



OFFICE OF THE OMBUDSMAN

PUBLIC REPORT

**ON THE FAILURE TO PAY OVERTIME
ENTITLEMENT BENEFIT FOR MR
JOSEPH PAKOA BY THE DEPARTMENT
OF HEALTH**

Date: 30 December 2016



REPUBLIC OF VANUATU

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3139/2016/03

**PUBLIC REPORT ON THE ALLEGED MALADMINISTRATION BY THE VFSC IN
THE RECRUITMENT PROCESS FOR THE POST OF
SENIOR REGISTRATION OFFICER**

SUMMARY**Outline of events (see further page 5)**

Mr Clifton Rau, amongst 13 other applicants applied for the post of the Senior Registration Officer which was advertised by the Vanuatu Financial Services Commission (VFSC) on 12 February 2013. A Panel was convened and 10 candidates were short-listed. Interviews were held and 2 candidates were recommended for the post. The candidate who was offered the post declined as she was offered another job elsewhere. The alternate was offered the post but he too also declined as he was being promoted in his current job. To avoid re-advertisement, VFSC then reviewed the list of the unsuccessful candidates and identified Mr Rau, who was then called in for an appointment. He was met and interviewed solely by Mr Roy MacDonald, the Manager, Registration Department.

Mr Rau was informed by Mr MacDonald that he was not considered in the first place because he had not signed his application letter and that recruiting him to the post would be a waste of his legal skills. Mr Rau was then given his application letter to be signed and was told by Mr MacDonald that he would be contacted on the outcome of the interview.

Findings (see further page 7)

- The current VFSC Staff Manual is silent on the process to recruit staff members, thus the disorganized incident involving Mr Rau described above.

Recommendations (see further page 6)

The Ombudsman recommends:

- 7.1.1 The Commissioner of the VFSC write a letter of apology to Mr Clifton Rau to apologise for the following matters:
- (i) for the interview panel not advising him to attend the VFSC office to sign his application letter as soon as it was noticed to be absent in his application letter;
 - (ii) for the interview panel not asking him to sign his application during his interview for the VFSC vacancy but went ahead to interview him anyway; and
 - (iii) for Mr McDonald's ad hoc treatment of him during their 'interview' or discussion on 27 May 2013, including Mr McDonald's uncivil conduct of the 'interview' by sitting on the table while Mr Rau was sitting on the only chair in the room.
- 7.1.2 The laws and procedures relating to appointments within the VFSC are observed.

- 7.1.3 Procedures pertaining to recruitment, selection, and appointment of staff should be reviewed and clearly documented so that situations such as Mr Rau's are dealt with professionally and within the rules. In addition, the VFSC Staff Manual should be amended to include other independent panellists apart from VFSC officers, if required.
- 7.1.4 That the VFSC Commissioner and or the VFSC Chairman write a warning letter to Mr McDonald for his ad hoc and uncivil conduct of the interview with Mr Rau on 27 May 2013.

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1. JURISDICTION

- 1.1 The Constitution, the Ombudsman Act [CAP 252] and the Leadership Code Act [CAP 240] allow the Ombudsman to enquire into the conduct of government, related bodies, and Leaders. This includes the Vanuatu Financial Services Commission (VFSC) as a Government statutory entity. The Ombudsman can also enquire into defects in laws or administrative practises, including the procedures utilised by Mr Roy McDonald as the Registration Manager of the VFSC, in recruiting potential candidates to the post of Senior Registration Officer.
- 1.2 This short enquiry was carried out by the General Complaints and Investigation team of the Ombudsman's Office on behalf of the Ombudsman.

2. PURPOSE, SCOPE AND METHOD OF INVESTIGATION

- 2.1.1 The purpose of this report is to present the Ombudsman's findings as required by the Constitution and the Ombudsman Act. The scope of this investigation is to establish the facts about the alleged improper recruitment procedures of the VFSC and to determine whether Mr McDonald's conduct was proper by meeting privately with Mr Clifton Rau.
- 2.1.3 This Office collects information and documents by informal requests, summons, letters, interviews and research when conducting an enquiry.

3. RELEVANT LAWS, REGULATIONS AND RULES

Relevant parts of the following laws are reproduced in **Appendix A**. They include:

Constitution of the Republic of Vanuatu

Ombudsman Act [CAP 252]

VFSC Act

VFSC Staff Manual – 20 June 2003

4. OUTLINE OF EVENTS

- 4.1 On 02 February 2013, the Vanuatu Financial Services Commission (VFSC) advertised the post of Senior Registration Officer in the Daily Post newspaper issue No 3771 and also on the website <http://www.wokikik.com> . **(Refer to copy of daily post advertisement as Appendix B).**
- 4.2 Mr Clifton Rau (Mr Rau) amongst thirteen (13) other applicants applied for the post of Senior Registration Officer.

- 4.3 A panel, consisting of three senior officers of the VFSC was convened to screen the applications. After screening the applications, the panel shortlisted ten applicants including Mr Rau. **(Refer to copy of several parts of the Selection/Recruitment report to the Commissioner as Appendix C).**
- 4.4 On 28 February 2013 and 01 March 2013, interviews were conducted for the ten applicants. After the panel assessments, two applicants were recommended for the post. They were Lucyana Natuoivi and Tarisu Kailes. **(Refer to Appendix C).**
- 4.5 The VFSC offered the position to Ms Lucyana Natuoivi, who accepted the offer. However, she later cancelled it since she received a better job offer with another employer.
- 4.6 VFSC then contacted the alternate candidate, Mr Tarisu Kailes who also declined as he had been promoted also by his current employer.
- 4.7 Since the VFSC had not successfully recruited a person to fill up the post, the panel then reviewed the list of unsuccessful candidates to identify a potential applicant in order to avoid re-advertising the position.
- 4.8 On 24 May 2014, Ms Bethylyne Tabi of the VFSC then contacted Mr Rau and asked him to attend an appointment at 9:00 am on 27 May 2013 at the VFSC Office. Mr Rau attended and met only with Mr McDonald.
- 4.9 Mr McDonald interviewed Mr Rau and informed him that he was not considered by the panel in the first place due to his unsigned application and that recruiting him to the post would be a waste of his legal skills. Mr Rau was then given his application letter to sign. He was also informed that he would later be contacted by the VFSC on the outcome of that interview. Mr Rau was never contacted by Mr MacDonald or the VFSC.
- 4.10 The room that Mr McDonald interviewed Mr Rau in had only one chair and one table. Mr Rau sat on the chair while Mr McDonald sat on the table.

5. RESPONSES BY THOSE WITH FINDINGS AGAINST THEM

- 5.1 Before starting this enquiry, the Ombudsman notified all people or bodies complained of and gave them the right to reply. A working paper was provided on 08 December 2015 prior to preparation of this public report to give the individuals mentioned in this report another opportunity to respond.
- 5.2 There were no responses received to the working paper by the Ombudsman.
- 5.3 Two letters of response were received from Mrs Serah Obed as Acting and Deputy Commissioner of VFSC during the enquiry relating to information requested from the VFSC.

- 5.4 Further information was obtained from Mr Roy McDonald in an interview during the enquiry.

6. FINDINGS

Finding 1: The current VFSC Staff Manual is silent on the process to recruit staff members.

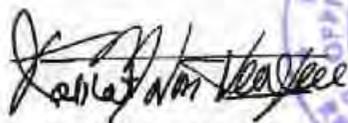
- 6.1.1 The VFSC Act pursuant to section 10(1) gives power to the Commission to appoint such staff as necessary "for the proper and efficient discharge of its functions." It further states in Section 10(2) that the Commission may also "make rules regulating the terms of service, discipline and training of all persons employed by it."
- 6.1.2 While there are provisions relating to assessments and conditions of eligibility for appointment in the VFSC Staff Manual, the VFSCSM is silent as to the actual process that must take place before arriving at the point of making an appointment. There is no provision for the appointment of a recruitment panel, its constitution or rules of procedure.
- 6.1.3 Normally in circumstances where provisions of the 'Manual' is silent on a matter, then considerations of reasonableness come into play. In this case, an interview should have been conducted as was the case with the first 2 candidates.
- 6.1.4 As in Mr Rau's situation, there was a panel that screened all the applications for the advertised post, however, when he was called in on 27 May 2013, the least he expected was to be interviewed by Mr Roy McDonald. Because, the VFSC Staff Manual is silent on the process, Mr McDonald saw it fit to interview or speak to Mr Rau without the presence of the other two panel members, who were VFSC officers. To make matters worse Mr McDonald 'interviewed' Mr Rau in a room with a table and only one chair, necessitating Mr McDonald to sit himself unprofessionally on the table while Mr Rau was sitting on the chair during their discussion. Clearly the VFSC is not an organization which is short of chairs. The professional attitude of Mr Roy McDonald is brought into question by that episode.
- 6.1.4 In addition, on 27 of May 2013, well after the applications for the post were screened by the panel, Mr McDonald asked Mr Rau to sign his application letter. Normally, his application should not have been considered in the first place. This shows a lack of proper documented process of recruitment in the Staff Manual causing mal-administrative error on staff recruitment such as has occurred to Mr Rau.

7. RECOMMENDATIONS

The Ombudsman recommends that:

- 7.1.1 The Commissioner of the VFSC write a letter of apology to Mr Clifton Rau to apologise for the following matters:
- (i) for the interview panel not advising him to attend the VFSC office to sign his application letter as soon as it was noticed to be absent in his application letter;
 - (ii) for the interview panel not asking him to sign his application during his interview for the VFSC vacancy but went ahead to interview him anyway; and
 - (iii) for Mr McDonald's ad hoc treatment of him during their 'interview' or discussion on 27 May 2013, including Mr McDonald's uncivil conduct of the 'interview' by sitting on the table while Mr Rau was sitting on the only chair in the room.
- 7.1.2 The laws and procedures relating to appointments within the VFSC are observed.
- 7.1.3 Procedures pertaining to recruitment, selection, and appointment of staff should be reviewed and clearly documented so that situations such as Mr Rau's are dealt with professionally and within the rules. In addition, the VFSC Staff Manual should be amended to include other independent panellists apart from VFSC officers, if required.
- 7.1.4 That the VFSC Commissioner and or the VFSC Chairman write a warning letter to Mr McDonald for his ad hoc and uncivil conduct of the interview with Mr Rau on 27 May 2013.

Dated 06 April 2016



Kalkot Mataskelekele
OMBUDSMAN OF THE REPUBLIC OF VANUATU



8. INDEX OF APPENDICES

A Relevant Laws

B Copy of VFSC advertisement

C Copy of several parts of the Selection/Recruitment report to the Commissioner

CONSTITUTION OF THE REPUBLIC OF VANUATU

ENQUIRIES BY OMBUDSMAN

62. (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 National Council of Chiefs or of a Local Government Council: or
 - (c) of his own initiative.
- (2) This Article shall apply to all public servants, public authorities and ministerial departments, with the exception of the President of the Republic, the Judicial Service Commission, the Supreme Court and other judicial bodies.
- (3) The Ombudsman may request any Minister, public servant, administrator, authority concerned or any person likely to assist him, to furnish him with information and documents needed for his enquiry.
- (4) The Ombudsman shall grant the person or body complained of an opportunity to reply to the complaints made against them.
- (5) The enquiries of the Ombudsman shall be conducted in private.

OMBUDSMAN ACT [CAP 252]

PART 4 – COMPLAINTS AND PROCEEDINGS

Division 1 – Procedures

17. Complaints

- (1) A person may make a complaint under the Constitution or this Act to the Ombudsman either orally or in writing.
- (2) If a complaint is made orally, the Ombudsman must make a written record of the complaint as soon as possible.

VANUATU FINANCIAL SERVICES ACT NO. 35 OF 1993

7. Duties of the Commission

(1)...

(2) Without prejudice to the generality of subsection (1) the Commission shall have the following duties –

(c) **to be responsible for the general administration** and for the collection of fees, charges and other revenue due under the Acts specified in the Schedule;

10. Appointment of officers and servants of the Commission

(1) The Commission may appoint at such remuneration and upon such other terms and conditions as it thinks fit, such officers, employees, agents, advisors or consultants as it thinks necessary for the proper and efficient discharge of its functions and may dismiss any such officer, employee, agent, advisor or consultant.

(2) **The Commission may make rules for regulating the terms of service, discipline and training of all persons employed by it.**

VANUATU FINANCIAL SERVICES COMMISSION STAFF MANUAL

PART V – RECRUITING AND SELECTING STAFF

4.0 Staff of the Commission

The staff of the Commission may, comprise of:

- (a) Senior staff;
- (b) Junior staff; and
- (c) Daily rated workers

4.1 Assessment

The selection of persons for appointments and promotion must be based upon merit and that a person's merit for appointment be determined by assessing their:

- (a) Skill and ability to perform the duties and responsibilities of the post;
- (b) Standard and efficiency of work performance;
- (c) Formal qualifications and training; and
- (d) Personal qualities including conduct.

4.2 General conditions of eligibility for appointment

a No person may be appointed on a permanent basis to an office in the Commission:

- (i) unless he or she is a citizen of Vanuatu;
- (ii) Unless he or she fulfils the physical requirements, if any, for the appointment;
- (iii) If he or she is under 18 years of age;
- (iv) If he or she is over 55 years of age, except in respect of an appointment on contract
- (v) Unless he or she has a knowledge of English or French; and
- (vi) Unless he or she is of good character.

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- b. Subject to paragraph 4.2.a, the Commission may determine any other general conditions of eligibility for appointment including minimum educational qualifications or their equivalent, for any particular position or class of positions.

Appendix C

SELECTION/RECRUITMENT REPORT TO THE COMMISSIONER

Date Prepared	01/03/2013
Prepared By	Serah Obed on behalf of the Panel
Action Officer	Commissioner
Submitted By	Serah Obed
VFSC	Registration Department
Position Title	Senior Registration Officer
Position Number	
Salary Level	D4
Reporting Relationships	Manager, Registration Department
Date of Board Approval to Advertise	2012
When Advertised	2 February 2013
Where Advertised	Daily Post
Closing Date of Applications	15 February 2013
Applications Received	14
Names of Applicants	Internal: None External: 14
Constitution of Panel	Roy McDonald, Manager Registration Dept., John Stephens Tougon, Manager ILE&C Dept. Serah Obed Corporate Services Dept
Short Listing occurred	26/02/13
Applications Short listed and Interviewed	Hannah M Liunakwalau Kevin Nathan Manen Hopa Clifton Rau Frederick Thyna Mina Bella Popovi Ruben Edward Tafau Wilfred Dovo Tarisu Kailes Lucyana Natuoivi
Interviews conducted	28 th February & 1 March 2013

Appendix C

Applications of interviewee attached	
List of recruitment and selection techniques used (e.g. applications, interviews, tests, and or referees reports)	Assessment of written applications, particularly, work history, experience and qualifications based on the set criteria. Interviews were conducted based on the set criteria as well.
Recommended Applicant	<i>Lucyana Natuovi</i>
Recommended Salary point	Salary Range = 1,680,000/2,856,000VT
Employment history of recommended candidate	See above
Eligible candidate (s)	<i>Tariu Kailes</i>
Employment history of eligible Candidate	See note above
Recommendation/Decision by Panel	<p>The Panel made recommendations based on the following reasons:</p> <p>(i) <i>Lucyana Natuovi</i> She has the experience and qualification required for the post. She has the private sector experience where work commitment is a priority</p> <p>(ii) <i>Tariu Kailes</i> He has the qualification and experience in a middle management position and exerts a good leadership style.</p>
Panel Approval Date	01/03/13
Signature	John Stephens, Roy McDonald, Serah Obed



VACANCY NOTICE

SENIOR REGISTRATION OFFICER

The Vanuatu Financial Services Commission wishes to recruit a Senior Registration Officer for its Registration Department. The successful candidate should satisfy the following criteria:

- Bachelors Degree in Law, Business Administration or related field;
- Must have 5 years or more experience in a middle management position;
- Ability to communicate and negotiate effectively in a professional manner, ability to communicate (orally and in writing) in the English language. Good understanding of the French language will be an advantage;
- Must be computer literate;
- Must be able to exert good leadership qualities and be able to supervise others, and to work as a team member of the VFSC Management;
- Must be willing to work extra hours and take on extra duties as required from time to time;
- Must have sound knowledge of the legislations administered by the Commission;
- Commitment, professionalism and a willingness to make positive contributions to the environment of and to enhance the performance the VFSC in delivery of services to the general public;
- Be of good character

Other Skills:

A valid driver's licence

Any candidates having the required qualifications stipulated above may apply in writing, attached with a passport photo, C.V and copies of your educational transcripts and marked "CONFIDENTIAL" to:

The Commissioner,
Vanuatu Financial Services Commission,
Private Mail Bag 9023, PORT VILA.

Applications must be received by 4.30 pm, close of business day of Friday 15th February 2013.

VACANCY NOTICE

REGISTRATION OFFICERS.

The Vanuatu Financial Services Commission wishes to recruit 2 Registration Officers for its Registration Department. The successful candidate will have the following criteria:

- Diploma in Commerce, Business Studies or related field;
- Good understanding of corporate concepts and basic knowledge of the legislations administered by the Commission will be an advantage;
- Must have 5 years or more experience in any similar position;
- Ability to communicate effectively and in a professional manner. Proficient communication in English language a must. Preference will be given to candidates with proficiency in both English and French;
- Must be computer literate;
- Must show initiative, ability to work unsupervised and ability to work as a team member;
- Commitment, professionalism and a willingness to make positive contributions to the environment of and to enhance the performance the VFSC in delivery of services to the general public
- Be of good character

Any candidates having the required qualifications stipulated above may apply in writing, attached with a passport photo, C.V and copies of your educational transcripts and marked "CONFIDENTIAL" to:

The Commissioner,
Vanuatu Financial Services Commission,
Private Mail Bag 9023, PORT VILA.

Applications must be received by 4.30 pm, close of business day of Friday 15th February 2013.

VACANCY NOTICE

OFFICE CLERK.

The Vanuatu Financial Services Commission wishes to AN Office Clerk. The successful candidate will have the following criteria:

- Minimum Year 13 but preferably a certificate in commerce or related field.
- Must possess good understanding of office and clerical work;
- Preference will be given to candidates with past experience in a similar position;
- Ability to communicate effectively;
- Must have a good command of spoken English;
- Must be computer literate;
- Must show initiative, ability to work unsupervised and ability to work as a team member;
- Commitment, professionalism and a willingness to make positive contributions to the environment of and to enhance the performance the VFSC in delivery of services to the general public
- Be of good character

Applications open only to citizens of Vanuatu

Any candidates having the required qualifications stipulated above must apply in writing, attached with a passport photo, C.V and copies of your educational transcripts and marked "CONFIDENTIAL" to:

The Commissioner,
Vanuatu Financial Services Commission,
Private Mail Bag 9023, PORT VILA.

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Appendix B