



Tonga

COMMISSIONER FOR PUBLIC RELATIONS ACT 2001

No. 10 of 2001



COMMISSIONER FOR PUBLIC RELATIONS ACT 2001

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COMMISSIONER FOR PUBLIC RELATIONS ACT 2001

No. 10 of 2001

AN ACT TO MAKE PROVISIONS FOR THE ESTABLISHMENT OF THE OFFICE OF THE COMMISSIONER FOR PUBLIC RELATIONS AND MATTERS RELATED THERETO

I assent,
TAUFA'AHAU TUPOU IV,
31st August, 2001

[9th August, 2001]

BE IT ENACTED by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows: —

1 Short Title and commencement

- (1) This Act may be cited as the Commissioner for Public Relations Act 2001.
- (2) This Act shall come into force on a date to be proclaimed by His Majesty in Council.

2 Interpretation

In this Act, unless the context otherwise requires —

“chief executive” means the Head of Department in the case of a Department; or the principal administrator in the case of an organization;

“Commissioner”, in relation to any function, power, or duty under this Act, means the Commissioner for Public Relations for the time being investigating the complaint in respect of which the function, power, or duty is being exercised;

“Department” means any government ministry, department or office but does not include the Cabinet and Privy Council, the Legislative Assembly or the Judiciary;

“organisation” means any organisation listed in the Schedule;

“statutory body” includes a local authority and any like body of persons, whether corporate or unincorporated, established or constituted by or in accordance with the provisions of any Act.

3 Commissioner for Public Relations

- (1) His Majesty in Council shall appoint a Commissioner for Public Relations to hold office during good behaviour.
- (2) In the event of the absence or incapacity of the Commissioner or if the office of Commissioner is vacant, His Majesty in Council shall appoint a person to temporarily perform the duties of the Commissioner.
- (3) The provisions of the laws and regulations relating to the Tonga Civil Service shall apply to the Commissioner.

4 Commissioner to hold no other office

The Commissioner shall not be capable of being a member of the Legislative Assembly, and shall not, without the approval of the Cabinet in each particular case, hold any office for profit, other than his office as the Commissioner, or engage in any occupation for reward outside the duties of his office.

5 Term of office of Commissioner

- (1) Except as otherwise provided in this Act, the Commissioner shall hold office for a term of 5 years.
- (2) Notwithstanding subsection (1) a Commissioner shall hold office until his successor is appointed. The Commissioner may be re-appointed.
- (3) The Commissioner may at any time resign his office by writing addressed to His Majesty in Council, and shall so resign his office on attaining the age of 72 years.

6 Removal or suspension from office

The Commissioner may at any time be removed or suspended from his office by His Majesty in Council for disability, bankruptcy, neglect of duty, or misconduct.

7 Filling of vacancy

If the Commissioner dies, or resigns his office, or is removed from office, the vacancy thereby created shall be filled in accordance with section 3.

8 Salaries and allowances of Commissioner

- (1) There shall be paid to the Commissioner out of public money as salary and allowances as are determined by His Majesty in Council.
- (2) The salary and allowances of the Commissioner are not to be diminished during the continuance of his appointment.

9 Oath or affirmation to be taken

Before entering upon the exercise of the duties of his office the Commissioner shall take the following oath or affirmation in the presence of Cabinet.

- (a) The oath is —

“I solemnly swear before God that I will be truly loyal to His Majesty King Taufa’ahau Tupou IV, that I will perform my duties as Commissioner for Public Relations faithfully, honestly, diligently, impartially, without fear or favour, and that I will not except according to law divulge any information which I shall receive in the execution of my duties.”;

- (b) The affirmation is —

“I solemnly, sincerely and truly declare and affirm that I will be truly loyal to His Majesty King Taufa’ahau Tupou IV, that I will perform my duties as Commissioner for Public Relations faithfully, honestly, diligently, impartially, without fear or favour, and that I will not except according to law divulge any information which I shall receive in the execution of my duties.”

10 Staff

Such officers and employees as are necessary to enable the Commissioner to perform his duties shall be appointed in accordance with the laws and regulations relating to the Tonga Civil Service.

11 Functions of Commissioner

- (1) It shall be a function of the Commissioner to investigate any decision or recommendation made, or any act done or omitted, whether before or after the passing of this Act, relating to a matter of administration and affecting any person or body of persons in his or its personal capacity, in or by any department or organisation to which this Act applies or by any officer (including the Minister or Governor), employee, or member of any such Department or organisation in his capacity as such officer, employee, or member.
- (2) The Commissioner may make any such investigation either on a complaint made to the Commissioner by any person or on his own motion; and where a complaint is made he may investigate any decision, recommendation, act, or omission to which subsection (1) relates, notwithstanding that the complaint may not appear to relate to that decision, recommendation, act, or omission.
- (3) Without limiting the foregoing provisions of this section, it is hereby declared that at any time the Prime Minister may, with the consent of the Commissioner, refer to the Commissioner for investigation and report any matter, other than a matter concerning a judicial proceeding, which the Prime Minister considers should be investigated by the Commissioner. Where a matter is referred to the Commissioner pursuant to this subsection, he shall, notwithstanding anything to the contrary in this Act, forthwith investigate that matter and report thereon to the Prime Minister. Nothing in section 18 shall apply in respect of any investigation or report made under this subsection.
- (4) The powers conferred on the Commissioner by this Act may be exercised notwithstanding any provision in any enactment to the effect that any such decision, recommendation, act, or omission shall be final, or that no appeal shall lie in respect thereof, or that no proceeding or decision of the person or organisation whose decision, recommendation, act, or omission it is shall be challenged, reviewed, quashed, or called in question.
- (5) Nothing in this Act shall authorise the Commissioner to investigate:
 - (a) Any decision, recommendation, act, or omission in respect of which there is, under the provisions of any Act or regulation, a right of appeal or objection, or a right to apply for a review, available to the complainant, on the merits of the case, to any Court, or to any tribunal constituted by or under any enactment, whether or not that right of appeal or objection or application has been exercised in the particular case, and whether or not any time prescribed for the exercise of that right has expired:

Provided that the Commissioner may conduct an investigation (not being an investigation relating to any decision, recommendation,

act, or omission to which any other paragraph of this subsection applies) notwithstanding that the complainant has or had such right if by reason of special circumstances it would be unreasonable to expect him to resort or have resorted to it.

- (b) Any decision, recommendation, act, or omission of any person in his capacity as a trustee.
 - (c) Any decision, recommendation, act, or omission of any person acting as legal adviser to the Crown or acting as counsel for the Crown in relation to any proceedings.
- (6) Nothing in this Act shall authorise the Commissioner to investigate any matter relating to any person who is or was a member of the Tonga Defence Services or any matter relating to the Tonga Defence Services, so far as the matter relates to —
- (a) The terms and conditions of his service as such member; or
 - (b) Any order, command, decision, penalty, or punishment given to or affecting him in his capacity as such member.
- (7) If any question arises whether the Commissioner has jurisdiction to investigate any case or class of cases under this Act, he may, if he thinks fit, apply to the Supreme Court for a declaratory order determining the question.
- (8) His Majesty in Council may by Order amend the Schedule.

12 Mode of complaint

- (1) A complaint to the Commissioner may be made in writing or orally.
- (2) A complaint made orally shall be put in writing as soon as practicable.
- (3) Notwithstanding any provision in any enactment, where any letter appearing to be written by any person in custody on a charge or after conviction of any offence, or by any patient of any hospital within the meaning of the Mental Health Act 2001, is addressed to the Commissioner it shall be immediately forwarded, unopened, to the Commissioner by the person for the time being in charge of the place or institution where the writer of the letter is detained or of which he is a patient.

13 Commissioner may refuse to investigate complaint

- (1) The Commissioner may —
 - (a) refuse to investigate a complaint that is within his jurisdiction or to investigate any such complaint further if it appears to him that under the law or existing administrative practice there is an

- adequate remedy or right of appeal to which it would have been reasonable for the complainant to resort; or
- (b) refuse to investigate any such complaint further if in the course of the investigation of the complaint it appears to him that, having regard to all the circumstances of the case, any further investigation is unnecessary.
- (2) Without limiting the generality of the powers conferred on the Commissioner by this Act, it is hereby declared that the Commissioner may in his discretion decide not to investigate, or, as the case may require, not to investigate further, any complaint if it relates to any decision, recommendation, act, or omission of which the complainant has had knowledge for more than 12 months before the complaint is received by the Commissioner, or if in his opinion —
- (a) the subject-matter of the complaint is trivial;
- (b) the complaint is frivolous or vexatious or is not made in good faith; or
- (c) the complainant has not a sufficient personal interest in the subject-matter of the complaint.
- (3) In any case where the Commissioner decides not to investigate or make further investigation of a complaint he shall inform the complainant of that decision, and shall state his reasons therefor.

14 Proceedings of Commissioner

- (1) Before investigating any matter under this Act, the Commissioner shall inform the chief executive of the Department or organisation affected, of his intention to make the investigation.
- (2) Every investigation by the Commissioner under this Act shall be conducted in private.
- (3) The Commissioner may hear or obtain information from such persons as he thinks fit, and may make such inquiries as he thinks fit. It shall not be necessary for the Commissioner to hold any hearing, and no person shall be entitled as of right to be heard by the Commissioner: Provided that if any time during the course of an investigation it appears to the Commissioner that there may be sufficient grounds for his making any report or recommendation that may adversely affect any Department or organisation or person, he shall give to that Department or organisation or person an opportunity to be heard.
- (4) In the case of an investigation relating to a Department, the Commissioner may in his discretion at any time during or after the investigation consult any Minister who is concerned in the matter of the investigation, and the

Commissioner shall consult any Minister who so requests or to whom a recommendation which is the subject of the investigation has been made after the Commissioner has made the investigation and before he has formed a final opinion on any of the matters referred to in subsection (1) or subsection (2) of section 18.

- (5) In the case of an investigation relating to an organisation the Commissioner may in his discretion at any time during or after the investigation consult the Chairman of the organisation concerned, and the Commissioner shall consult the Chairman of the organisation who so requests or to whom a recommendation which is the subject of the investigation has been made, after the Commissioner has made the investigation and before he has formed a final opinion on any of the matters referred to in subsection (1) or subsection (2) of section 18.
- (6) If, during or after any investigation, the Commissioner is of the opinion that there is sufficient evidence of any significant breach of duty or misconduct on the part of any officer or employee of any Department or organisation, he shall refer the matter to the appropriate authority.
- (7) Subject to the provisions of this Act and of any rules made for the guidance of the Commissioner for the time being in force, the Commissioner may regulate his procedure in such manner as he thinks fit.

15 Evidence.

- (1) Subject to the provisions of this section and of section 16, the Commissioner may require any person who in his opinion is able to give any information relating to any matter that is being investigated by the Commissioner to furnish to him any such information, and to produce any documents or papers or things which in the Commissioner's opinion relate to any such matter as aforesaid and which may be in the possession or under the control of that person. This subsection shall apply whether or not the person is an officer, employee, or member of any Department or organisation, and whether or not such documents, papers, or things are in the custody or under the control of any Department or organisation.
- (2) The Commissioner may summon before him and examine on oath —
 - (a) any person who is an officer or employee or member of any Department or organisation to which this Act applies and who in the Commissioner's opinion is able to give any such information as aforesaid;
 - (b) any complainant; or
 - (c) with the prior approval of the Attorney-General in each case, any other person who in the Commissioner's opinion is able to give any such information;

and for that purpose may administer an oath. Every such examination by the Commissioner shall be deemed to be a judicial proceeding within the meaning of section 63 of the Criminal Offences Act (Cap. 18) (which relates to perjury).

- (3) Subject to this section and to subsection (1) of section 16, any person who is bound by the provisions of any enactment to maintain secrecy in relation to, or not to disclose, any matter may be required to supply any information to or answer any question put by the Commissioner in relation to that matter, or to produce to the Commissioner any document or paper or thing relating to it, notwithstanding that compliance with that requirement would otherwise be in breach of the obligation of secrecy or non-disclosure.
- (4) Compliance with a requirement of the Commissioner (being a requirement made pursuant to subsection (3)) is not a breach of the relevant obligation of secrecy or non-disclosure or of the enactment by which that obligation is imposed.
- (5) Every person shall have the same privileges in relation to the giving of information, the answering of questions, and the production of documents and papers and thing as witnesses have in any Court.
- (6) Except on the trial of any person for perjury within the meaning of the Criminal Offences Act (Cap. 18) in respect of his sworn testimony, no statement made or answer given by that or any other person in the course of any inquiry by or any proceedings before the Commissioner shall be admissible in evidence against any person in any Court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Commissioner shall be given against any person.
- (7) No person shall be liable to prosecution for an offence against any enactment, other than this Act, by reason of his compliance with any requirement of the Commissioner under this section.
- (8) Where any person is required by the Commissioner to attend before him for the purposes of this section, the person shall be entitled to the same fees, allowances, and expenses as if he were a witness in a Court. For the purposes of this subsection the Commissioner shall have the powers of a Court to fix or disallow, in whole or in part the amounts payable thereunder.

16 Disclosure of certain matters not to be required

- (1) Where the Attorney General certifies that the giving of any information or the answering of any question or production of any document or paper or thing —

- (a) might prejudice the security, defence, or international relations of Tonga (including Tonga's relations with the Government of any other country or with any international organisation), or the investigation or detection of offences;
- (b) might involve the disclosure of the deliberations of Cabinet or Privy Council; or
- (c) might involve the disclosure of proceedings of Cabinet, or Privy Council or of any committee of Cabinet, or Privy Council relating to matters of a secret or confidential nature, and would be injurious to the public interest —

the Commissioner shall not require the information or answer to be given or, as the case may be, the document or paper or thing to be produced.

- (2) Subject to the provisions of subsection (1), the rule of law which authorises or requires the withholding of any document or paper, or the refusal to answer any question, on the ground that the disclosure of the document or paper or the answering of the question would be injurious to the public interest shall not apply in respect of any investigation by or proceedings before the Commissioner.

17 Commissioner and staff to maintain secrecy

- (1) The Commissioner and every person holding office or appointment under the Commissioner shall maintain secrecy in respect of all matters that come to their knowledge in the exercise of their functions.
- (2) Every person holding any office or appointment under the Commissioner shall, before he begins to perform any official duty under this Act, take the following oath or affirmation, to be administered by the Commissioner:
 - (a) The oath is —

“I solemnly swear before God that I will not except according to law divulge any information which I shall receive in this office or appointment.”
 - (b) the affirmation is —

“I solemnly, sincerely and truly declare and affirm that I will not except according to law divulge any information which I shall receive in this office or appointment.”
- (3) Notwithstanding anything in subsections (1) and (2), the Commissioner may disclose such matters as in the Commissioner's opinion ought to be disclosed for the purposes of an investigation or in order to establish grounds for the Commissioner's conclusions and recommendations.

- (4) The power conferred by subsection (3) shall not extend to the following:
- (a) Any matter that might prejudice —
 - (i) the security, defence, or international relations of Tonga (including Tonga's relations with the Government of any other country or with any international organisation); or
 - (ii) the prevention, investigation, or detection of offences.
 - (b) Any matter that might involve the disclosure of the deliberations of Cabinet or Privy Council.
 - (c) Any information, answer, document, paper, or thing obtained by the Commissioner by reason only of compliance with a requirement made pursuant to subsection (3) of section 15.

18 Procedure after investigation

- (1) The provisions of this section shall apply in every case where, after making any investigation under this Act, the Commissioner is of the opinion that the decision, recommendation, act, or omission which was the subject-matter of the investigation —
- (a) appears to have been contrary to law;
 - (b) was unreasonable, unjust, oppressive, or improperly discriminatory;
 - (c) was based wholly or partly on a mistake of law or fact; or
 - (d) was wrong.
- (2) The provisions of this section shall also apply in any case where the Commissioner is of the opinion that in the making of the decision or recommendation, or in the doing or omission of the act, a discretionary power has been exercised for an improper purpose or on irrelevant grounds or on the taking into account of irrelevant considerations, or that, in the case of a decision made in the exercise of any discretionary power, reasons should have been given for the decision.
- (3) If in any case to which this section applies the Commissioner is of the opinion —
- (a) that the matter should be referred to the appropriate authority for further consideration;
 - (b) that the omission should be rectified;
 - (c) that the decision should be cancelled or varied;
 - (d) that any practice on which the decision, recommendation, act, or omission was based should be altered;
 - (e) that any law on which the decision, recommendation, act, or omission was based should be reconsidered;

- (f) that reasons should have been given for the decision; or
- (g) that any other steps should be taken —

the Commissioner shall report his opinion, and his reasons therefor, to the appropriate Department or organisation, and may make such recommendations as he thinks fit. In any such case he may request the Department or organisation to notify him, within a specified time, of the steps (if any) that it proposes to take to give effect to his recommendations. The Commissioner shall also, in the case of an investigation relating to a Department send a copy of his report or recommendations to the Minister or Governor concerned, and, in the case of an investigation relating to an organisation send a copy of his report or recommendations to the Chairman of the organisation concerned.

- (4) If within a reasonable time after the report is made no action is taken which seems to the Commissioner to be adequate and appropriate, the Commissioner, in his discretion, after considering the comments (if any) made by or on behalf of any Department or organisation affected, may send a copy of the report and recommendations to the Prime Minister who shall table the matter in the Privy Council with his appropriate recommendation.
- (5) The Commissioner shall attach to every report sent or made under subsection (4) a copy of any comments made by or on behalf of the Department or organisation affected.
- (6) Notwithstanding anything in this section, the Commissioner shall not, in any report made under this Act, make any comment that is adverse to any person unless the person has been given an opportunity to be heard.

19 Complainant to be informed.

- (1) Where, on any investigation following a complaint, the Commissioner makes a recommendation under subsection (3) of section 18, and no action which seems to the Commissioner to be adequate and appropriate is taken thereon within a reasonable time, the Commissioner shall inform the complainant of his recommendation, and may make such comments on the matter as he thinks fit.
- (2) The Commissioner shall in any case inform the complainant, in such manner and at such time as he thinks proper, of the result of the investigation.

20 Proceedings not to be questioned or to be subject to review

No proceeding of the Commissioner shall be held bad for want of form, and except on the ground of lack of jurisdiction, no proceeding or decision of the

Commissioner shall be liable to be challenged, reviewed, quashed, or called in question in any Court.

21 Proceeding privileged

(1)

(a) No proceedings, civil and criminal, shall lie against the Commissioner, or against any person holding any office or appointment under the Commissioner, for anything he may do or report or say in the course of the exercise or intended exercise of his functions under this Act unless it is shown that he acted in bad faith.

(b) No Commissioner, and no such person as aforesaid, shall be compelled to give evidence in any Court, or in any proceedings of a judicial nature, in respect of anything coming to his knowledge in the exercise of his functions under this Act.

(2) Anything said or any information supplied or any document, paper, or thing produced by any person in the course of any inquiry by or proceedings before the Commissioner under this Act shall be privileged in the same manner as if the inquiry or proceedings were proceedings in a Court.

22 Power of entry on premises

(1) For the purposes of this Act, but subject to the provisions of this section, the Commissioner may at any time enter upon any premises occupied by any Department or organisation and inspect the premises and, subject to the provisions of section 15 and 16, carry out therein any investigation that is within his jurisdiction.

(2) Before entering upon any such premises the Commissioner shall notify the chief executive of the Department or organisation by which the premises are occupied.

(3) The Attorney-General may from time to time by notice to the Commissioner exclude the application of subsection (1) to any specified premises or class of premises, if he is satisfied that the exercise of the power conferred by this section might prejudice the security, defence or international relations of Tonga (including Tonga's relations with the Government of any other country or with any international organisation).

23 Delegation of powers by Commissioner

- (1) The Commissioner may from time to time, by writing under his hand, delegate to any person holding any office under him any of his powers under this Act, except this power of delegation and the power to make any report under this Act.
- (2) Any delegation under this section may be made to a specified person or to the holder for the time being of a specified office or to the holders of offices of a specified class.
- (3) Every delegation under this section shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Commissioner.
- (4) Any such delegation may be made subject to such restrictions and conditions as the Commissioner thinks fit, and may be made either generally or in relation to any particular case or class of cases.
- (5) Until any such delegation is revoked, it shall continue in force according to its tenor. In the event of the Commissioner by whom it was made ceasing to hold office, it shall continue to have effect as if made by his successor.
- (6) Any person purporting to exercise any power of the Commissioner by virtue of a delegation under this section shall, when required to do so, produce evidence of his authority to exercise the power.

24 Protection of name

- (1) No person, other than the Commissioner appointed under this Act, may use the name “Commissioner for Public Relations” in connection with any business, trade, or occupation or the provision of any service, whether for payment or otherwise, or hold himself, or itself out to be the Commissioner except pursuant to an Act or with the prior written consent of the Commissioner.
- (2) Every person who contravenes subsection (1) of this section commits an offence and is liable on conviction to a fine not exceeding \$1,000.

25 Annual report

Without limiting the right of the Commissioner to report at any other time, but subject to the provisions of subsection (6) of section 18 and to any rules for the guidance of the Commissioner for the time being in force, the Commissioner shall in each year make a report to the Prime Minister on the exercise of his functions under the Act and the report shall be tabled in the Legislative Assembly by the Prime Minister.

26 Offences

Every person who —

- (a) without lawful justification or excuse, wilfully obstructs, hinders, or resists the Commissioner or any other person in the exercise of his powers under this Act;
- (b) without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirement of the Commissioner or any other person under this Act;
- (c) wilfully makes any false statement to or misleads or attempts to mislead the Commissioner or any other person in the exercise of his powers under this Act;
- (d) represents directly or indirectly that he holds any authority under this Act when he does not hold that authority; or
- (e) is in breach of any oath or affirmation made under this Act,

commits an offence against this Act and is liable on conviction to a fine not exceeding \$5,000.

27 Money to be appropriated.

Except as otherwise provided in this Act, all salaries and allowances and other expenditure payable or incurred under or in the administration of this Act shall be payable out of money to be appropriated by the Legislative Assembly for the purpose.

28 Audit.

The Auditor General shall be the auditor of all money and stores of the Commissioner and of all books and accounts and transactions relating thereto.

29 Regulations

His Majesty in Council may make such regulations or rules which are necessary or expedient for carrying out the purposes of this Act.

SCHEDULE

(Section 2)

ORGANISATIONS TO WHICH THIS ACT APPLIES

1. Tonga Broadcasting Commission
2. Tonga Communications Corporation
3. Tonga Electricity Power Board
4. Tonga Water Board
5. National Reserve Bank of Tonga
6. Tonga Development Bank
7. Frisco Hardware Limited
8. Home Gas Limited
9. International Dateline Hotel Company Limited
10. Leiola Duty Free Limited
11. Primary Produce Export Limited
12. Royal Tongan Airlines Limited
13. Sea Star Fishing Company Limited
14. Shipping Corporation of Polynesia Limited
15. Tongan Corporation
16. Tonga Investment Limited
17. Tonga Timber Limited
18. Retirement Fund Board
19. Ports Authority
20. Talamahu Market Authority

Passed by the Legislative Assembly this 9 day of August, 2001.