

REPUBLIC OF VANUATU
OFFICE OF THE OMBUDSMAN

PUBLIC REPORT

**IMPROPER APPOINTMENTS AND
PROMOTIONS OF HEALTH WORKERS IN
NOVEMBER 1995**

This Report contains the findings and recommendations of the Ombudsman pursuant to the Constitution of the Republic of Vanuatu and the Ombudsman Act No 14 of 1995

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PREAMBLE

"Woe unto them that decree unrighteous decrees, to take away the right from the poor of my people" ... ISAIAH 10 v 1.

1 SUMMARY

- 1.1 On 30 October 1995, the former Director of Health, Mr Yves Niowenmal sent a letter of request to the Public Service Commission ("PSC") to approve 193 daily-rated and temporary health staff to become permanent officers, and 44 permanent officers to be promoted with their salaries regraded to a higher salary scale. The permanent appointments and promotions were approved by the PSC on 1 November 1995.
- 1.2 Mr Niowenmal's request was made two days before the PSC met and three weeks before the 1995 general election. Mr Niowenmal misled the PSC by suggesting that there were budgetary provisions for the increased expense. The proper procedures for promotions and for granting permanent status were totally ignored by Mr Niowenmal as well as the PSC members (Mssrs Mael, Andeng, Lulu and Basil) and Acting Director Andre Lesines of the Public Service Department ("PSD"). It is understood that Mr Niowenmal's request was made to honour pre-election campaign promises and/or to ensure job security for individuals who were not appointed on merit.
- 1.3 On the Ombudsman's enquiry, it was found that all the appointments that the PSC approved on 1 November 1995 did not follow the Public Service Rules and therefore were contrary to law. These appointments were also made without any budgetary provision. It was found that the individuals involved acted improperly in the performance of their duties. It was further found that Mr Niowenmal breached the Leadership Code of the Constitution by placing himself in a position where the fair exercise of his official duties might be compromised, and by allowing his honesty and integrity to be called into question.
- 1.4 In addition to sanctions against Mssrs Niowenmal, Lesines, Mael, Andeng, Lulu and Basil, the Ombudsman recommends that :
 - * The PSC revoke the improper promotions of 44 officers and the permanent status of 193 employees discussed in this report, returning them to their status as of 30 October 1995
 - * The PSC, PSD and Department of Health should initiate proper procedures for promotions of health workers and recruitment of permanent staff where vacancies exist
 - * The PSC, the PSD, all Directors General, and all Department Heads should be trained in proper recruitment and promotion procedures.
 - * The Public Service Manuals should be updated, comprehensive and cohesive.

2 CASE NUMBER

2.1 C.015/96-97

3 THE COMPLAINT

3.1 An individual ("XY") lodged a complaint that a number of health workers were not being paid the new salary scale that was approved by the Public Service Commission. Based on preliminary results of the investigation, the Ombudsman extended her inquiry into the legality of the permanent appointments or promotions of 237 health workers by the Public Service Commission .

4 METHOD OF INVESTIGATION

4.1 Correspondence with Public Service Department("PSD")

4.2 Correspondence with PSC

4.4 Correspondence with Health Department

4.5 Correspondence with Finance Department

4.6 Correspondence with Ministry of Health

5 PRELIMINARY REPORT

5.1 A preliminary report was issued by the Ombudsman which outlined the preliminary findings of misconduct. In accordance with Article 62 (4) of the Constitution, the Ombudsman allowed 21 days from the receipt of the preliminary report to people who had been involved in the matter to give their comments about the report and make submissions to the Ombudsman.

5.2 The preliminary report was sent to the former Director of Health, Mr Yves Niwenmal, the former Acting Director of Public Service Department, Mr Andre Lesines, the former Chairman of PSC, Mr William Mael and the members of the PSC who approved the appointments: Mr Amos Andeng, Mr Tinsley Lulu and Mr Edwin Basil. However, **none of them replied to the preliminary report and must be taken to agree with the facts therein.**

6 RELEVANT LAW

Public Service Staff Manual

6.1 Clauses 3.11 to 3.19 of the Manual set out the procedure for **recruitment of permanent staff** for the Public Service. A summary of these clauses is attached as Appendix A.

6.2 Clause 1.4[iii](f) states that "*Temporary*" appointments are:

...expected to come to an end in a few weeks or months because of the return of the substantive holder of the post or because of the **completion of normal recruitment procedures.**

- 6.3 *"Daily rated"* appointments are made pursuant to the provisions of the Casual Employees Manual, designed to allow Department Heads to recruit for low-paying positions such as drivers and cleaners without the need for going through the PSD and PSC. There is **no mechanism for daily rated employees to become permanent, other than utilising the recruitment procedures for permanent appointment** set out in the Public Service Staff Manual (and summarised here in Appendix A). This point was confirmed by former Attorney General Oliver Saksak.
- 6.4 Clauses 3.11 and 3.20 of the Manual set out the procedure for **promotion to a higher grade**. These clauses are attached as Appendix B.

The Constitution

- 6.5 Art 66(1) of the Constitution provides:

Any person who is defined as a leader in art 67 has a duty to conduct himself in such a way both in his public and private life so as not to:

- (a) place himself in a position in which he has or could have a conflict of interests or in which the fair exercise of his public or official duties might be compromised;
- (b) demean his office or position;
- (c) allow his integrity to be called into question; or
- (d) endanger or diminish respect for and confidence in the integrity of the Government of the Republic of Vanuatu.

8 RELEVANT MATTERS AND FACTS

- 8.1 On **30 October 1995**, Mr Niowenmal wrote a letter to the Chairman of the PSC, Mr William Mael. In this letter, Mr Niowenmal made a request to the PSC to approve a list of the health officers to permanent status and higher salary grades (see **Appendix C**).
- 8.2 On **1 November 1995**, the members of the PSC, Mr Mael, Mr Andeng Mr Lulu and Mr Basil met and approved the list as per the request. No official copy of any approval document from the PSC was received. The only available document to confirm this decision is a hand written note on the above letter (Appendix C) with the PSC stamp.
- 8.3 The approved list is classified into the following categories:
- * 44 permanent officers promoted, with salaries regraded to higher salary scales (**Appendix D**)
 - * 164 daily rated employees given permanent status (**Appendix E**)
 - * 29 temporary officers given permanent status (**Appendix F**).

- 8.4 These mass promotions were made just a few weeks before the General Elections were held in November 1995. Mr Niowenmal as found in several of my public reports is strongly linked to UMP Party. Mr Mael was an unsuccessful UMP candidate for Paama Constituency in the 1987 General Election. Mr Andeng was the UMP Member of Parliament for Ambrym Constituency and was the former Minister of Agriculture, Livestock, Fisheries and Forestry.
- 8.5 On 27 March 1996, the former acting Director of PSD, Mr Lesines, wrote letters to the daily rated officers who were given permanent status, to confirm their appointments. On 22 April 1996, Mr Lesines wrote letters to the permanent officers informing them of the PSC's decision to promote them to a higher grade.
- 8.6 On 20 September 1996, XY lodged an official complaint to the Ombudsman as a number of health workers were not being paid their new salary scales which were approved by the PSC.
- 8.7 The former acting Director of Health, Mr Daniel Kalorib, confirmed to the Ombudsman that the procedures taken to make these mass promotions were not made by the committee within the Health Department but that it was one man's decision, that is Mr Niowenmal's decision. Mr Kalorib also informed the Ombudsman that some staff were promoted on merit and experience. However, others were recruited to fill the vacant positions after the Public Servant's strike in 1993, and were promoted to skilled positions (dental therapists, lab technicians, nurses, X-ray technicians etc.) without proper qualifications. Mr Kalorib indicated that such employees would have their cases reviewed. Mr Kalorib's letters are **Appendices G and H**.
- 8.8 Mr Kalorib also provided a list of 31 employees (out of the 164 daily rated employees given permanent status on 1 November 1995) who were made permanent despite being recruited less than a year before. This list is **Appendix I**.
- 8.9 In his reply to the Ombudsman, the Director General of Finance, Mr Jeffery Wilfred, confirmed that there was no budgetary provision for these mass promotions made by the PSC. The letter is **Appendix J**.
- 8.10 The Accountant in the Health Department, Mr Jameson Mokoroe, confirmed through a phone conversation with the Ombudsman's Office the following information:
- * 10 officers were paid their new salary scales effective as from 1 November 1995. These were seven temporary staff given permanent status, and three officers promoted to higher grades; they are listed in **Appendix K**.
 - * All 44 promoted permanent officers (Appendix D) were paid their new salary scales from December 1996. Funds were made available to pay these salaries through savings made from other chapter heads of the Health Department.
 - * The upgraded salaries of most officers given permanent status from temporary or daily-rated, have not been paid.

9 FINDINGS OF WRONG CONDUCT AND MALADMINISTRATION

FINDING NO1 : PROMOTION OF 44 OFFICERS TO HIGHER GRADES ON 1 NOVEMBER 1995 WAS CONTRARY TO LAW

- 9.1 Former Director of Health Mr Niowenmal, Acting PSD Director Mr Lesines, and Mr Mael, Mr Andeng, Mr Lulu and Mr Basil of the Public Service Commission acted together to illegally promote 44 health officers to higher grades, in violation of the requirements of the Public Service Staff Manual. Existing or forthcoming vacancies were not identified (cl 3.11). Full recruitment procedures were not followed (cl 3.12 - 3.19). A properly-constituted Promotion Board did not sit to ensure the minimum qualifications and select the best candidates (cl 3.20). Officers were improperly promoted beyond the next higher category, sometimes as many as 10 grades higher (cl 3.20).
- 9.2 Mr Niowenmal is primarily responsible for these illegal promotions, by initiating the request and deceiving the PSC with respect to the financial implications. Mr Lesines is responsible for confirming the promotions when he knew, or ought to have known, that the proper procedures were not followed.

FINDING NO2 : GRANTING PERMANENT STATUS TO 164 DAILY RATED EMPLOYEES AND 29 TEMPORARY OFFICERS ON 1 NOVEMBER 1995 WAS CONTRARY TO LAW

- 9.3 Former Director of Health Mr Niowenmal, Acting PSD Director Mr Lesines and Mr Mael, Mr Andeng, Mr Lulu and Mr Basil of the Public Service Commission acted together to illegally grant permanent status to 164 daily rated employees and 29 temporary officers, in violation of the requirements of the Public Service Staff Manual. Existing or forthcoming vacancies were not identified (cl 3.11). The Minister for the Public Service did not approve the vacancies for recruitment (cl 3.12). The Public Service Commission did not advertise the positions, review applications, check eligibility and otherwise ensure that the best qualified candidates were chosen for the positions (cl 3.12 - 3.19).

FINDING NO3 : MR NIOWENMAL'S CONDUCT IN THE PERFORMANCE OF HIS DUTIES WAS IMPROPER AND IN BREACH OF THE LEADERSHIP CODE

- 9.4 Mr Niowenmal misled the PSC by stating that the Health Department had budgetary provision for the promotions when in fact there were none. Mr Niowenmal by-passed the proper recruitment procedures as indicated above. Mr Niowenmal acted to secure positions of individuals who were found not to have had the required qualifications when they were appointed after the Civil Servants Strike in 1993. These appointments of unqualified

persons has led to the ever-deteriorating state of health services in Vanuatu during the last several years. In these ways, Mr Niowenmal's conduct in the performance of his duties was improper.

- 9.5 Furthermore, Mr Niowenmal requested mass promotions to be made immediately before the General Elections in 1995. It is understood that this was done to honour "pre-election campaign promises" (as stated by Mr Kalorib) and/or to ensure job security for individuals who were not appointed on merit. By making such a request, and backing it up with untrue assertions that the Health Department had budgetary provision for the higher salaries, Mr Niowenmal placed himself in a position where the fair exercise of his official duties might be compromised. He allowed his honesty and integrity to be called into question by putting other interests ahead of his public duty, ignoring proper procedures, and misleading the PSC. In these ways, Mr Niowenmal breached Chapter 10 of the Constitution, specifically s 66(1)(a) and (c) of the Leadership Code.

FINDING NO.4: MR LESINES' CONDUCT IN THE PERFORMANCE OF HIS DUTIES WAS IMPROPER

- 9.6 Mr Lesines, as Acting Director of PSD, should have directed the PSC not to approve the promotions as proper procedures had not been followed, and there was no budgetary provisions for the higher salaries. Mr Lesines should not have confirmed the promotions to the individual officers.

FINDING NO.5: THE CONDUCT OF THE MEMBERS OF THE PUBLIC SERVICE COMMISSION, MSSRS MAEL, ANDENG, LULU AND BASIL, IN THE PERFORMANCE OF THEIR DUTIES WAS IMPROPER AND CONTRARY TO ART. 60 OF THE CONSTITUTION

- 9.7 The Public Service Commission is charged with the Constitutional responsibility for "the appointment and promotion of public servants" (Art 60(1)). They failed completely to carry out their responsibilities in accordance with the Public Service Staff Manual, which are Orders under the Public Service Act. Article 60 of the Constitution also states that the PSC "shall not be subject to the direction or control of any other person or body in the exercise of its functions". Yet, in this case, it appears that the PSC members simply acted as "yes-men" for the Director of Health. The requirements for granting permanent status and for promotions were blatantly disregarded.

10. RECOMMENDATIONS

- 10.1 In view of the findings, the Ombudsman makes the following recommendations:

NO.1 The Public Service Commission should immediately revoke the improper promotions of 44 officers and the permanent status of 193 employees discussed in this

report, returning them to their status as of 30 October 1995.

- NO.2 The Public Service Commission, Public Service Department and Department of Health should initiate the proper procedures for the promotions of health workers and the recruitment of permanent Health Department staff where vacancies exist. The procedures set out in the Public Service Staff Manual must be followed.
- NO.3 The Minister responsible for the Public Service (Prime Minister Kalpokas) should ensure that the PSC, the PSD, all Directors General, and all Department Heads are provided with information and training respecting the proper recruitment and promotion procedures. The Public Service Staff Manual and Casual Employees Manual should be reviewed and integrated to ensure that the public service rules are updated, comprehensive and cohesive. However we understand that within the Comprehensive Reform Program, new laws might be on the way.
- NO.4 Mr Niowenmal should not be appointed again to the position of Director of Health or any other responsible position in the Public Service.
- NO.5 Mr Lesines should not be appointed again to the position of acting Director of Public Service.
- NO.6 Mr Andeng and Mr Lulu should not be appointed again as members of the Public Service Commission.
- NO.7 Mr Basil and Mr Mael should resign as members of the Public Service Commission and not to be appointed again as members of the PSC.

11 CONCLUSION

- 11.1 In accordance with Art 63(2) of the Constitution and s 22 of the Ombudsman Act, the Ombudsman requests the Prime Minister and his Director General, the Minister of Health and his Director General to put the above recommendations into effect, and also the President of the Republic of Vanuatu to look at the breaches of the Leadership Code and deal with the persons concerned.
- 11.2 The above persons are required to notify this Office within 30 days of the date of receipt of this report outlining what steps have been taken by them to implement the recommendations.

Dated this 17th day of April 1998.



Marie-Noëlle FERRIEUX PATTERSON
OMBUDSMAN OF THE REPUBLIC OF VANUATU

