



OFFICE OF THE OMBUDSMAN

PUBLIC REPORT

ON THE TRANSFER OF HAROLD TAROSA FROM THE DEPARTMENT OF CUSTOMS TO THE MINISTRY OF YOUTH & SPORT

Date: 20 May 2025



REPUBLIC OF VANUATU

OMB24-0003/2025/03

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1. PURPOSE

The purpose of the investigation is to determine whether the decision taken by the Public Service Commission (PSC) to make a temporary transfer of Harold Tarosa from the Department of Customs & Inland Revenue to the Department of Youth & Sport is lawful.

2. SCOPE

The scope of the investigation is to look into the decision taken by PSC to transfer Harold Tarosa from the Department of Customs & Inland Revenue to the Department of Youth and Sport is lawful.

3. ISSUES

The main issue raised in this matter is whether the transfer of Harold Tarosa from the Department of Customs & Inland Revenue to the Department of Youth and Sport is lawful.

4. OUTLINE OF EVENTS

1. On the 8th February 2023, the Public Service Commission appointed Mr. Harold Tarosa as the Director of the Department of Customs and Inland Revenue.
2. On the 19th of January 2024, at approximately 5pm, Mr. Harold Tarosa was given a Temporary Transfer letter from the Public Service Commission, providing no explanation for the transfer. The transfer letter indicated that Mr. Harold Tarosa would be transferred from the Department of Customs and Inland Revenue to the Department of Youth and Sport Development.
3. On the same date 19th January 2024, Mr. Collins Geza was also given a letter of Appointment as Acting in the position of the Director of the Department of Customs and Inland Revenue.

5. DISCUSSIONS

The main issue raised in this matter is whether the transfer of Harold Tarosa from the Department of Custom & Inland Revenue to the Department of Youth & Sport was lawful.

Harold Tarosa received a phone call from the PSC Acting SG, Jonathan Iavere that he should attend to the PSC Office on that date 19 January 2024. Harold Tarosa met the Acting SG, Jonathan Iavere that same day and was handed with a temporary transfer letter. The letter reads;

... this letter serves to inform you that the Commission in its meeting N0.02 of 19th January 2019, decision N0.16 approved your temporary transfer to the position stated below.

Post Title: Director

Post N0. 3600

Salary Grade: VT.4, 682,900

Department: Youth Development & Sport

Effective Date: 19th January 2024

End Date: 19th April 2024

The letter further reads that the Commission may direct that a director-general, director, or an employee transfer or take a posting from one position or locality to another within the Public Service but subject to the Commissions obligation to act as good employer.

The term “good employer” mentioned above refers to section 15 of the PSC Act.

The evidence available to prove whether the Commission acted as a good employer comes from a number of sources. First from Harold Tarosa. He made this statement on the 5th of April 2024. The relevant part of his statement goes as follows;

“Mi risivim phone call from Jonathan lavere, Acting SG blong PSC. Mr lavere hemi askem blong mi go long PSC. Hemi handem offer temporary transfer from Department of Customs to Department of Youth & Sport Development. Mi no aware long transfer from PSC hemi no providem reasons blong transfer”.

Unfair treatment was given to Harold Tarosa for failure to provide the reasons for his transfer.

The second evidence comes from Collins Geza. He made this statement on 25 April 2025. The relevant part of his statement goes as follows;

“Mifla ino consulted by PSC, hemi decision we hemi made by employer nomo and mifla I comply wetem. Mi no aware long any reason blong transfer”.

The third evidence comes from Russel Tamata. The Director General of the Ministry of Youth & Sport. He made this statement on the 25th of April 2025. The relevant part of his statement goes as follows;

“Mi save talem se inogat any consultation I kam long Department blong me long Youth & Sport Development blong oli transfer Harold I kam. Bifo Harold Tarosa I kam, mi bin consult wetem PSC blong mi appointem Director I stap hemi Rebecca Boroku. Mi bin mekem advertisement blong Position blong Director last year finis mo fulap man I apply from, mi sek nomo se Harold Tarosa hemi kam long position ia”.

The forth evidence comes from Alvina Chilia. The Corporate Service Officer. She made this statement on the 13th of April 2025. The relevant part of her statement goes as follows;

“Before we Director Harold Tarosa hemi risivim letter blong transfer blong hem blong go long Department blong Youth & Sport, mi bin sta p olsem Acting Principal blong Corporate service long time ia. PSC ehmi no consult wetem mifla long transfer ia. Mi no save stret reason blong transfer. Mifla askem tru long HRM Manager long Ministry blong Finance about reason blong transfer, be PSC I respond se hemi wan decision blong Commission blong oli mas comply wetem”.

The fifth evidence comes from Julie Andrew Garoleo. She made this statement on the 27th of May 2025. The relevant part of her statement goes as follows;

“Mifla long ofis blong DG mifla ino save reason blong transfer blong Director. Long that time mifla I bin luk nomo long social media se PSC bae I transfer sam Directors after then long Monday Director Tarosa hemi kam wetem letter mo askem long mi spos mi gat copy blong letter mo sipos mi save any reason behind long transfer blong hem. Mi reply se no mi nogat and mi referem hem go long Acting DG Tony Swen. Mifla I jes risivim copy long Acting Director Deputy inland Revenue long that time Colinz Gesa. Somehow folem chain of emails mi look PSC oli stap comunictae before finis wetem Collins blong informem hem long transfer ia.

I gat plante issue I stap long olgeta long Customs, we ol officers time oli no glad long Directors or Deputy Directors, oli go stret long PSC blong addressem. I gat plante time we PSC oli stap interfere lo ol issues blong Customs without consultem ofis blong DG”.

Now I come to the law,

Constitution

“60. Functions of Public Service Commission

- (4) The Commission shall not be subject to the direction or control of any other person or body in the exercise of its functions”.

The Public Service Commission is empowered by the above provision while exercising its power. During the exercise of its power, it must consider section 15 of PSC Act as follows;

“15. Duty to act as a good employer

(1) It shall be the duty of each member of the Commission to ensure that the Commission shall, in the performance of its functions, responsibilities and duties, be a good employer.

(2) The Commission shall as a good employer:

(a) ensure the fair and proper treatment of employees in all aspects of their employment; and

(b) require the selection of persons for appointments and promotion to be based upon merit; and

(c) promote good and safe working conditions, and

(d) encourage the enhancement of the abilities of individual employees; and

(e) promote and encourage an equal opportunities program ; and

(f) abide by the principles set out in section 4.

(3) In determining a person's merit for appointment or promotion to a post or salary increment regard must be had to:

(a) skill and ability to perform the duties and responsibilities of the post; and

(b) the standard and efficiency of work performance; and
Leadership Code Act".

The Commission is also empowered by section 15 of PSC Act to always act as good employer. That is, to treat it's employees with fairness.

The Commission is not empowered under Article 60 (4) of the Constitution if the Commission, during the exercise of its function acted outside of the requirements under section 15 (1) (2) (3) of the PSC Act. In the case of the transfer, Harold Tarosa was unfairly treated.

The Commission is also empowered under section 49 of the PSC Act to have consultation with the Director General as follows;

"49. Duty of Commission to consult with director-general

(1) The Commission must consult with the relevant director-general in relation to any action it proposes to take involving any ministry or department prior to taking the proposed action.

(2) The Commission must take into consideration the views and requirements of the

director-general prior to taking the proposed action, and must cooperate and be prepared to compromise where appropriate in the action initially proposed”.

In the matter concerning the transfer of Harold Tarosa, the Commission has acted contrary to the provision of section 49. Additionally, the Commission failed to fulfil its responsibilities to act as a good employer.

Under Article 62(1) of the Constitution, the Ombudsman has the authority to commence an Own Initiative Investigation into the Public Service Commission for failing to fulfill its duty as a good employer while exercising its powers under Article 60 of the Constitution.

CONSTITUTION

“62. Enquiries by Ombudsman

- (1) *The Ombudsman may enquire into the conduct of any person or body to which this Article applies –*
- (a) *upon receiving a complaint from a member of the public (or, if for reasons of incapacity, from his representative or a member of his family) who claims to have been the victim of an injustice as a result of particular conduct;*
 - (b) *at the request of a Minister, a member of Parliament, of the Malvatumauri Council of Chiefs or of a Provincial Government Council; or*
 - (c) *of his own initiative”.*

In the case of Harold Tarosa’s transfer, the Ombudsman is empowered under Article 62 (1) (c) of the Constitution.

The Ombudsman is also empowered under Article 63 to write report and make recommendations based on unjustified decision/action as follows;

“63. Findings of the Ombudsman and reports

- (1) *Wherever, after due enquiry, the Ombudsman concludes that a complaint is unjustified, he shall so inform the complainant and the Prime Minister and the head of the public department or authority concerned.*
- (2) *Wherever, after due enquiry, the Ombudsman concludes that conduct was contrary to the law, based on error of law or of fact, delayed for unjustified reasons, or unjust or blatantly unreasonable and that, consequently, any decision taken should be annulled or changed or that any practice followed should be revised, he shall forward his findings to the Prime Minister and to the head of the public authority or department directly concerned.*
- (3) *The report of the Ombudsman shall be public unless he decides to keep the report, or parts of it, confidential to the Prime Minister and the person in charge of the relevant public service, on the grounds of public security or public interest. The complainant shall in any case be told of the findings of the Ombudsman.*
- (4) *The Prime Minister or the person in charge of the relevant public service shall decide upon the findings of the Ombudsman within a reasonable time and the decision, with reasons, shall be given to the complainant forthwith. Any period limiting the time in*

which legal proceedings may be commenced shall not begin to run until the complainant has received the decision.

- (5) *The Ombudsman shall present a general report to Parliament each year and may make such additional reports as he considers necessary concerning the discharge of his functions and action taken or his findings. He may draw the attention of Parliament to any defects which appear to him to exist in the administration”.*

The Ombudsman is also empowered by Article 66 of the Constitution to monitor the conduct of leaders as follows;

“66. Conduct of leaders

- (1) *Any person defined as a leader in Article 67 has a duty to conduct himself in such a way, both in his public and private life, so as not to –*
- (b) *demean his office or position;*
- (c) *allow his integrity to be called into question”.*

The Leadership Code Act, also grants the Ombudsman the authority to oversee the conduct of leaders. In this report, the conduct of the Chairman of the PSC and its members is reviewed to ensure their actions reflect or demonstrate proper ethical behaviour as follows;

LEADERSHIP CODE ACT

“3. Leader's behavior

A leader holds a position of influence and authority in the community. A leader must behave fairly and honestly in all his or her official dealings with colleagues and other people, avoid personal gain, and avoid behavior that is likely to bring his or her office into disrepute. A leader must ensure that he or she is familiar with and understands the laws that affect the area or role of his or her leadership”

That, to me, shows that the conduct of the Chairman and members of the Commission was unfair during the transfer of Harold Tarosa. The decision to transfer Mr Tarosa was made on the 19th of January 2024. On that same day, he was asked to the Office of the PSC and handed his transfer letter with no reasons for the transfer. By not following the due process required by law to consult the DG of the relevant Ministries prior to transferring Mr Tarosa, gives rise to bringing the Office of the Public Service Commission to disrepute.

The Ombudsman is also empowered by the Leadership code Act to monitor the leaders who fail to comply with the principles of good leadership set out in section 13 of the Leadership Code Act as follows;

“13. Duties of leaders

- (1) *A leader must:*

(a) comply with and observe the law;

(b) comply with and observe the fundamental principles of leadership contained in Article 66 of the Constitution;

(c) comply with and observe the duties, obligations and responsibilities established by this Code or any other enactment that affects the leader”.

In my view, the Chairman and members of the Commission failed to comply with section 49 of the PSC Act, which requires consultation with the Director General of the affected ministries. Since they did not consult with the Director General of Youth and Sport and the Director General of Finance before transferring Harold Tarosa, their actions contravene section 13 of the Leadership Code Act.

Members of the Public Service Commission are leaders under section 5 of the Leadership Code Act as follows;

“. Leaders

In addition to the leaders referred to in Article 67 of the Constitution the following are declared to be leaders:

(u) members of the Public Service Commission”.

Furthermore, Subsection 5.11 of the Staff Manual states the following;

“5.11 Refusal to accept a transfer without valid reason

(a) An officer who fails to accept a transfer or take a posting from one position or locality to another within the Public Service may be dismissed without notice, if in the opinion of the Commission the officer fails to provide a valid or sufficient reason for refusing the transfer or posting [Public Service Act, section. 26(2)].

(b) However, no action shall be taken by the Commission in relation to the transfer or posting of an officer without first consulting with the Director-General of the Ministry where the officer is located. The Director-General, in turn, should consult with the Director of the Department and the officer before providing advice to the Commission.

(c) Any such action, including any intended dismissal action, shall also only be taken in accordance with the Commission's obligation to act as a good employer”.

I am more concern about subsection 5.11 (b) above. There was no record of consultation between PSC and both Ministry of Finance and Ministry of Youth and Sport. That, to me, PSC intended action was not made in accordance with the Commission obligation to act as a good employer.

The Head of State (HOS) is empowered by section 9B of the PSC Act to remove the members of the Public Service Commission, particularly Chairman of PSC based on the following;

(2) *The President after consultation with the Minister may remove a member if he or she is satisfied that the member:*

(e) *has performed unsatisfactorily or ineffectively for a significant period of time."*

In legal context, unsatisfactorily implies that something doesn't meet the required standard or expectation, leading to a situation that is not adequate or suitable. It often indicates a deficiency or shortcoming that could have negative legal consequences.

In the context of the Transfer of Harold Tarosa, it is seen as unsatisfactorily. This is due to the Commission's decision made outside of the legal requirements under section 49 of the PSC Act.

6. RESPONSE BY THOSE WITH FINDINGS AGAINST THEM

Before starting this investigation, the Ombudsman notified all people or bodies complained of and gave them the right to reply. Also, a working paper was provided prior to preparation of this Public Report to give the individuals mentioned in this report another opportunity to respond.

No member of the Public Service Commission including the Chairman who implicated in the matter responded to the findings of the Ombudsman within 14 days given.

7. FINDINGS

FINDING 1: MEMBERS OF THE PUBLIC SERVICE COMMISSION ARE LEADERS UNDER SECTION 5 OF THE LEADERSHIP CODE ACT.

All members of the Public Service Commission, being leaders, were responsible for the decision to transfer Harold Tarosa from the Department of Customs to the Ministry of Youth and Sport.

FINDING 2: THE PUBLIC SERVICE COMMISSION BREACHED SECTION 15 OF THE PSC ACT

Their decision to transfer Harold Tarosa is considered unfair, as members of the Commission neglected their responsibility to act as a good employer.

FINDING 3: THE PUBLIC SERVICE COMMISSION HAS BREACHED SECTION 49 OF THE PSC ACT

The Commission disregarded the requirements set forth in section 49 of the PSC Act before making the transfer, resulting in an unfair decision.

FINDING 4: PUBLIC SERVICE COMMISSION BREACHED SECTION 3 OF THE LEADERSHIP CODE ACT

By disregarding their duties as Commission members and leaders under section 5 (u) of the Leadership Code Act, their action amounts to contravention of section 3 of the Leadership Code Act.

FINDING 5: THE PUBLIC SERVICE COMMISSION WAS EMPOWERED BY ARTICLE 60 OF THE CONSTITUTION IN CARRYING OUT ITS FUNCTION UNDER SECTION 8 OF THE PSC ACT

The Public Service Commission, while exercising its power under Article 60 of the Constitution, it must always comply with its duty to Act as good employer under section 15. It failed to do so in this matter.

FINDING 6: THE HEAD OF STATE IS EMPOWERED UNDER SECTION 9B TO REMOVE MEMBERS OF THE COMMISSION.

Section 9B of the PSC Act states that the Head of State can remove a member. In the case of this transfer, the Head of State is empowered under section 9B (e) to remove the Chairman of the PSC for unsatisfactorily performance or ineffectively for a long period of time. In legal context, it is the decision that does not meet with the lawful requirements.

8. RECOMMENDATIONS

I make the following recommendations:

1. Members of the Public Service Commission must ensure that all future decisions regarding the transfer of Directors or employees strictly comply with the legal requirements set forth in the PSC Act and the Public Service Staff Manual.
2. The Head of State is respectfully requested to consult with the Prime Minister at the earliest opportunity regarding the removal of the Chairman of the Public

Service Commission, in light of the ongoing breaches of the laws affecting the Commission under his leadership.

3. The Compliance Unit of the Public Service Commission must ensure that accurate and comprehensive advice is provided to the Public Service Commission concerning the welfare of its employees, thereby supporting fair and effective management of employee rights and well-being.
4. The Chairman and Members of the Commission to be prosecuted for breaching the Leadership Code Act

Dated 20 May 2025


Hamlison Bubu
OMBUDSMAN OF THE REPUBLIC OF VANUATU

