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**REPORT FROM OMBUDSMAN
OWN MOTION CASE AGAINST
ALLEGATIONS AGAINST PUBLIC ENTERPRISES**

CASE NO. OMB/OM 18/19-03

27th May 2019

**'Aisea H. Taumoepeau, SC
Ombudsman**

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Executive Summary

Background

1. On Tuesday, 19th of February 2019, the Ombudsman announced that he will be carrying out an Own Motion investigation pursuant to section 11(2) of the *Ombudsman Act, 2001*.
2. This investigation is in relation to allegations of incidents of maladministration by Boards of Directors of Public Enterprises published in the *Kele'a newspaper, Volume 34 No. 52* of Monday 24th December 2018.
3. There are 6 allegations which appear in the copy of the newspaper article with the heading "*Pau'u 'i he ngaahi Poate, Ngaahi pisinisi 'a e Pule'anga*" and may be summarized as follows-
 - (a) PE Boards do not follow the same procurement process as Government ministries, and can spend in excess of \$1million without utilizing the procurement process. (**"First complaint issue"**);
 - (b) Board members are taking loans from board funds. An example is a member took out \$18 thousand loan from the Board (*and is still paying it out*). (**"Second complaint issue"**);
 - (c) Board members are paid tens of thousands, with some paid a bonus of \$60 thousand each (*Santa Claus had visited some Boards well before Xmas*). (**"Third complaint issue"**);
 - (d) FISA purchased "*Niuvakai*" for \$1million although its real value was much less. (**"Fourth complaint issue"**);
 - (e) One Board had a Board meeting at Barcelona. (**"Fifth complaint issue"**); and
 - (f) Some Board members are being paid overtime. (**"Sixth complaint issue"**).

Annexed marked "**Annex 1**" is a copy of the newspaper article.

4. The Office of the Ombudsman and the Ministry of Public Enterprises ("MPE") have agreed to work in partnership on this Own Motion investigation. On the 7th of February 2019 the Ombudsman wrote to the Chief Executive Officer ("CEO") of MPE requesting for information to assist him with the investigation.

Annexed marked "**Annex 2**" is a copy of the letter from the Ombudsman to CEO, MPE.

5. On 13th of February 2019 CEO, MPE wrote to Ombudsman conveyed his support to the investigation and that his Office is willing to cooperate in providing information.

Annexed marked “**Annex 3**” is a copy of the letter from CEO, MPE to Ombudsman.

6. On or about the 19th of February 2019, MPE sent a response to the information requested by the Ombudsman.

Annexed marked “**Annex 4**” is a copy of the response.

Finding

As a result of the investigation carried out regarding the 6 alleged maladministration decisions or actions by Public Enterprises, only the fourth complaint issue was proven to be unreasonable.

I have set out the details of my opinions –

In relation to first complaint issue –

I hold the opinion that a public enterprise do have the power to create rules and procedures to govern its procurement processes pursuant to Regulation 3(3) of the *Public Procurement Regulations, 2015*.

In relation to second complaint issue –

I hold the opinion that there is no evidence to support the allegation that PAT had been providing loans to its Board of Directors.

In relation to third complaint issue –

I hold the opinion that there is no evidence before me to prove that there has been payment of bonuses to Board of Directors of PEs.

In relation to fourth complaint issue –

It is my recommendation that pursuant to section 18(3) of the *Ombudsman Act, FISA* and its Board of Directors must ensure that due diligence work is carried out in purchasing of any vessel of this magnitude.

In relation to fifth complaint issue –

I hold the opinion that the Board members attending the World Route 2017 and in attendance at legal negotiations between GECI and TAL to pursue the release of reimbursement to TAL of \$USD69,993.19.00 were crucial to the future development of TAL as a public enterprise.

In relation to sixth complaint issue –

I hold the opinion that the process used to nominate the Directors of TPL to carry out work outside their normal Directors functions justifies special rates to be paid to them. The decision made by TPL Board was not unreasonable.

OMBUDSMAN’S ROLE

- 1 Under section 11 of the *Ombudsman Act 2001*, (“the Act”), the Ombudsman has the authority to investigate the administrative acts, decision, omissions and recommendations of an officer of a Ministry or organization subject to this Act, in his capacity as an officer of that Ministry or organization. This applies to all Government Ministries and organizations as listed under the Schedule of the Act.
- 2 My investigation is not an appeal process nor is it a judicial proceeding. I would not generally substitute my judgment for that of the decision maker. Rather, I consider the substance of the act or decision and the procedure followed by the Minister, CEO or any officer, and then form an opinion as to whether the act or the decision and the procedures followed by him, was properly arrived at and was one that could have been reasonably make.

Investigation Process

The investigation process included –

- Meeting and interviewing the editor of Kele’a newspaper, Cabinet Ministers, Chief Executive Officers and employees of government ministries, Directors of Public Enterprises Boards, and employees of public enterprises (“PE”).

FIRST COMPLAINT ISSUE

PE Boards do not follow the same procurement process as Government ministries, and can spend in excess of \$1million without utilizing the procurement process.

Background

The Tongan version as it appears in the words of the Kele’a newspaper, is as follows-
“*Fakataataa ‘oku ‘ikai fou ‘enau fakatau (procurement) ‘i he founa ‘oku ngaue ‘aki ‘e he ngaahi ngaue ‘anga ‘a e Pule ‘anga. ‘Oku lava pe ke fakapaasi ‘e he poate ia ke fakamoleki/ngaue ‘aki ha pa ‘anga lahi hake he \$1miliona ‘o ‘ikai toe fou ia founa (procurement process) ngaue ‘a e pule ‘anga. Kuo ‘osi toutou hoko ‘a e me ‘a pehe ni ‘i he ngaahi poate*”.

Investigation

On the 7th of February

Response from the Ministry of Public Enterprises

1. Regulation 3(3) of the *Public Procurement Regulations, 2015* (“the Regulations”) provides the authority for Public Enterprises’ to adopt rules and procedures to govern their own procurement however these rules and procedures must be consistent with the Regulations. Annexed marked “**Annex 5**” is a copy of the Regulations.
2. Public enterprises’ have their own procurement policy and any approval of any spending will depend on the threshold of each public enterprises’ procurement policy. The following public enterprises have provided their policies for information purposes -
 - a) Ports Authority, Tonga;
 - b) Tonga Airports Limited;
 - c) Tonga Post Print;
 - d) Tonga Broadcasting Commission;
 - e) Tonga Communication Corporation;
 - f) Tonga Water Board;
 - g) Tonga Cable Limited; and
 - h) Tonga Power Limited.

Annexed marked “**Annex 6**” copies of procurement policies of the PEs’ listed above.

3. If a public enterprise wants to make an expenditure, single or linked that exceed 10% of equity or total assets of the concerned PE, it can only be incurred when all the Board of Directors authorize the expenditures by signing the declaration form and submitting it to the Ministry for approval.
4. It is significant to note that the goals for PEs and government ministries are different. PEs are profit orientated and focusses on increasing returns for the organization and shareholder. Private and public organizations share a similar objective in getting value for money in all procurement activities. They focus on purchasing goods and services at the right prices and often engage in cost reduction negotiations with suppliers.
5. Further, organizations in the private and public organizations serve the public in a different sense. Public entities serve the public through provision of free or low cost services, whilst private organizations do so by selling products and services at higher rates based on competition, which can lead to superior service. PEs operate under institutional policies that are often tailored to meet their business goals. They can source suppliers at will and award direct contracts following a bidding process that suits them with favourable terms and conditions.

6. Any amount greater than \$1million dollars will have to be presented to the Board of PE relevant to the request for their authorisation.

Analysis

1. With regard to the above allegations it has been confirmed from the information before me that PEs have the authority to carry out procurement processes according to their rules and regulations. However, the rules and regulations must be consistent with the Regulations. When examining rules and procedures of the PEs listed under paragraph 2 above, against the Procurement Regulations to see if they are consistent with the Regulations, we confirm there is no inconsistency or breach.
2. The allegation raised by the Kele'a newspaper does not provide any specific names or details to prove the allegation. We provided them with the opportunity to come forth and provide us with the information. To date this has not been done.

Opinion

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

SECOND COMPLAINT ISSUE

Board members are taking loans from Board funds

Background

1. According to the *Kele'a* newspaper publication on *Monday 24th December 2018*, the Prime Minister alluded that some members of the Board had taken loans from PE Board Funds.
2. The Tongan version as it appears in the words of the Kele'a , is as follows:
“*Oku pehe 'e he Palemia 'oku a'u ki he tu'unga ko e no 'a e kau memipa 'i he pa'anga 'a e Poate pehe ki he vahe penisoni laumano 'a e kau memipa 'e ni 'ihi.*”
3. In meeting with Kele'a publisher Mr Siaosi Pohiva in February 2019 he confirmed the allegation is pointing to the Ports Authority Tonga Limited (“PAT”) and is alleged to have taken place on or about 2011 or 2012..

Investigation

Response from Ports Authority Tonga

1. On 2nd May 2019, Ports Authority Tonga (“PAT”) confirmed there were no loans granted to any Board members during the financial year 2011/2012.

2. PAT does not have a policy in place to allow for personal loans to be granted to any of its employees or Board members. It also confirms that there was no Board resolution that allowed the Authority to grant loans to any of its employees or Board members.”
3. PAT suspects the allegation may be referred to a loan facilitated by PAT from its funds to Waste Authority Limited (“WAL”) in the 2011/2012 financial year. CEO of PAT confirmed that the loan account was audited and disclosed in PAT’s Annual Report of the same year and subsequent years. The loan amounted to \$500,000 which was advanced to WAL.

The process for granting the loan

1. WAL directors met with PAT directors requesting for a loan to complete Australian Aid grant requirement of \$500,000 as Government of Tonga contribution before grant funds are released.
2. PAT was fully supportive of the loan as waste management was a national interest as well as aiming for waste from wharf areas to be minimised. Further PAT had sought legal advice on the loan and were advised to draft a Guarantee Agreement to protect PAT and its investment.
3. Cabinet was informed of this loan agreement and it was endorsed by the Minister of Public Enterprise and the Ministry of Public Enterprise.

Annexed marked “**Annex 7** is a copy of the letter from CEO of Ports Authority, Tonga to Office of the Ombudsman dated 2nd of May 2019.

Relevant Legislation

Under section 32 of the *Ports Authority Act 1998*, it provides that “*Any funds not immediately required for expenditure by the Authority may be invested in any manner authorised by the Board.*”

Analysis

PAT in response to us has denied any loan being granted to any of its Board members. The only information that PAT has provided that may have been misconstrued by Kele’a newspaper to be the loan from PAT to WAL in the 2011/2012 financial year. This loan was authorised by section 32 of the *Ports Authority Act*.

Opinion

I hold the opinion that there is no evidence to support the allegation that PAT had been providing loans to its Board of Directors.

THIRD COMPLAINT ISSUE

Board members being paid gratuity

Background

The allegations against the Board Members may be summarized as follows: Board members are paid tens of thousands, with some paid a bonus of \$60 thousands each (*Santa Claus had visited some Boards well before Xmas*)

The Tongan version as it appears in the words of the *Kele 'a* newspaper, is as follows:

“Vahe taki \$6mano kau memipa poate neongo kuo te'eki ke tau a'u ki he 'aho Kilisimasi ka kuo fuoloa e 'ahia 'e Santa Claus ia 'a e poate 'e ni'ihii 'a e ngaahi pisinisi 'a e pule'anga. Kuo ma'u 'ehe Kele 'a ha fakamatala ha kuo 'osi vahe atu ki he kau memipa 'e ni'ihii ha taki pa'angaa 'e \$6mano ko honau ponasi.”

Investigation

Ministry of Public Enterprise's response

1. No public enterprise pays bonus payments to their Board of Directors. All public enterprises are following the remunerations and meeting fees set by Remuneration Authority and approved by Cabinet.

Annexed marked “**Annex 8**” is a copy of the remuneration and fees table.

2. Tonga Power Limited, Tonga Water Board and Waste Authority Limited make gratuity payments to Board of Directors upon completion of their 3 years term. This is pursuant to their Directors superannuation fund rules.
3. Tonga Water Board has rules governing its superannuation fund. This fund is called the *Directors Superannuation Fund Rules*. (“the Rules”). These Rules have been adopted by the Joint Utilities Board (Tonga Water Board, Tonga Power Limited and Waste Authority Limited).

Annexed marked “**Annex 9**” is a copy of the Directors Superannuation Fund Rules.

4. On the 18th of January 2019 a special meeting was held between the Minister of PE, CEO of PE, Common Utilities Board Chairman and CEO of Tonga Water Board. This meeting was to discuss the Directors' gratuity remuneration in particular to revoke the Directors Superannuation Fund Rules and replaced by approved gratuity remuneration options in order to establish relativity and consistency with other utilities.

Annexed marked “**Annex 10**” is a copy of the Special meeting resolution.

Response from Ports Authority Tonga (“PAT”)

1. Confirmed that there were no Christmas bonuses paid out to former Board members which amounted to \$60,000.00.
2. Payments that were paid out only related to gratuity paid out to Directors of Port Authority Tonga, Board members. Since establishment of the Board, all directors were entitled to 20% gratuity on all their earnings and only to be paid out at the end of their services with the Board.
3. The gratuity practice of paying 20% was discontinued in mid-2018 when the Minister of PE stating that their benefits be amended consisting of only their annual director’s fees and meeting fees.
4. The last gratuity payment made under PAT Board was made in 2016 to a director who had served the Board for 17 years.

Annexed marked “**Annex 11**” is a copy of the letter from PAT to Office of the Ombudsman dated 2nd May 2019.

Analysis

1. The Ministry and PAT has denied any knowledge of any PE Board of Directors being paid \$60,000 bonuses. We had requested the editor of *Kele’a* newspaper to provide us with any information that would assist us with this investigation. To date nothing has been provided to us. This allegation is unfounded.

Opinion

I hold the opinion that there is no evidence before me to prove that there has been payment of bonuses to Board of Directors of PEs.

FOURTH COMPLAINT ISSUE

FISA purchased Niuvakai for \$1million dollars however its real value was much less

Background

The Tongan version as it appears in the words of the Kele’a, is as follows:

“Mahalo ‘oku ‘ikai loto ‘a Clive ia ke ta‘ofi ‘a e ngaahi fu‘u pau‘u ‘oku fakahoko ‘e he kau memipa ‘o e poate pea ka ‘ikai ‘oku ne poupu‘i pe ‘e ia ‘a e founa fakatakaka ko ‘eni. Hange ko hono fakatau mai ‘e he FISA ‘a e fu‘u vaka ko e Niuvakai ‘aki ‘a e miliona neongo ko hono mahu‘inga totonu ‘oku si‘i ‘aupito ia ai.”

Investigation

1. The CEO for Ministry of Public Enterprises (“MPE”) in 2013 was Siaosi Sovaleni. He informed us that the Cabinet Economic Development Committee was looking at increasing primary exports to the neighbouring islands Fiji, Wallis, Samoa, American Samoa and Tuvalu and also to increase shipping runs to the northern islands of Tonga.
2. On or about 2013 there was a business proposal submitted to the Ministry of PE from owners of a MV Theresa (“the vessel”) with an offer for FISA to consider purchase. This proposal was forwarded to FISA Board to consider.
3. On 21 June 2013, the CEO of FISA wrote to CEO of MPE raising relevant queries which is prudent and pertinent to ensuring the right vessel is purchased. Questions relating to ship’s price and comparative issues when considering “*like or similar vessels*”.
4. FISA had carried out a comparability exercise comparing criteria and prices, in particular between MV Baltic and MV St Theresa.

Annexed marked “**Annex 11**” is a copy of the letter from Chairman, FISA Board to CEO, MPE.

5. MPE was copied in all communications representing the shareholder (Government) but in the end the decision is for the FISA Board to make.
6. FISA had inspected the vessel on the 21st and 22nd of January 2014 with their independent surveyor from Dunsford Marine Limited. This was a marine cargo surveyor, assessors and loss adjusters. It was reported after Dunsford Marine Limited carried out its survey, it had identified 17 deficiencies.

Annexed marked “**Annex 12**” is a copy of the Dunsford report.

7. On 14th of February 2014, Pacific Royale Shipping sold the vessel to the Friendly Island Shipping Agency (“FISA”) for NZ\$936,500.00 The vessel was then renamed MV Niuvakai. A Memorandum of Agreement was signed between the parties.

Annexed marked “**Annex 13**” is a copy of the agreement.

8. On the 5th of April 2017, 3 years after the purchase of the vessel, New Zealand Marine Brokers inspected and evaluated the MV Niuvakai as worth NZ\$350,000.

Annexed marked “**Annex 14**” is a copy of the Marine Brokers report.

Analysis

1. FISA through its Chairman, in its letter dated 21st June 2013 to CEO MPE had provided a clear contrast comparison regarding its requirements for another cargo vessel, MV Baltic to fit FISA purposes.

I clearly found MV St Theresa wanting in most capabilities as stated by Chairman, FISA. Marine cargo surveyor and assessor Dunsford Marine on the 21st and 22nd of February 2014 had identified 17 deficiencies with capabilities and warrant of fitness of some critical parts or equipment on the vessel MV St Theresa.

2. There is no evidence to support the vessel was independently valued before it was purchased by FISA except for the comparative exercise made between the vessels MV Baltic and MV St Theresa. It was not clear whether FISA or MPE wanted further valuation or were they satisfied with information presented to them.
3. With regard the Maintenance Records, the report says: *“It is noted that even if the MV Theresa complies with the criteria that FISA requires we would still need to conduct a thorough due diligence to ensure that the proffered information is verified.”*
4. The report expressed deep concern on the viability of having to purchase the MV St Theresa which clearly portrays a reluctance from the part of FISA to purchase. It appears despite these concerns raised about the vessel FISA and its Board agreed for the purchase to take place on 14th of February 2014.
5. Later reports from Dunsford Marine on 21 February 2014, carried out after the agreement was signed clearly shows deficiencies about the vessel which was not revealed by the owners of St MV Theresa. The report from New Zealand Marine Brokers made in 2017, highlights further deficiencies and states that the value of the vessel was NZ\$350,000.
6. The valuation made by New Zealand Marine Brokers in 2017, 3 years after the purchase of the vessel valued the vessel at the price of NZ\$350,000. This is a decrease of \$NZ586,500.00 from its original price of \$ NZ\$936,500.00, when valued in 14th February 2014. This is clear evidence that the vessel was over valued for the condition it was in 2014.

Opinion

I hold the opinion that FISA Board had failed to conduct a proper evaluation of the 35-year-old vessel despite the criteria assessment report by FISA Board Chairperson and the survey report by Dunsford. Taking into account the survey report by Dunsford, and the Criteria Assessment, the vessel's true value should have been significantly lower. The fact that FISA had upgraded the vessel shortly after the purchase, and three years later was valued to be worth NZ\$350,000 supports my view that the vessel's real worth was much lower before the sales in 2014.

Recommendation

It is my recommendation that pursuant to section 18(3) of the *Ombudsman Act*, FISA and its Board of Directors must ensure that due diligence work is carried out in purchasing of any vessel of this magnitude and value.

FIFTH COMPLAINT ISSUE

One of the Board of Directors of a Public Enterprise had a Board meeting in Barcelona.

Background

The Tongan version as it appears in Kele'a newspaper is as follows –

“ Fakataha ki Paselona. Kuo ma'u 'e he Kele'a ha fakamatala na'e fakahoko 'a e fakataha ia 'a e poate 'e taha ki Paselona lolotonga 'a e folau atu 'a e kau memipa poate ke fakatau mai 'a e koloa pisinisi ko 'eni. Malie 'a e founa ko 'eni he 'oku ne fakamahino mai 'a e fa'ahinga 'ai'ai noa'ia 'i he Poate”.

Investigation

Response from Tonga Airport Limited

1. It was confirmed from Tonga Airport Limited (“TAL”) that the delegation that was approved by TAL Board meeting to travel to Barcelona were –
 - (a) Chairman, Steve Edwards;
 - (b) Director Tomifa Paea;
 - (c) Director Viliami Takau;
 - (d) Director Helen Toli;
 - (e) CEO Viliami Ma'ake;
 - (f) CCO Siena Taumoepeau; and
 - (g) Commercial Officer Salome Feimoefiafi
2. The purpose of the travel was to-
 - (i) attend World Routes 2017; and
 - (ii) to finalise requisite documentation and verification to complete process for a security bank guarantee due to TAL for breach of contract by Spanish contractor, GECl.
3. World Routes 2017 is an annual event which was held in Barcelona, Spain from 23-26 September 2017. This is the first time for Tonga to attend such meeting but the Board viewed the attendance as crucial for the commercial and marketing strategies for route development. Further this meeting gave TAL delegation the opportunity to discuss, develop and plan network strategies on a global scale. Attendance at this meeting enabled TAL to meet with airlines and setup and manage a TAL booth exhibition aimed at promoting the Kingdom of Tonga and route development for Fua'amotu International Airport.

4. Members of the Board were also required to sign a Deed with legal counsel for a Spanish construction company (“GECI”) who had been engaged by TAL to carry out construction work at Fua’amotu Airport. TAL had engaged the services of Spanish lawyers to assist with legal matters relating to GECI breaching contractual obligations. Remedial action was sought against GECI who were represented by Bankia lawyers.
5. A meeting was held on the 26th of September 2017 in Barcelona, Spain between Bankia for GECI and Board of Directors’, Steve Edwards (Chairman), Tomifa, Takau, Toli and CEO TAL, Ma’ake. At this meeting upon signing of the deeds and pursuant to the security bank guarantees, approvals and verifications were provided to Bankia therefore enabling the release of reimbursement payment in the amount of \$USD69,993.19.00 to TAL.

Annexed marked “**Annex 15**” is a copy of the report.

Analysis

1. It is clear from the evidence that TAL Board members and others travelled to Spain for two events, to attend World Route 2017, from 23-26 September 2017 and to attend a signing of deed agreement relating to legal issues, held on 26 September 2017.
2. It was important for TAL delegation to attend World Routes 2017 as it is a crucial forum where airline and bodies that manage airports meet annually to discuss, network and plan strategies on a global scale. Developing commercial and marketing strategies are essential for TAL to ensure the company develops and services are offered at a high standard to the public.
3. Further it was mandatory for Board members to attend the meeting between the Board and the legal team, Bankia on behalf of GECI. The legal issue discussed at this meeting is vital to the resolving of a breach of contract in view of reimbursement to TAL. The outcome of the meeting was that there was release of reimbursement payment in the amount of \$USD69,993.00 to TAL from GECI.
4. Upon review of the relevant evidence TAL Board members just didn’t travel to Barcelona, Spain to hold a Board meeting there but to attend World Route 2017, an event that is annually held but also to attend to important negotiations of legal issues which were pertinent to the Board.

Opinion

I hold the opinion that the Board members attending the World Route 2017 and in attendance at legal negotiations between GECI and TAL to pursue the release of reimbursement to TAL of \$USD69,993.19.00 were crucial to the future development of TAL as a public enterprise.

SIXTH COMPLAINT ISSUE

Some Board Members paid overtime, when it is normally for low earners (not including CEOs and other higher paid employees)

Background

The Tongan version as it appears in the words of the Kele'a , is as follows:

“Oku totongi ngaue tu'ataimi (overtime) 'a e kau memipa 'e ni'ihii 'o e Poate. Ko e angamaheni ko e vahe 'ovataimi ko kinautolu pe kau ngaue ma'ulalo ka 'oku 'ikai kau ai 'a e CEO mo kinautolu 'i he lakanga ma'olunga ange. “Oku pehe mei he Poate 'e taha ko e me'a angamaheni pe ia mei fuoloa 'a e vahe ponasi ko 'eni”

Investigation

1. On the 11th April 2018 the Tonga Power Limited (“TPL”) Board of Directors approved a Sub-Committee for the due diligence of the Enterprise Resource Planning System (“ERP”). ERP is a business process management software that allows an organization to use a system of integrated applications to manage the business and automate many office functions related to technology, services and human resources.
2. TPL had engaged Technology One, one of Australia’s largest publicly listed software company to review TPL’s system with a view to migrate to the ERP System. Therefore, a TPL special Board meeting on the 11th of April 2018 approved the Sub-Committee to be chaired by TPL Director ‘Aisake Tu’iono and Director Fuiva Kavaliku to work with Tu’iono for the Due Diligence of fact finding of identifying problems and solving problems for ERP System.
3. The Board also approved that a Sub-Committee to be established and members in the committee to provide a full report to the Board with recommendations.

Annexed marked “**Annex 16**” is a copy of the Board resolution.

4. TPL confirmed the work carried out by the Sub-Committee members were paid by way of consultant fees and not overtime.

Analysis

1. It was clear from the evidence that the work carried out by TPL Board directors were authorised by TPL resolution carried out on the 11th of April 2018. This permitted ‘Aisake Tu’iono and Fuiva Kavaliku to carry out work which was crucial to the development of TPL’s operation.
2. TPL confirmed that the work carried out by nominated persons will be paid by way of consultant fees. This is work outside the ambit of their normal duties of Directors of TPL therefore required special rates.

Opinion

I hold the opinion that the process used to nominate the Directors of TPL to carry out work outside their normal Directors functions justifies special rates to be paid to them. The decision made by TPL Board is not unreasonable.

SUMMARY OF TOTAL RECOMMENDATIONS

In relation to first complaint issue –

I hold the opinion that a public enterprise do have the power to create rules and procedures to govern its procurement processes pursuant to Regulation 3(3) of the *Public Procurement Regulations*, 2015.

In relation to second complaint issue –

I hold the opinion that there is no evidence to support the allegation that PAT had been providing loans to its Board of Directors.

In relation to third complaint issue –

I hold the opinion that there is no evidence before me to prove that there has been payment of bonuses to Board of Directors of PEs.

In relation to fourth complaint issue –

It is my recommendation that pursuant to section 18(3) of the *Ombudsman Act*, FISA and its Board of Directors must ensure that due diligence work is carried out in purchasing of any vessel of this magnitude.

In relation to fifth complaint issue –

I hold the opinion that the Board members attending the World Route 2017 and in attendance at legal negotiations between GECl and TAL to pursue the release of reimbursement to TAL of \$USD69,993.19.00 were crucial to the future development of TAL as a public enterprise.

In relation to sixth complaint issue –

I hold the opinion that the process used to nominate the Directors of TPL to carry out work outside their normal Directors functions justifies special rates to be paid to them. The decision made by TPL Board is not unreasonable.

MINISTRY'S RESPONSE

On 5th June 2019, I delivered my Provisional Report to the Ministry of Public Enterprises setting out my findings, opinions and recommendations. On 19th June 2019, I received a letter from the Ministry accepting the recommendations of this Report.

As required under section 18 (5) of the Ombudsman Act, a copy of this letter is attached to this Report as Annex 1A.



'Aisea H. Taumoepeau, SC
Ombudsman

19th June 2019



19/6/19

RECEIVED
18/6/2019

KINGDOM OF TONGA

MINISTRY OF PUBLIC ENTERPRISES

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P.O. Box 19
TONGA POST OFFICE BUILDING,
TAUFA'AHAU RD, NUKU'ALOFA
KINGDOM OF TONGA

Reference No: MPE/L350/19

Date: 19th June 2019

Mr. 'Aisea Taumoepeau,
Ombudsman,
Nuku'alofa.

Dear 'Aisea,

**Re: Provisional Report under the Ombudsman's Act Own Motion Case
against Allegations against Public Enterprises**

Reference is made to your letter received by the Ministry on the 5th June, 2019 with the abovementioned subject.

Further considerations had been made in regards to the provisional report you have formed on the various complaints/allegations made against the Public Enterprises and I have no further comments on the said report.

As for the proposed recommendation you provided within the provisional report, this will be conveyed to the Friendly Islands Shipping Agency's (FISA) Board of Directors, that due diligence must be carried out in the purchasing of any vessel of significant magnitude and value.

If you have any further queries regarding this matter, please do not hesitate to contact my office.

Respectfully,

Mr. Sione 'Akauola

Chief Executive Officer for Ministry of Public Enterprises.

