



GOVERNMENT OF TONGA

MEDIA RELEASE

(16 February 2015)

“Concerns Raised by the Public Service Association.”

Ms Mele ‘Amanaki
Secretary General
Public Service Association
NUKU’ALOFA

Dear Ms ‘Amanaki

“Upholding the Rule of Law and Sustainable Socio-Economic Development for Tonga

I refer to your letter to me dated 19 January 2015 regarding the above matter.

First, I would like to thank you and the Public Service Association for your kind words and support for my Government. As you are aware this is a Government that is founded on the principles of the rule of law and good governance, including accountability and transparency, and this Government is committed to preserving, protecting and developing the rights of all individuals that is available in any free and democratic society, according to law.

This Government however is still in its early days, being only 3 weeks old, and so I hope that there is some leniency and patience at this early stage with the pace in which Government is taking to absorb and determine the profound issues that this Government has inherited from the previous Government, some of which you have raised in your letter.

Furthermore, I would like to take this opportunity to call on the PSA to encourage and remind its members that they too also have a responsibility to perform their roles and functions with integrity in an effective and efficient manner, in order to deliver a public service in the best interests of the public as a whole.

Thank you for also offering to work together under a ‘Partnership for Quality Public Service’. At this time my Government welcomes the offer, and embraces the spirit in which such offer is made to working together. At this time my Government would like to have consultations and dialogue with your Association, and we would indeed want to learn more about the elements and objectives of a ‘partnership for quality public service’.

In saying so, please rest assured that one of the priority areas of this Government is to improve the quality of the work of the public service, however, we intend to do this diligently and efficiently. So we welcome your willingness to work together, and at this time it is best that we limit this arrangement to regular consultations and dialogue on the issues that are most pertinent to the public service only, which is I understand your mandate from your members.

Accordingly, please accept, that on behalf of my Government, I intend to respond only to the issues directly relating to the public service. With respect, the issues you have raised regarding the Tongasat, the Remuneration Authority, the distribution of portfolios amongst Cabinet Ministers, the Commissioner for Public Relations, the International Labour Organisation, and the Employment Relations Bill are important and will appropriately address them, going forward. I am sure you would agree with me that these matters are considered beyond the periphery of the governance and administration of the public service, and will be best to deal with the appropriate authority.

Before responding to the issues in relation to the public service, I would like at the outset thank you and the PSA for their continued concern for an effective and efficient public service, and bringing these issues to my Government at this early stage of my Government's term.

I will respond to the public service issues as follows:

A Interim Chief Secretary and Interim Secretary to Cabinet

- (1) Based on legal advice that I have received and accepted from the Attorney General's Office, I do not accept that the employment of the Interim Chief Secretary and Interim Secretary to Cabinet is unlawful and invalid.
- (2) The appointment was made after the Public Service Commission failed to make an appointment of a substantive office holder within the statutory requirements of 12 months. This is not the fault of the incumbent, and it is incorrect and improper to blame him.
- (3) The appointment made by the former Government regularised the continued appointment of the Acting Chief Secretary and Acting Secretary to Cabinet, and also fixed the failure of the PSC.
- (4) More importantly, you should be aware that the post of Chief Secretary and Secretary to Cabinet has been advertised publicly both within and beyond the Kingdom, and an appointment of a substantive office holder should be made before the end of the Interim Chief Secretary and Interim Secretary to Cabinet's post, or very soon after.
- (5) Let me assure you that this Government will not allow this administrative failure by the PSC to be repeated.

B Review of the Public Service Commission

- (1) As the Minister responsible for the Public Service Commission, I will review the current contractual arrangements of the Chairperson to determine whether it is permissible under her PSC employment contract to be employed for another organisation.
- (2) You should note however that it is normal for members of a Commission established under law to consist of members who have other permanent or part-time employment.
- (3) You should also note that the Prime Minister and Cabinet can only remove Commissioners on the grounds set out in section 51(3) of the Public Service Act. The removal of Commissioners therefore can only be done in accordance with those grounds, and so far there is no evidence that any or all of the Commissioners should be subject to removal under the grounds set out in section 51(3) of the Public Service Act.
- (4) Furthermore, the qualifications of a Commissioner is set out in sections 5(4) and 5(5) of the Public Service Act. Those are the legal requirements for qualifications of a Commissioner, and so Government cannot use any other qualifications beyond what is stated under the Act.
- (5) Under section 5(10) of the Public Service Act, a Commissioner, which includes the Chairperson, may be employed on a part-time or full-time basis. There is no statutory requirement that all Commissioners must be employed part-time only.
- (6) Finally, the Public Service Act provides that the governance and administration of the Public Service Commission independent of Cabinet and Government as a whole, except for any policy decision that Cabinet may make in relation to the general public service. This Government will respect that at all times.

C Review of the Remuneration Authority

- (1) It is not unlawful for the Remuneration Authority to be engaged to conduct the salary review for the PSC;
- (2) A function of the PSC may be tasked out to others to perform on the PSC's behalf, just like how PSC engages expert consultants to perform the function for the PSC;
- (3) The Remuneration Authority is an independent body that assesses remuneration for the Government posts outside of the public service. It is important to have such a body to recommend to the appointing authorities outside of the PSC as to what the appropriate remuneration of those posts should be. Otherwise, these posts will determine their own remuneration that would be unaffordable, unfair and disproportionate to the rest of the public service and the private sector.

D Review of the Public Service Tribunal

- (1) First, you seem to misunderstand the judicial review case that was filed by the former Chief Secretary and Secretary to Cabinet against the Public Service Commission. The case of the former Chief Secretary and Secretary to Cabinet was decided in his favour in the Public Service Tribunal. The PSC then filed judicial review proceedings against the Tribunal claiming that the Tribunal's decision was wrong. We understand that the PSC is considering withdrawing the judicial review proceedings. I will follow this matter up with the PSC.
- (2) Secondly, we understand that the PSA's appeal to the Tribunal was dismissed on a technicality. First, the PSA could not prove that it is an "employee association" made up of public service employees, nor could it prove that it was currently registered according to law as such. Furthermore, the decision granting the Cost of Living Allowance was a decision by Cabinet, not the PSC, and so an employment dispute could not exist between the PSA and the Cabinet, because Cabinet is not an employer under the Public Service (Grievance and Disputes) Regulations.
- (3) As you may appreciate, if you wanted to review the decision of the Tribunal, it was open to you to file judicial review proceedings in the Supreme Court.
- (4) Under the Commissioner for Public Relations Act, the Commissioner for Public Relations has no jurisdiction to review the proceedings or decisions of the Public Service Tribunal.
- (5) Finally, I do not accept that there is a conflict of interest for the Commissioner for Public Relations to also be the Chairman of the Tribunal. The Commissioner deals with complaints from the public relating to administration shortfalls by ministries and public enterprises, whilst the Tribunal deals with complaints by public servants relating to their employment.

E Use of Tongasat Counsel to Represent Government

- (1) Please be advised that the Government will no longer be requiring the services of the Tongasat legal counsel for the civil action CV 48/14, and that the Attorney General's Office has been instructed to disengage his services, and to represent Government.

F Threats to de-register the PSA

- (1) I am satisfied that the work of the Registrar of Incorporated Societies in relation to the PSA as a registered incorporated society was done under instructions of the previous Government, however such work was carried out under legal authority granted to the Registrar under the Incorporated Societies Act.
- (2) May I take this opportunity however to encourage the PSA to comply with the Incorporated Societies Act, especially under section 22(3) and 23 of the Incorporated Societies Act. These provisions require provision of information to the Registrar when requested, and also annually. It should not be an excuse for non-compliance that other

societies have not been required to provide this information, because as a registered incorporated society the PSA is required to comply with the law, not comply with the law only when every other society complies with the law.

I very much hope that the response that I have provided to you in this letter will be sufficient to alleviate your concerns about this Government and the public service. If they do not, I entreat you to please accept it, and that we move forward from these issues so that we can deal with the more pressing issues in the public service, which we can resolve in order to develop an efficient and effective public service for the Kingdom.

I thank you once again for your support, and look forward to regular consultations and dialogue based on understanding and reasonableness.

ENDS

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