31 December 2015. However, in informing the Ministry of Finance & National Planning (“the Ministry of Finance”) of the complainant’s acting for allowance purposes, the Ministry overlooked to include the required “Substitution Form”. This failure delayed the complaint receiving the acting allowance, a failure that further frustrated the complainant. She waited 18 months before she received part of her acting allowance. The complainant applied for special leave without pay which the Ministry approved for 20 days. She travelled on the 19 November 2015 to the United States of America. She requested a further 12 month special leave without pay but this was not approved by PSC. She tendered her resignation on the 22 February 2016 the day she received the PSC decision of 5 February 2016. We concluded that the decision to put Mr Takeifanga back as Head of EMIS was reasonable, and that the complainant is a senior public servant who should enquire first with PSC before making her resignation, and then claimed to have been dissatisfied with the MET decision.’

D. Feedback

We do not seek feedback from the complainants but we are gratified when a “thank you” is received for work well done. Set out below are some of the feedback received during the year –

1. Kalafitoni Latu “...ko e fakafofonga’i atu pe ‘a e fakamalo mei he motu’a ni ‘i he ngaue lahi mo osi kia velenga hono toe uki mo e fakamanatu ‘a e mateaki’i ‘o e pule lelei...” Letter 17 August 2017
2. Sione Misinale “...fakaha atu...fekau’aki mo e ‘uhila ‘a Sione Misinale, kuo lava hono fkotu’u he ‘aho 21.8.17 ‘i Vaini...fakamalo atu ki ho’o mou tokoni ‘o lava ke solova ai ‘a e palopalema ‘i ha taimi loloa...” Letter 22 August 2017
3. Tapu Panuve “I write to extend the sincere thanks of the Board of TCC for the recent investigation conducted by your good office...we are thankful for the findings and recommendations...we the board have already acted on a number of the recommendations outlined in your very detailed report. The end result of the implementation of a number of these changes has seen a dramatic turnaround in the morale of the staff...happy staff deliver good results...please pass on my sincere gratitude to the Ombudsman...for the leadership and

guidance on the report. Your office serves a vital function in bringing about accountability under good governance and our board has seen first-hand the benefits of the vital and essential work that you do on behalf of our country..." Email 8 September 2017

4. Kotoni Fifita "ko au Kotoni kou fakamalo atu he tokoni kuo fai he kuo mau e me'a nau fakaamu ki ai, malo 'aupito sii tokoni..." Ucall text December 2017

5. Sione Masima "ko au Sione Masima, ko e 'ofisa kolo 'o Felemea. Ko e launga fekau'aki mo e 'ikai ma'u 'eku vahe...ko 'eni kuou 'osi fakafoki mai 'eku vahe pea kuou fakamalo atu he ngaue na'a mou fakahoko..." Ucall text 1 February 2018

E. Effective Outreach

We have continued to make this a priority of our work and is an all office effort and not just the Investigation Division. This year we recognised the importance of mixing our material up to maximize the message and provide some entertainment. To this end we added skits performed by the staff which has proved to be a success and has added to our skill set. At the same time we note that at the outreach events the decision makers are often not present owing to other commitments.

The Year in Outreach 2017/2018

Outreach Highlight of 2017/2018 Tonga's Inaugural Integrity March

This was organized by the Office of the Ombudsman, Tonga to promote transparency, accountability and principles of good governance in the public sector. The march was led by Hon. Fanetupouvavaú Tuivakano and the Speaker of the Legislative Assembly, Lord Tuivakano commencing from the Tonga High School rugby field to Vuna wharf. All the participants of the Anti-Corruption Investigation workshop participated and staff from Government ministries and public enterprises. There were approximately 500 participants. At Vuna wharf speeches were delivered by the Guest of Honour, Lord Tuivakano, Ms. Maria Adomeit from UNPRAC and Dr. Lia Maka, CEO of PSC. Participants were invited to join a float competition with slogans and designs to promote the principles of good governance.



Figure 1 The Integrity Float on Taufa'ahau Road



Figure 2 The Integrity March program at Vuna Wharf

Outreach to Tongatapu Villages

This year we decided to try and cover as many of the Tongatapu villages as we could given that previous village outreach had been to districts only. We also had more staff and more equipment to enable this exercise so we went in 3 teams of 3, Team A led by our CEO – Linda Folaumoetu'i covered the Nuku'alofa area, Team B led by Principal Investigation Officer Pilimisolo Tamo'ua covered the Hihifo Villages and Team C led by Director of Investigation Lepaola Vaea went out to the Hahake Villages. These visits were held after work and utilized the Church of Latter Day Saints Halls in an effort to reduce costs. The visits began in July 2017 and ended in August 2017. It was a mammoth exercise but we managed to cover 72 villages.

We used radio announcements to inform the public of the visits. Some of the meetings were well attended while others not so much, but we ensured that we were at least accessible to the public. The issues that were raised varied – from basic questions about what is the Ombudsman to frustration with Government services particularly land.

Village	Attendees	Village	Attendees
Niutoua	6, all male	Utulau	Door to door
Afa	9, all male	Matangiake/Mapelu	11, 4 male, 7 female
Kolonga	20, 7 male, 13 female	Tatakamotonga	6, 4 male, 2 female
Fatai/Matafonua	12	Alakifonua	3, 1 male, 2 female
Nukunuku	3, 2 male 1 female	Holonga	4, 3 male, 1 female
Kolomotu'a	5, 2 male, 3 female	Pelehake	3, all male
Sopu/Isileli	5, 4 male, 1 female	Malapo	35, 1 male, 34 female
Havelu	25	Vaini	10, 5 male, 5 female
Lakepa	27, 10 male, 17 female	Lomaiviti	37, 18 male, 19 female
Matahau	12, 4 male, 8 female	Kahoua	35, 14 male, 21 female
Manuka	11, 5 male, 6 female	Pahu	4, 2 male, 2 female
Navutoka	5, 1 male, 4 female	Halaleva	23, 14 male, 9 female
Talafo'ou/Makaunga	9, 2 male, 7 female	Pili	3, 2 male, 1 female
Halaovave	11, 9 male, 2 female	Fasi	29, 11 male, 18 female
Longolongo	20 1 male, 2 female	Fanga	3, 1 male, 2 female
Nukuleka	8, 3 male, 5 female	Vaini	6, 4 male, 2 female

Hoi	1, male	Nukuhetulu/Folaha	5, 5 female
Lapaha/Talasiu	10, 2 male, 8 female	Longoteme	1, 1 male
Houma	3 all female	Makapaeo	Door to door
Vaotu'u	Door to door	Liahona	157, 75 male, 82 female
Haveluliku	9, 3 male, 6 female	Veitongo	1, male
Fatumu	4, 1 male, 3 female	Ha'ateiho	20, 12 male, 8 female
Lavengatonga	4, 2 male, 2 female	Tokomololo	8, 5 male, 3 female
Fahefa	5, 4 male, 2 female	Pea	Door to door
Kala'au	26, 16 male, 11 female	Houmakelikao	6, 3 male, 3 female
Hofoa	9, 5 male, 4 female	Ma'ufanga	24, 10 male, 14 female
Puke	2, 1 male, 1 female	Ngele'ia	17, 7 male, 10 female
Tu'atakilangi	21, 12 male, 9 female	Popua	7, 5 male, 4 female
Kolofo'ou	2, 1 male, 1 female	Te'ekiu	Door to door
Tofoa	30, 22 male, 8 female	Masilamea	Door to door
Ha'asini/Hamula	7, 4 male, 3 female	Fo'ui	15, 8 male, 7 female
Nakolo	8, 6 male, 2 female	Ha'avakatolo	8, 4 male, 4 female
Fu'amotu	11, 4 male, 7 female	Kolovai	Door to door
Ha'alalo	14, 9 male, 5 female	Ahau	Door to door
Ha'akame	14, 8 male, 6 female	Kanokupolu	6 male
Mataika	7, 6 male, 1 female	Ha'atafu	12, 6 male, 6 female



Figure 3 Outreach at Fu'amotu



Figure 4 Outreach at Vaini

Outreach to Ministries and Public Enterprises

Extensive visits were made to the Ministries and Public Enterprises as per the table below.

DATE	MDA	MALE	FEMALE	TOTAL
06/07/17	Teaching & Learning Ngele'ia	5	11	16
13/07/17	Audit Office	18	14	32
28/08/17	MPE	11	5	16
28/08/17	MEIDECC	9	18	27
29/08/17	Customs	29	11	40
30/08/17	TAL	11	2	13
30/08/17	Prisons	80	8	88
30/08/17	TCC	22	21	43
04/09/17	MTCCIL	8	20	28
04/09/17	MIA	14	6	20
04/09/17	TBC	14	21	35
05/09/17	MRC	6	20	26
06/09/17	Fisheries	7	12	19
06/09/17	Tonga Fire & Emergency Services	38	4	42
06/09/17	Ports Authority	33	6	39
07/09/17	Tonga Cable	4	1	5
07/09/17	TDB	14	15	29

11/09/17	MAF	6	14	20
11/09/17	MOJ	4	4	8
13/09/17	Statistics Office	13	6	19
19/09/17	Foreign Affairs	2	7	9
20/09/17	Police (Nukunuku)	10	4	14
20/09/17	Health	2	10	12
20/09/17	Police (Mu'a)	23	6	29
21/09/17	Police (Nuku'alofa)	32	18	50
22/09/17	Police (Longolongo)	34	14	48
25/09/17	FISA	30	7	37
09/10/17	Tourism	5	13	18
	TOTAL	484	298	782

OUTREACH TO THE OUTER ISLANDS

Ha'apai (September 2017)

DATE	VILLAGE	MALE	FEMALE	TOTAL
25/09/17	Fonoifua	8	12	20
25/09/17	Mango	7	6	13
25/09/17	Nomuka	5	7	12
26/09/17	'O'ua	13	9	22
26/09/17	Tungua	9	3	12

26/09/17	Kotu	6	5	11
26/09/17	Matuku	2	7	9
26/09/17	Ha'afeva	5	2	7
27/09/17	Lofanga	21	5	26
27/09/17	'Uiha	14	4	18
27/09/17	Felemea	5	8	13
27/09/17	Pukotala & Fakakai	1	7	8



OUTREACH TO VAVA'U - 30/10 - 03/11/2017

DATE	Village	MALE	FEMALE	TOTAL
30/10/17	Talihau	3	8	11
30/10/17	'Utngake	0	2 kids	2
30/10/17	Toula	Door	To	Door
30/10/17	Real Tonga Airlines	3	0	3

31/10/17	Longomapu	2	2	4
31/10/17	Tu'anuku	Door	To	Door
31/07/17	Taoa & Vaimalo	1	5	6
31/10/17	Makave	Door	To	Door
01/11/17	Koloa	3	0	3
01/11/17	Holeva	0	4	4
01/11/17	Tu'anekeviale	Door	To	Door
01/11/17	Ta'anea	Door	To	Door
01/11/17	'Utulei	8	6	14
02/11/17	Feletoa	Door	To	Door
02/11/17	Mataika	6	6	12
02/11/17	Holonga	Door	To	Door
02/11/17	Houma	Door	To	Door
03/11/17	Ha'akio	Door	To	Door
03/11/17	Mangia	0	4	4
03/11/17	'Utui	Door	To	Door
03/11/17	Okoa	Door	To	Door



OUTREACH TO 'EUA – April 2018

DATE	MDA	MALE	FEMALE	TOTAL
09/04/18	MIA, MEIDECC and Statistics	2	2	4
09/04/18	Sainai Prison	11	0	11
10/04/18	'Eua High School	66	67	133
10/04/18	Ministry of Police	5	2	7
12/04/18	Ministry of Infrastructure	5	1	6
12/04/18	Ministry of Finance, TDB, Tourism & Commerce/Labour	4	4	8
12/04/18	Hofangahau College	2	12	14
12/04/18	Hango College	25	11 + 1 kid	37
12/04/18	Tonga Power Ltd	30	6 + 1 kid	37
	TOTAL	150	107	257



OUTREACH TO HA'APAI – May 2018

DATE	MDA	MALE	FEMALE	TOTAL
29/05/18	GOVERNOR OFFICE, MOI, MFNP, MCCTIL, MLNR, MIA, MEIDECC(NEMO)	7	5	12
29/05/18	Fale'one Prison	9	0	9
29/05/18	TCC	2	6	8
29/05/18	TPL	9	1	10
29/05/18	Pangai District	5	3	8
30/05/18	MAFFF	7	6	13
30/05/18	Police	6	0	6
30/05/18	Ha'apai High School & USP	4	8	12
30/05/18	TWB	7	2	9
30/05/18	Tongoleleka	9	0	9
31/05/18	Sangato Sosefo College	3	8 + 73	84

			children	
31/05/18	MET Primary School	2	0	2
31/05/18	Koulo	1	1	2
31/05/18	TAL	12	0	12
31/0/18	Lotofoa & Faleloa	Door	To	Door
01/06/18	TDB	4	4	8
01/06/18	MOI	0	1	1
01/06/18	FISA	1	1	2
01/06/18	MOH (Niu'ui Hospital)	2	14	16
01/06/18	Fotua & Fangale'ounga	16	14	30



OUTREACH TO VAVA'U – June 2018

DATE	MDA	MALE	FEMALE	TOTAL
16/06/18	Talihau, 'Utungake & Pangaimotu	Door	To	Door

18/06/18	Governor's Office	13	7	20
18/06/18	Ha'alefo Prison	11	0	11
18/06/18	Neiafu	9	1	10
19/06/18	Customs & Revenue	9	13	21
19/06/18	Kakala Rubbish Dumpsite	S I T E	V I S I T	= 1
19/06/18	Tongan Beach Resort	S I T E	V I S I T	= 2
19/06/18	Leimatu'a	11	17 + 1 child	29
20/06/18	MOI	12	5	17
20/06/18	Vava'u High School	17	20	37
20/06/17	Ha'alaufuli	5	8	13
21/06/18	Pangaimotu	7	13 + 1 child	21
21/06/18	'Utulei Harbour Channel	S I T E	V I S I T	= 3
21/06/18	Tefisi	14	9 + 2 child	24



OTHER OUTREACH ACTIVITIES

Newsletter and Newspaper articles



Figure 5 Ombudsman Newsletter



Figure 4 Ombudsman Talaki Newspaper Article

Newsletter	Date Distributed	Newspaper Articles - Talaki	Date
July 2017	8/8/17	"Fanguna 'a e 'Ompatimēni"	July 2017
August 2017	8/9/17	"Mahu'inga ke Tohi 'a e Tu'utu'uni Ngaue"	September 2017
September 2017	6/10/17	"Ko e Taki Lelei 'a e Taki 'oku Angatotonu"	October 2017
October 2017	3/11/17	"Muimui ki he Lao kae Tau'ataina 'a e Fakahoko Fatongia"	January 2018
November 2017	12/12/17	Ngaahi Fatongia 'o e 'Ompatimēni"	February 2018

January–February 2018	20/3/18	“A’ahi ‘a e ‘Omipatimeni ki ‘Eua”	April 2018
March–April 2018	8/5/18	“Lipoofo ki he Fakatotolo fekau’aki mo e founga tohi mo’ua mo e founga tu’usi vai ‘a e Poate Vai ‘o Tonga”	May 2018
May–June 2018	3/7/18	“A’ahi ‘a e ‘Omipatimeni ki Ha’apai”	June 2018

RADIO TALKBACK



Radio Station	No. Callers	Date of program
A3Z AM	16	11/7/17
87.5 FM	4	11/8/17
87.5 FM	17	20/9/17
A3Z FM	11	7/11/17
A3Z AM	6	24/5/18
<i>TOTAL</i>	<i>54</i>	

SOCIAL MEDIA



Facebook Insights 2017-2018

Month	Total Page followers	Total Post Liked	Total Post reached
July 2017	381	391	383
Aug 2017	435	440	901
Sep 2017	466	466	432
Oct 2017	503	503	504
Nov 2017	532	525	88
Dec 2017	549	544	90
Jan 2018	567	546	93
Feb 2018	617	600	83
Mar 2018	669	659	217
Apr 2018	714	709	306

May 2018	762	758	568
June 2018	835	825	534
July 2018	929	931	153

Twitter Analytics 2017-2018

Month	Tweets	Profile visits	Tweet impressions	New followers	Mentions
July 2017	1	2	8	0	0
Aug 2017	19	208	2,819	47	4
Sep 2017	29	174	7,264	28	3
Oct 2017	24	251	6,644	31	16
Nov 2017	5	67	3,788	30	5
Dec 2017	2	75	1,748	18	5
Jan 2018	22	107	5,810	18	7
Feb 2018	10	102	4,928	30	2
Mar 2018	12	105	7,359	29	10
Apr 2018	16	162	8,195	16	1
May 2018	33	129	10.2k	13	10
Jun 2018	14	43	4,777	22	2
Jul 2018	11	118	7,267	18	5

F. The Team

For most of the year, the Investigation Team comprised of 5 investigators and 2 support staff and we were joined by our new investigator – Mosese Uili in June 2018.

Position	Name	Date of Appointment
Director of Investigations	Mrs. Lepaola B. Vaea, LLB	July 2016
Principal Investigation Officer	Mr. Pilimisolu Tamoua	April 2003
Principal Investigation Officer	Mr. Roman Vaihu, LLB	July 2016
Senior Investigation Officer	Mrs. Mele'ofa Mohenoa, BA	October 2015
Investigation Officer	Mrs. 'Elisiva E Lui, LLB	November 2016
Investigation Officer	Mr. Mosese Uili, BA	June 2018
Computer Operator	Mrs. Mo'onia Taufua	2001 (founding staff member)
Driver	Mr. Tevita B. Kava	March 2017

G. The Year Ahead

With the increasing work load, it is important that the Investigation Team is appropriately staffed and trained. To this end continuing education and training is a focus and attachments in New Zealand and Australia are planned. The Office also has a monthly in-house training session and a quarterly guest speaker which has proved invaluable to maintaining focus and relevance. There is also avenue to engage experts to conduct investigation training.

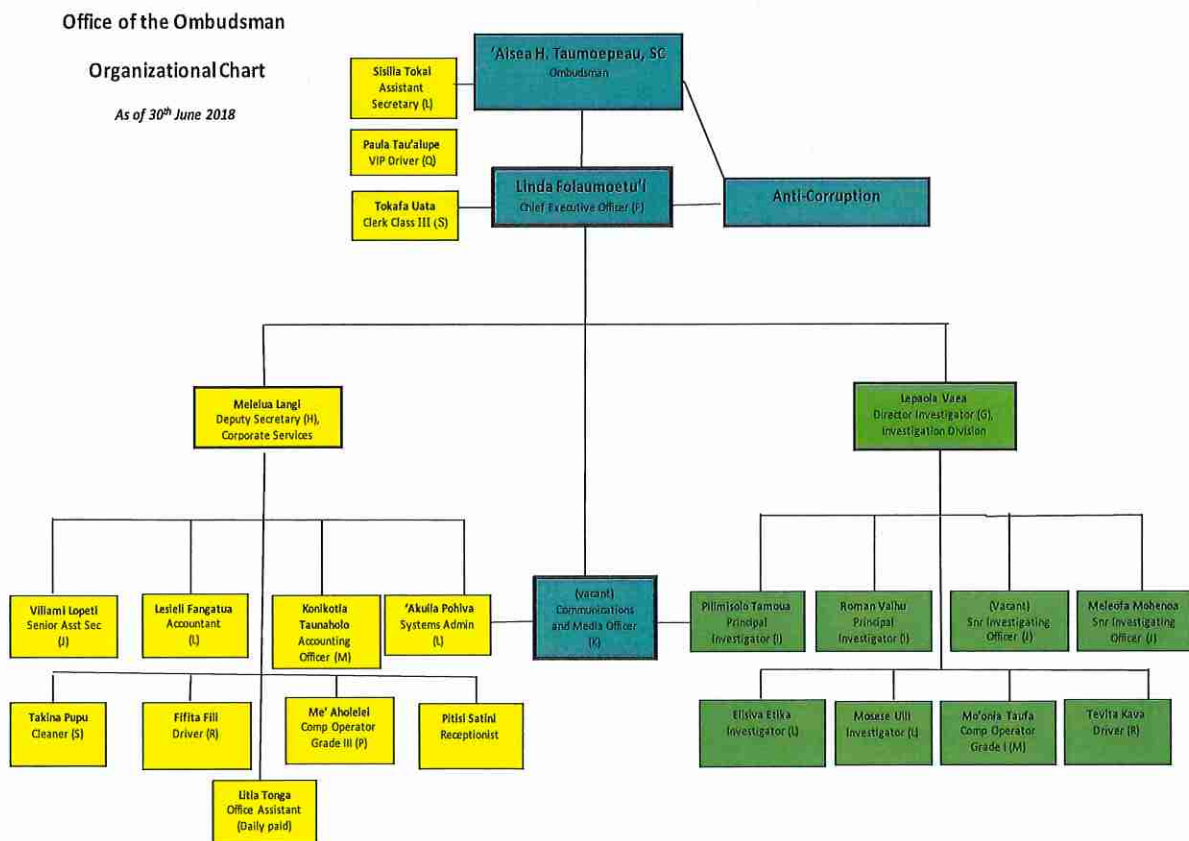
The focus will continue to be effective and efficient complaint system for the people of Tonga. In the 2018/2019 financial year outreach is no longer led by the Investigation Division but a Communications Officer is being recruited to lead. We will assist as required.

Regarding the investigation process, we are committed to streamlining and reviewing our processes and included in the budget for 2018/2019 is a new initiative to create a Case Management System for the complaints and investigations. We hope that this will be completed and implemented in the next financial year.

4. OUR PEOPLE

4.1 Organizational Structure

The organizational structure of the OMB Office is displayed here in this chart. As outlined in the organizational chart and as of the end of this reporting period – 30th June, 2018, the Ombudsman heads an office which consists of a Chief Executive Officer, twenty-three (23) permanent staff and one (1) daily paid staff.



4.2 Staff Matters

New Appointments

During the Fiscal Year (FY) 2017/2018, the Office of the Ombudsman had nine (9) job vacancies. New vacant posts that were added to our staff list included an Accountant, and a Communications and Media Officer. By the end of the FY, the Office completed six (6) successful recruitments, two of them being a promotion. A promotion can take place internally or through a transfer of staff from another government ministry. The following vacant posts were filled.

Figure 4.1 New Appointments

Staff Post	Staff Member	Recruitment Date
Accountant	Lesieli Fangatua	July 2017
Receptionist	Pitisi Satini	September 2017
Senior Investigation Officer	Meleofa Mohenoa	October 2017 (promotion)
Principal Investigation Officer	Roman Vaihu	November 2017 (promotion)
Accounting Officer	Konikotia Taunaholo	May 2018
Investigation Officer	Mosese Uili	June 2018

Since Meleofa Mohenoa was promoted, her previous post of Investigation Officer was vacated. Roman Vaihu was also promoted from Senior Investigation Officer to fill the Principal Investigation Officer post.

It is also noted that our former daily paid laborer, Pitisi Satini, applied for the permanent post of Receptionist and was selected as the successful candidate.

Resignation from the Office of the Ombudsman

Throughout this 12-month reporting period, there has been one (1) staff that has resigned. Due to family commitments and plans, Mr. Lea'asi Tonga, Accounting Officer, resigned from the office in February 2018.

Retirement

Ms. Takina Pupu, Cleaner, has reached retirement age of over 60 years old and fortunately, the Ombudsman approved her request for extension of service for an additional 6 months. She will complete her service with our office at the end of the 2018 calendar year.

4.3 Workshops, Conferences, Trainings and Guests

The Office of the Ombudsman continues to encourage development and advancement of our staff. This can take place through attendance of workshops and conferences, training programs and attachments.

Figure 4.2 – The following table outlines the *overseas* meetings/workshops.

Date	Meeting/Workshop	Attended by.
22–30 September 2017	International Ombudsman Institute Workshop for National Preventative Mechanism (NPM) “Communication Skills and Techniques” in Vienna Austria	Director of Investigation
5–10 November 2017	Study tour to the Samoa Ombudsman	CEO, Senior Investigation Officer, Computer Operator Grade I
25–30 November 2017	29 th Australian and Pacific Ombudsman Region (APOR) Conference in Perth Western Australia	Ombudsman, CEO, Senior Investigation Officer
November 2017	Pacific Regional Workshop on Monitoring Sustainable Development Goal 16 in Suva Fiji	Director of Investigations
28 February – 2 March 2018	First Pacific Integrity Network working Group Meeting in Brisbane Australia	Principal Investigation Officer
23–31 March 2018	Study tour to the Ombudsman Office in Vanuatu	Ombudsman and Assistant Secretary/PA to the Ombudsman
2–6 March 2018	Meeting with independent Auditor to discuss audit matters in Auckland New Zealand	CEO
18–28 May 2018	Australia and New Zealand Ombudsman Association (ANZOA) Conference in Wellington New Zealand	Ombudsman, Principal Investigation Officer and Investigation Officer



Training/Work Attachments

Management looks into opportunities for training attachments and courses that would be of benefit for staff. The following are trainings/attachments, local and overseas, that took place. Every month there are also ongoing in-house trainings conducted for both Corporate and Investigation divisions and respective staff are designated to lead these discussions.

To note, an application was submitted to the New Zealand High Commission in Tonga for a Short Term Training Award (STTA) for one of our Investigators, Mrs. Elisiva Lui, to be attached to the NZ Ombudsman Office. We were pleased to be informed of her successful application for placement with the New Zealand Ombudsman office in Auckland NZ.

Figure 4.3 Training & Work Attachment

Date	Training	Attended by.
July 2017	Gathering Evidence/ Types of Evidence/ Analyzing Evidence and Evidentiary rules presentation to the Investigators	Investigation Division
August 2017	Confidentiality Procedures / Privacy and Confidentiality breach procedures presented by the CEO; The Ombudsman also explained to all staff the Royal Decree regarding the dissolution of Parliament and how this will not affect the mandate of our office	All Staff

10 th August to 9 th of September 2017	Short Term Training Award attachment to NZ Ombudsman Office in Auckland NZ. Visit to review role & functions of the Ombudsman in Auckland New Zealand with a one day visit to Wellington Headquarters Office.	Investigation Officer
22 nd August 2017	Basic Investigation Training conducted by Tonga Police Officers, Superintendent Filipe Fifita and Senior Police Constable Alifeleti Takataka	Investigation Division
22-24 August 2017	MEIDECC facilitated a workshop on Cyber Crime awareness	Systems Administrator
September 2017	The Ombudsman presented on the topic of Ombudsman's jurisdiction and discretion/Making a recommendation to the Investigation Division	Investigation Division
September 2017	The CEO gave a presentation on Grievance Processes and on the Ombudsman Staff Policy Manual	All Staff
October 2017	Silia Tokai gave a presentation on her work experience within government and also with the Ombudsman office. Elisiva gave a presentation on her short term training attachment to the New Zealand Ombudsman Office.	All Staff
16-19 October 2017	Integrity Systems in the Pacific; A Systems Workshop and Anti-Corruption Regional Training Workshop for Investigating Cases of Corruption in Nuku'alofa at the Tanoa Hotel	Investigation Division, 40 participants from 14 Pacific Island countries
November 2017	A joint presentation was given by the CEO on	All Staff

	Samoa's Ombudsman Act compared to our Act and Roman Vaihu gave a presentation on the Special Investigation Unit and Human Rights mandate in Samoa's Ombudsman office. Moonia Taufu gave a presentation on the case management database and outreach programs to Vava'u and Samoa.	
December 2017	A Pacific Network 21 workshop was hosted by the Tonga Communication Corporation, in support from the Australian Government. This was held locally in Nuku'alofa.	Systems Administrator
February 2018	The Ombudsman gave a presentation on our new Ombudsman Staff Policy Manual	All Staff
March 2018	Pilimisolo Tamoua gave a presentation on a case study of the TCC complaint from 2016	Investigation Division
7-14 April 2018	Training course – ITIL Foundation and Microsoft Access Essential Training hosted by Auldhouse NZ in Auckland New Zealand	Systems Administrator
24 April 2018	Our Office wardens Roman and Akuila gave a presentation on emergency procedures of the office. Akuila also gave a presentation on the IT training he attended in Auckland NZ	All Staff
30 April – 7 May 2018	Pacific Integrity Network (PIN) training on project management and leadership in Brisbane Australia	Deputy Secretary and Principal Investigation Officer
June 2018	Melelua Langi and Viliami Lopeti gave a presentation on the following topics. PMS evidence, Customer Service and Time Management	All Staff



Office of the Ombudsman Planning Retreats

Our Office organize two retreats per financial year and these are considered planning and team building events. During this financial year, the first took place on the 15th of September 2017 at Vakaloa Resort in Kanokupolu. This full day retreat brought staff together to focus on our Corporate Plan targets and review our annual management plan, noting how each individual staff member contributes to the achievement of our office objectives and goals. Staff would be better prepared to focus on their respective roles and strive to be more efficient and effective.

In March of 2018, a second retreat was planned and took place at Scenic Hotel in Fuaamotu. This retreat was scheduled for February 2018, but due to Cyclone Gita, we had to postpone to a later date.



During this retreat, we discussed targets and outputs that have been achieved and looked at areas that could be improved in our work. We also allocated time to break up into our Sub-Programs to review our outputs/sub-outputs and make necessary amendments for the new financial year.

Visitors and Guest Speakers to the Office of the Ombudsman

Our office is always happy to receive guests. This gives us an opportunity to share information about our work. The Ombudsman invites a guest speaker to address the whole OMB staff quarterly. This is usually held during the last month of the quarter before our OMB all staff monthly meeting. The Speakers that were invited have experience in good governance, retired public servants, and people from relevant agencies within government or public enterprises. The objective of this initiative is for these learned speakers to share their experiences in their work and life. In turn we were able to learn and to ask questions on relevant topics relating to our work.

Figure 4.4 Visitors & Guest Speakers to the Office

Date	Guests/Visitors	Purpose
October 2017	Guest Speaker, Mrs. Alisi Taumoepeau – former Minister of Justice, Attorney General and legal practitioner	Spoke to the staff on the principles of good governance in the public sector
November 2017	Guest Speaker, Mr. Pita Vuiki – Election Supervisor	Presentation about the election process and how relevant good governance principles are to such process
Quarter 3 – March 2018	Guest Speaker, Ms. Nicola White – Independent Auditor from New Zealand	Engaged to work on auditing matters for cases within the office and presented her experience and expertise in good governance, good practices, fairness throughout her career
Quarter 4 – June 2018	Guest Speaker, Mr. Kelepi Makakaufaki – retired Public Service Employee, former CEO of the Establishment Office (currently known as Public Service Commission)	Presentation on his experience within government and matters relating to promoting and encouraging

5. Our Performance

5.1 Corporate Plan Outputs and Targets

Our Corporate Plan for 2017/18 FY was amended to reflect. Management of the office focused their efforts on achieving goals that were set and these are outlined in the tables below.

Figure 5.1 Corporate Plan Outputs & Targets

Output	Sub-Output	Targets/Activities Achieved
Output 1, Leadership & Policy Advice	Sub-output 1, Leadership & Policy Advice	<ul style="list-style-type: none"> –Presented OMB CP/AMP at LA –Assisted Speaker of LA during the deliberation of OMB Budget at LA –Finalized, submitted and presented OMB Annual Report to LA
	Sub-output 2, Overall Management of OMB Operation	<ul style="list-style-type: none"> –Presented OMB CP/AMP and Budget to Ombudsman –Presented Annual Report to the Ombudsman –Managed the Budget performance of the

		OMB to ensure its in line with the CP/AMP
Output 2. Budgeting, Planning and Reporting	Sub-output 3. Quality Budget, Planning and Reports	<ul style="list-style-type: none"> - Good Governance awareness programs presented to various MDAs -Recommendations are adopted by stakeholders
Output 3. Finance, Procurement and Assets Management	Sub-output 4. Annual Cashflow forecast	-prepared ACF and submitted to CEO and MOFNP on time
	Sub-output 5. Procurement Services	-facilitated the purchase and payments of OMBs good & services above the threshold
	Sub-output 6. Asset Management	-accurately updated assets in a timely manner
Output 4. Human Resources and Logistic Services	Sub-output 7. Logistic support services	-facilitated the logistics needs for staff
	Sub-output 8. Recruitment Services	-facilitated the recruiting of the vacant posts
	Sub-output 9. IT Services	-maintained and troubleshoot office equipment
	Sub-output 10. Reporting	<ul style="list-style-type: none"> -attend weekly meetings -submit monthly/weekly reports
	Sub-output 11. Staff Assessment	-conducted PMS assessments and monitor performance regularly
	Sub-output 12. Customer Satisfaction (Internal & External)	-established monitoring systems appropriately
Output 5. Training & Capacity Development	Sub-output 13. Staff Training (Internal & External)	-conducted training for all staff to know their role in office and build their capacity
Output 6. Investigation Services	Sub-output 14. Complaints	-Developed new outreach program
	Sub-output 15. Own motion investigations	-Facilitated new outreach program
	Sub-output 16. Outreach	-Carried out new outreach programs
	Sub-output 17. Monitoring	-Increased visibility of the OMB office to the public
	Sub-output 18. Staff Training	-Website and Social media avenues are active

5.2 Financial Performance

The budget allocated from the Government to the Office of the Ombudsman increased from previous years. T\$1,756,714 was the allocated budget for this FY and the total expenditure was T\$1,477,889. That is 84% of the total budget that was spent throughout the year.

As the budget is allocated to staff salaries and operations, we are pleased that we were able to fill 6 vacant posts, as mentioned above. Two of which were internal promotions. Various activities and events took place throughout the financial year and we had sufficient funds to cater for these events. Notable events that was funded through our budget included the hosting of the NZ Chief Ombudsman's visit to Tonga, the first Inaugural Integrity March, two office retreats to review approved Corporate Plans and draft the new plans for the following financial year,

The procurement process was followed for two transactions to include the purchase of two multi-function copier/printer machines and also the recruitment of a Consultant to assist with assessment of cases. We are pleased that this financial year, we have been 100% compliant with the procurement processes and procedures of the Ministry of Finance.

6 Challenges and Way Forward

6.1 Challenges

The Office of the Ombudsman continues to strive to improve in its respective work. We have recognized the need to have closer working relationships with the Ministry of Finance and the other Integrity organisations of Tonga. Although we are no longer staff that follow the Public Service Commission regulations, we continue to liaise with their office as the need arises, to discuss and confirm policies and processes that may still be relevant to our office. We appreciate the ongoing assistance given from these offices.

6.2 Way Forward and Conclusion

The Office of the Ombudsman continues to promote increased transparency and accountability and believes that all institutions in government can be partners in this aspect. We take pride in our effective working relationships with government organizations and public enterprises. We acknowledge the support we receive from the leadership of these establishments and are pleased when we all have a common understanding to support good governance initiatives in our work. We do our best to reach out to the communities and villages and we appreciate that they take time to get to know and understand our work as well.

We look forward to a new year of strengthening our relations with all stakeholders from government and the people of Tong

Ombudsman Staff 2017–2018



7 Acknowledgement

"The Office of the Ombudsman continued its vigorous endeavours through its outreach programs which included visits to the outer islands, villages, schools and to Government Ministries and Public Enterprises to inform all stakeholders about our roles and functions coupled with promotion of good governance principles. Other mediums used were through the radio, newspapers and newsletter, Office website, Facebook, Twitter and YouTube. This vigorous program would not have been successful without the cooperation and assistance of Chief Executive Officers of all Government Ministries and Public Enterprises, Town and District officers, church officials, school administrators and the public. Further the office recognizes the significant role government has played in its support to strengthen the Office through its budget and resources and in enhancing the Office's policies and legislative reforms. In the past 18 months there was a clear exponential growth in the number of complaints which is a result of collaborative working relationship between the Office and its stakeholders and we are indeed grateful to all stakeholders in this respect.

We greatly anticipate the continuation of the established close working relationship that we have with stakeholders during this new year and that all will strive to promote good governance practices in carrying out their administrative roles for the betterment of Tonga.

8 Appendix 1

IN THE SUPREME COURT OF TONGA CV 54 of 2016
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Defendant's Consent
10/11/16
Scan, insert & file.

BETWEEN : RIZVI JURANGPATHY

Plaintiff

AND: COMMISSIONER FOR PUBLIC RELATIONS

Defendant

BEFORE LORD CHIEF JUSTICE PAULSEN

Counsel: Mr. W. Edwards Jnr for plaintiff
Mr. 'A. Kefu SC for defendant

Date of Hearing: 10 and 11 November 2016

Date of Ruling: 21 November 2016

RULING

Nature of the case

- [1] The plaintiff is the Chief Executive Officer of the public enterprise, Tonga Communications Corporation (TCC). His conduct in that role is the subject of an investigation by the defendant (the Commissioner) under the *Commissioner for Public Relations Act 2001* (the Act).
- [2] Prior to the commencement of the Commissioner's investigation, the plaintiff filed a defamation action in the Magistrates' Court against the Newspaper Kele'a, a member of the Legislative Assembly, Mr. Mateni Tapueluelu, the publisher of the Kele'a, Mrs. Laucala Tapueluelu, and the

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editor of the Kele'a, Mr. Ofa Vatikani. He says the issues arising in the defamation action and in the Commissioner's investigation are substantially the same and he is seeking an interim stay of the Commissioner's investigation until his defamation action has been heard and determined.

- [3] The plaintiff also argues that the Commissioner has exceeded his powers in the conduct of his investigation and has failed to observe natural justice. As a second cause of action he is seeking a declaration that the investigation is vexatious and an abuse of process or has been conducted unfairly in excess of jurisdiction.
- [4] Finally, the plaintiff seeks an order that an affidavit of Mrs. Fololeni Tolu, which the Commissioner has before him, be released to him so that he may commence a prosecution against her for perjury.

The facts

- [5] In comprehensive submissions Mr. Edwards set out the facts in detail. There is no need for me to do so to the same extent for the purposes of this ruling.
- [6] In June 2015, Mr. Mateni Tapueiuelu made allegations against the plaintiff which were subsequently the subject of an article in the Newspaper Kele'a. The allegations were, broadly speaking, that in his capacity as the Chief Executive Officer of TCC the plaintiff had committed indecent acts upon, and was having affairs with, staff members, was

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misusing funds of TCC and dismissing employees for improper reasons. The plaintiff denied the allegations.

- [7] On 13 July 2015, the Prime Minister, Hon. S. 'Akilisi Pohiva, wrote to the plaintiff to express his serious concerns about the plaintiff's conduct as CEO of TCC. He recommended that the plaintiff resign. The Prime Minister wrote:

The weigh [sic] of these allegations such as the misuse of position, company resources, invading the private calls of customers including the indecent moral [sic] behaviour, is a serious breach of public trust in the public enterprise.

- [8] The plaintiff did not resign. In response to the publication of the allegations in the Kele'a he commenced his defamation action in the Magistrates' Court, which is presently part heard.
- [9] Mr. Tapueluelu then referred the allegations to the Commissioner under section 11(1) of the Act. The Commissioner was of the view that Mr. Tapueluelu was not a person affected for the purposes of the section but otherwise considered the allegations fell within his functions and should be investigated. In August 2015, the Commissioner decided to conduct an own motion investigation (section 11(2) of the Act). However, following submissions from the plaintiff's lawyer the Commissioner put his investigation on hold pending the completion of the defamation action.

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- [10] There the matter might have rested but that on 15 July 2016 the Prime Minister wrote to the Commissioner advising that he had received a complaint against the plaintiff from more than 60 employees of TCC (the complaint) and asking the Commissioner to consider the matter and provide advice as to the appropriate action to be taken in respect of the plaintiff. The complaint from the TCC employees listed seven specific issues of concern including disrespectful and inappropriate conduct towards female staff, inappropriate touching, kissing and texting of female staff, buying a car for a staff member the plaintiff was dating and buying an air ticket at the request of a female staff member he was dating. The complaint also referred to divisions within TCC, which it was said were mainly a result of the behaviour of the plaintiff, and that attempts to have the employees' concerns addressed within TCC had failed and were swept under the carpet. The complaint also noted that there were other matters the employees wished to raise.
- [11] The Commissioner regarded the Prime Minister's letter as a referral by the Prime Minister under section 11(3) of the Act. On 29 July 2016, he wrote to the Prime Minister that he consented to an investigation, which he would commence forthwith.
- [12] Incidentally, on 26 July 2016 the Board of TCC also referred the TCC employees' complaint to the Commissioner for investigation. The Commissioner has acknowledged that referral. The Board of TCC has put the plaintiff on

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suspension pending the outcome of the Commissioner's investigation.

[13] On 29 August 2016, the Commissioner advised the plaintiff that he had received a complaint against him and summoned him to provide information. The plaintiff was questioned on 1 September 2016.

[14] The Commissioner's office has been conducting its investigation. To date this has involved interviews with over 70 people. I understand that the investigation has some way to go before it will be complete.

The application for an interim stay

[15] The plaintiff submits that in the defamation action the Magistrate will have to resolve issues of fact which are also the subject of the Commissioner's investigation. Examples include whether the plaintiff is having an affair with a staff member, whether he acted indecently towards female staff and whether he bought a car for a female employee he was dating.

[16] Mr. Edwards argued that it is "all a little too convenient" that when Mr. Tapueluelu and his wife were served with the defamation proceedings the Prime Minister, who is the father of Mrs. Laucala Tapueluelu, should receive the same complaints from TCC employees and require the Commissioner to investigate the plaintiff. The plaintiff considers that the making of the complaints and the referral

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of them to the Commissioner has been driven by Mr. Tapueluelu and others close to the Prime Minister who have their own agendas and interests to protect. It is unfair, he says, that he should have to fight the allegations on two fronts.

- [17] The plaintiff also argues that because of the procedures adopted by the Commissioner, where there is no hearing and he has no right to call witnesses or cross-examine, it is highly likely that the Magistrate and the Commissioner will reach different conclusions on common issues of fact which will undermine the function of the judiciary.
- [18] Mr. Edwards referred me to a number of cases concerning applications to stay or adjourn court proceedings where there were concurrent proceedings involving the same issues before distinct tribunals or courts (*Slough Estates Ltd v Slough Borough Council and Another* [1967] 2 All ER 270, *Airport Restaurants Ltd v Southend on Sea Corporation* [1960] 2 All ER 888, *Thames Launches Ltd v Corporation of the Trinity House of Deptford Strand* [1961] 1 All ER 26 and *The Royal Bank of Scotland Ltd v Citrusdal Investment Ltd* [1971] 3 All ER 558).
- [19] These cases concerned the court exercising its undoubted jurisdiction to order a stay or adjourn proceedings to prevent abuses of its processes. That jurisdiction arises under the inherent jurisdiction of the court or is conferred by court rules. The plaintiff is not seeking a stay of a court proceeding. He seeks a stay of an investigation of the

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Commissioner. Therefore the issues arise whether jurisdiction to order a stay exists and, if so, upon what it is based.

- [20] The courts have recognised and exercised jurisdiction to supervise the administration of justice over subordinate tribunals performing judicial functions. This has included ordering a stay to prevent an abuse of process where the court is satisfied that the continuation of a proceeding would involve unacceptable injustice (*Walton v Gardiner* (1992-1993) 177 CLR 378, *R v Chief Constable of Merseyside Police; Ex parte Calveley* [1986] QB 424 and *Herron v McGregor* (1986) 6 NSWLR 246, 254).
- [21] These cases concerned judicial tribunals, which are typically charged with receiving and investigating complaints, determining them by adopting conventional court processes and, upon finding a complaint proved, imposing a disciplinary or other sanction.
- [22] I accept that in Tonga such jurisdiction is conferred on the Supreme Court by section 5 *Supreme Court (Amendment) Act 2012*, which provides that the Supreme Court has the same powers for the time being vested in the High Court of Justice of England and Wales. However, in my view such jurisdiction must be confined to tribunals exercising a judicial function (for the indicia of which see *NSW Bar Association v Mulrhead* (1988) 14 NSWLR 173, 208-214, 215-216) and such jurisdiction is subject, of course, to contrary statutory direction. My present view is that the

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Supreme Court does not have jurisdiction to order a stay of the Commissioner's investigation for these reasons.

- [23] First, the Commissioner is not exercising a judicial function, for reasons I will set out below.
- [24] Secondly, the existence of such jurisdiction appears contrary to section 20 of the Act, which provides that proceedings before the Commissioner are not to be subject to any challenge in any court except on the ground of a lack of jurisdiction. The plaintiff does not advance an argument that the stay should be ordered because of a lack of jurisdiction.
- [25] Thirdly, whilst I accept that the court might in judicial review proceedings make an order prohibiting the Commissioner from proceeding with an investigation in excess of his powers, the plaintiff would need to obtain leave of the court before commencing such an action (O. 39 *Supreme Court Rules*) and has not done so here.
- [26] In any event, had I considered jurisdiction did exist to grant a stay I would not have granted one. The plaintiff's application is based on the premise that the proceedings before the Magistrates' Court and before the Commissioner are in truth between the same parties and concern the same issues. I do not accept this submission.
- [27] In relation to the identity of the parties, none of the defendants in the Magistrates' Court action are involved in

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the investigation before the Commissioner. I do not accept the submission Mr. Edwards made that I should regard the Prime Minister (or the TCC employees) as doing the bidding of Mr. Tapueluelu. There is nothing at all to suggest to my mind that the Prime Minister is motivated by anything other than the best interests of TCC.

[28] In relation to the alleged commonality of issues, whilst I accept some common questions of fact will arise, that is as far as the similarities extend. The proceedings before the Magistrates' Court and the investigation before the Commissioner are of a very different nature, involving different enquiries, utilising fundamentally different processes and ultimately will result in very different outcomes.

[29] The action before the Magistrates' Court is obviously a judicial proceeding. The processes the Magistrates' Court must follow are those conventionally adopted by courts involving an adversarial contest where there is a hearing, the parties have a right to be present and may call evidence, cross-examine and address the court on the law or the facts. The principal questions for determination are whether the plaintiff has been defamed and, if so, what monetary compensation will right that wrong. The Magistrates' Court's decision is, subject to rights of appeal, final and binding on the parties. The decision will itself create new rights enshrined in the judgment of the court which will be the basis for further action or enforcement.

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[30] On the other hand, the Commissioner's investigation is not a judicial proceeding. The Commissioner decides what inquiries are to be made and it is not necessary for the Commissioner to hold a hearing (section 14(1) of the Act). There is no right for the subject of an investigation, or any other person interested in the matter, to be heard or to call evidence or to cross-examine witnesses (s.14(3) of the Act). The Commissioner and his staff are bound by secrecy obligations in respect of all matters which come to their knowledge in the exercise of their functions, which will of course include evidence from people interviewed in the course of an investigation (section 17(1) and (3) of the Act). The Commissioner is not concerned with questions of liability or compensation. The purpose of the investigation is to right administrative wrongs in the public sector and to promote open and accountable government. The Commissioner can only report and make recommendations; he cannot issue binding rulings (sections 11(3) and 18 of the Act). His findings are not subject to reconsideration or appeal (except by way of judicial review) and no new rights are created. The plaintiff's rights will remain unaffected regardless of the Commissioner's findings.

[31] I do not see any basis for the plaintiff's contention that he is prejudiced because the Commissioner's investigation is proceeding at the same time as his defamation action. Mr. Edwards submitted that there was a risk that should the report of the Commissioner be issued before the judgment of the Magistrates' Court the Board of TCC might rely on his findings to dismiss the plaintiff. There is nothing in this

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point. The Board could not rely on the findings of the Magistrates' Court or the Commissioner to conclude that there are grounds to dismiss the plaintiff. The Board would be required to reach a decision based on its own inquiries.

[32] Nor can I see any basis in logic or in the evidence for the submission that it is likely that the Magistrates' Court and the Commissioner will reach different conclusions on the facts. However, should that prove to be the case, the plaintiff's rights under the ruling of the Magistrates' Court will not be affected.

[33] The application for a stay is refused.

Affidavit of Fololeni Tolu

[34] The plaintiff learned of a serious allegation that was made against him by Mrs. Tolu in an affidavit which had been provided to the Commissioner. The plaintiff's counsel asked for the affidavit, intending to bring a prosecution against Mrs. Tolu for perjury. The Commissioner refused his request. The plaintiff has sought what is described as an order for discovery of Mrs. Tolu's affidavit.

[35] The Commissioner has produced Mrs. Tolu's affidavit. It is an annexure to the affidavit of the Chief Executive Officer of the Commissioner's Office, Mrs. Linda Folaumoetu'i.

[36] I have grave doubts that I had any jurisdiction to make the order the plaintiff has sought but I do not need to now

concern myself with that. Mr. Kefu accepts that the affidavit is now in the public arena and that the plaintiff may make use of the document, subject to the qualification that its admissibility is a matter to be resolved in any court proceeding in which the plaintiff seeks to produce it.

Has the Commissioner exceeded his jurisdiction

[37] The plaintiff alleges that the Commissioner has acted without jurisdiction for three principal reasons. First, he argues that not all of the TCC employees who have signed the complaint have been affected by the conduct in issue. Secondly, he says that the Commissioner is making enquiries about matters which are not raised in the complaint and which are the responsibility of the Board of TCC. Thirdly, he argues that the Commissioner has not observed the requirements of natural justice.

[38] At this point I note again section 20 of the Act which provides:

No proceeding of the Commissioner shall be held bad for want of form, and except on the ground of a lack of jurisdiction, no proceeding or decision of the Commissioner shall be liable to be challenged, reviewed, quashed or called into question in any Court.

[39] A question that arose in argument was whether, before being able to challenge the Commissioner's jurisdiction, the plaintiff had first to obtain leave to seek judicial review (O.

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39 *Supreme Court Rules*). Mr. Edwards argued that leave was not required as the plaintiff seeks only a declaration and not judicial review. The Court of Appeal recently noted the long established jurisdiction of the court to entertain proceedings which seek only declaratory relief (*Minister of Revenue and Customs v Prasad* (Court of Appeal of Tonga, AC 7 of 2016, 14 September 2016). For the purposes of this proceeding, Mr. Kefu was prepared to accept that the court has jurisdiction to grant declaratory relief.

- [40] In relation to the question of the scope of the Commissioner's inquiries, under section 11(3) of the Act the Prime Minister is able to refer to the Commission 'any matter' other than a matter concerning a judicial proceeding which the Prime Minister considers should be investigated.
- [41] The courts in other jurisdictions have adopted a broad, purposive interpretation to Ombudsman's legislation (of which the Act is an example) consistent with the unique public role that an Ombudsman is intended to fill (*British Columbia Development Corporation v Friedmann (Ombudsman)* [1984] 2 SCR 447). That is an approach with which I agree.
- [42] Mr. Kefu argues that the Commissioner's power under section 11(3) of the Act to investigate 'any matter' is very broad and not limited by reference to the functions of the Commissioner under section 11(1) of the Act to investigate matters of 'administration'. In his submission the Prime Minister may, under section 11(3) of the Act, refer to the

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Commissioner any subject that he may choose for inquiry. Such power is, he noted, subject to the safeguard that it is ultimately the Commissioner who must give consent to an investigation. I agree with Mr. Kefu's submission.

- [43] This was the approach taken by the Supreme Court of Victoria in *Glass v The President of the Legislative Council and Anor* [2016] VSC 507. The case concerned provisions in the *Ombudsman Act 1973* allowing the Legislative Council to make referrals to the Ombudsman in respect of 'any matter, other than a matter concerning a judicial proceeding' which it considered ought to be investigated by him. At paragraph [210] of that judgment Cavanough J said:

Nevertheless at first sight, at least, the expression 'any matter' in s 16(1) of the *Ombudsman Act 1973* appears to be used....in the sense of 'any subject matter that may be chosen for inquiry'. It is true that that is a very broad concept. However, it is difficult to think of any more narrow meaning which the expression 'any matter' might ordinarily bear in the context of a statute providing for one body to refer any unspecified thing to another body for investigation.

- [44] The question that arises is, what was the matter that the Prime Minister referred to the Commissioner for investigation?

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- [45] The plaintiff's challenge to the Commissioner's Investigation focuses unduly upon the content of the TCC employees' complaint and in particular the seven specific issues listed in it. It overlooks that the Commissioner's Investigation is not being undertaken upon the complaint but upon a referral by the Prime Minister under section 11(3) of the Act.
- [46] The Prime Minister's referral of 15 July 2016 refers to the complaint but it is plain that the 'matter' that is being referred is not the complaint itself. The Prime Minister is concerned generally with what he describes as volatility in the workplace of TCC resulting from the conduct of the plaintiff. That is the matter under investigation.
- [47] The plaintiff also argues that the complaint does not set out how each and every TCC employee who signed the complaint was affected by the allegations. The plaintiff would argue that in relation to the allegation that the plaintiff was kissing a staff member in his office it is only the one staff member who was kissed who could be affected by that behaviour. There is no merit in this submission. First, as I have noted, the Investigation is pursuant to the Prime Minister's referral and it is certainly not necessary that he be personally affected by the subject of the Investigation. Secondly, even if that were not the case the behaviour alleged *in toto* could reasonably be said to affect all employees of TCC by demoralising the workplace and creating a hostile work environment.

- [48] The plaintiff also argues that the Commissioner has exceeded jurisdiction because he is investigating matters concerning the staff sick bonus, the CEO's bonus, the 910 call centre and the Next Generation Network. There is evidence that questions have been put to TCC employees about these issues by the Commissioner in the course of his investigation (see the affidavits of Teisa Atiolo, Kilisitina Taufa, Kosema Pameti, and Ane Mailangi). The plaintiff says that these subjects are matters of policy made by the Board of TCC for which he is not responsible. His primary concern is that when interviewing him the Commissioner did not advise him that these subjects were under investigation or give him an opportunity to comment on them.
- [49] The plaintiff argues this was a breach of his rights under clause 11 of the *Act of Constitution* and section 14(3) of the Act. Clause 11 is not apposite as it is concerned with criminal proceedings before a court. Section 14(3) provides that a Department, organisation or person adversely affected by any report or recommendation of the Commissioner should first be given an opportunity to be heard.
- [50] Much of the plaintiff's concern will have been eliminated by the evidence of Mrs. Folaumoetu'i that the Commissioner's intention is to ensure the process of his investigation is fair and that this will include calling the plaintiff back to respond to any matters which may be adverse to his interests. Mrs. Folaumoetu'i said that this has always been the Commissioner's intention. The plaintiff was interviewed

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early in the investigation and as the investigation has progressed new issues have been raised which the plaintiff will be heard on.

- [51] That leaves the plaintiff's objection that these subjects are not relevant to the Commissioner's investigation. The court is not going to declare an investigation which is clearly within the Commissioner's jurisdiction vexatious or an abuse in excess of jurisdiction simply because some questions have been asked which the subject of the investigation contends are not relevant. It is certainly not clear to me that the subjects in issue can have no relevance to the Commissioner's investigation or that there is any risk of an adverse finding being made against the plaintiff in respect of them. It would create a very bad and chilling precedent if this court was to involve itself in the minutiae of the Commissioner's work, which, it seems to me, is what section 20 of the Act was intended to avoid.
- [52] The plaintiff also alleges that he has been denied natural justice because he is not being afforded the same rights he would have in court (paragraph 5.17.5 of the plaintiff's submissions). The plaintiff submits that he is entitled to full disclosure of all the evidence that is given in the investigation, a right to a hearing where witnesses will give their evidence, a right to cross-examine and a right to call his own witnesses in rebuttal.
- [53] I do not accept this submission which proceeds from the erroneous position that the Commissioner is conducting a

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judicial proceeding. The Commissioner is not a judge, he does not preside over a court and proceedings before him are not judicial proceedings.

- [54] It is well established that the obligations of natural justice may be modified or excluded entirely at the will of the legislature. As was noted in *Brettingham-Moore v Municipality of St Leonards* (1969) 121 CLR 509, 524 by Barwick CJ:

[Where] the legislature has addressed itself to the very question...it is not for the court to amend the statute by engrafting upon it some provision which the court might think more consonant with a complete opportunity for an aggrieved person to present his views.

- [55] The Act makes it clear that the Commissioner has a very wide discretion over the conduct of his investigations. Proceedings are conducted in private (section 14(2) of the Act) and there is no right of full disclosure as the Commissioner shall maintain secrecy in respect of all matters which come to his knowledge in the exercise of his functions (section 17 of the Act). It is not necessary for there to be a hearing, from which it must follow that there is no right of cross-examination of witnesses (section 14(3) of the Act) and no party is entitled as of right to be heard by the Commissioner, subject only to the qualification that there is a right to respond to adverse findings or recommendations (proviso to section 14(3) of the Act). It

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follows that the plaintiff's submission that he has been denied natural justice is misconceived and must fail.

[56] I would add at this juncture that I am not without some sympathy for the plaintiff's concerns about process. Whilst not wishing to imply that the Ombudsman is legally obliged to follow any particular process, it appears to me that there has been, as far as the plaintiff is concerned, a lack of transparency. Specifically, the letter advising the plaintiff of the investigation did not make it clear that it was upon referral from the Prime Minister under section 11(3) of the Act and referred to the complaint. This caused much confusion at the hearing. There does not appear to have been any clear advice given to the plaintiff as to the process the Commissioner intended to follow or that he would be called back to be heard on any matters that arose in the course of the investigation which were adverse to his interests. These are steps that could have easily been taken and may possibly have averted this action.

Result

[57] The plaintiff's claim is dismissed.

[58] If the Commissioner wishes to seek costs he should apply within 28 days.




O.G. Paulsen

NUKU'ALOFA: 21 November 2016

LORD CHIEF JUSTICE

