



OFFICE OF THE OMBUDSMAN

PUBLIC REPORT

ON THE ESTABLISHMENT AND MANAGEMENT OF THE MEMBERS EDUCATION SUPPORT SCHEME (MESS) BY VNPF BOARD AND THE MINISTRY OF EDUCATION & TRAINING

Date: 23 September 2021



REPUBLIC OF VANUATU

TABLE OF CONTENTS

1. PURPOSE, SCOPE OF INVESTIGATION	3
2. BACKGROUND AND ISSUES	4
3. OUTLINE OF EVENTS	5
4. DISCUSSIONS	6
5. RESPONSES BY THOSE WITH FINDINGS AGAINST THEM	17
6. FINDINGS	18
7. RECOMMENDATIONS	21

1. PURPOSE

1. The purpose of the Investigation is to determine whether the “Member Education Support Scheme” hereafter referred to as “MESS” was established in accordance with relevant laws.

2. SCOPE

2. The scope of this Investigation is to determine–

(a) whether the formulation of the policy to enter into the Memorandum of Understanding between the then, Minister of Education, Honourable Jean-Pierre Nirua Minister and the Board of the Vanuatu National Provident Fund, hereafter referred to as the “MOU” met the development policy requirements under the Government Act (CAP 243) and the Constitution of Vanuatu; and

(b) whether proper consultations were carried out with relevant stakeholders; and

(c) whether good administrative rules or guidelines were introduced by the parties to the MOU and MESS is being administered in accordance with such rules or guidelines to ensure that students who are recipient of scholarships under MESS are properly looked after and provided for.

3. This Investigation firstly, looked into the conduct of the Minister of Education hereafter referred to as “Minister” in the process of developing the initiative culminating in the signing of the MOU with VNPF.
4. Secondly, the Investigation looked into the conduct of the General Manager of VNPF in supporting the initiative and the process he utilized to carry out consultations and sought the approval of the VNPF Board.
5. Thirdly, the Investigation looked into the process utilized by the Minister to determine whether the policy was approved by the Council of Ministers as the initiative stems from the National Sustainable Development Goals (NSDG) Society Pillar 2 on “(increasing) higher education opportunities” to students coming out of high schools.
6. Fourth, the Investigation looked into the conduct of both parties to the MOU when after executing the MOU and agreed to commence MESS whether they agreed internal guidelines, policies, processes and systems to help them administer and implement MESS in a smooth and professional manner.
7. Finally, this Investigation is concerned mainly with issues of maladministration. The issues relating to the leadership code is for another day.

3. ISSUES

8. The following issues arise in this matter:

- (1) Whether the Minister carried out consultations with stake holders before the decision was made to enter into the MOU.
- (2) Whether the Minister sought and obtained the approval of the Council of Ministers in accordance with the requirements of the Government Act in matters of substantive or strategic government policy initiatives before signing the MOU with VNPF;
- (3) Whether Mr Parmod Achary, the General Manager of Vanuatu National Provident Fund, hereafter referred to as “Mr Achary”, carried out proper consultations with its stakeholders before signing the MOU with the Minister.
- (4) Whether since the decision was made to pursue the objective of the MOU its administration has been properly managed in accordance with good administrative rules or guidelines agreed to by the parties?

4. BACKGROUND

9. In 2011, the Ministry of Education & Training, hereafter referred to as “MOET”, drafted a Council Paper on partially funded scholarships. The focus was on a proposed shared arrangement between the Vanuatu Government (tuition, airfares, establishment) and students (living expenses) and the VNPF.
10. The basis of exploring this specific avenue, on the part of the MOET, was the high demand for post-secondary school education scholarships in Vanuatu that exceeded the availability of scholarships awarded and funded by the Vanuatu Government and foreign/bilateral partners. For example, in 2015 there were a total of 701 applications for 2016 Vanuatu Government funded scholarships. Of these approximately 125 applicants only were shortlisted.
11. In 2016, the MOET, through the Training and Scholarships Coordination Unit carried out a feasibility study with Fiji to examine the best practice in relation to partial scholarship funding, with a view to informing the next phase of policy development and subsequent implementation. Of interest to MOET was an integration and combination of student/parent loans and Government scholarship funding. Potential types of partial funding were:
 - student loans
 - student loans and scholarships
 - scholarships or loan, and individual contributions
 - private/public funding for specific scholarships.

12. The main factor that caused the MOET to find a way-out option due to the increase of scholarships demand was the National Sustainable Development Goals (NSDG) Society Pillar 2 on quality education which is to provide access to quality education. According to Soc 2.1, the Policy Objective is to *“Ensure every child, regardless of gender, location, educational needs or circumstances has access to the education system”* and Policy Objective Soc 2.4 states to *“Increase higher education opportunities, including technical and vocational training and skills.”*
13. In 2019, Mr Achary initiated a VNPF/MFSL Education Scheme and intended to seek the VNPF Board’s approval on the concept and introduction of MESS. The idea was to introduce “education access” as a benefit to members of the Fund. This education scheme package was intended to assist parents who are members of the Fund in financing their children’s education. It would operate as a micro-finance scheme, lending money to members to repay with interests.

5. OUTLINE OF EVENTS

14. On 02 March 2021, Principal Education Officer at the Scholarships Coordination Unit, Mr John Kaltau was interviewed and he explained that *“Scholarship, mifala I gat 2 samting: Yumi gat Vanuatu Government Scholarship, yumi gat VNPF MESS. So taem Gavman blong 2016 I form, oli se mifala I mas go lukaot wan partial funding. Hemi wan 100 Day Plan blong Gavman...blong helpem scholarship ... Council of Ministers oli go oli talem se, no, bae inomo gat inkris long scholarship funds. Mifala I lukaot ol options gogo, go findem VNPF.”*
15. On or about 16 January 2020, the MOET represented by the Minister, signed the MOU with the Vanuatu National Provident Fund Board (VNPF) represented by Mr Achary after receiving clearance from the State Law Office that the MOU was in order. The purpose of the MOU was to *“set forth the general principles” [to] “govern the facilitation of an education benefit package, to be called “Member Education Support Scheme” (MESS).*
16. On 20 February 2020 at 2:00pm, (4 days after the signing of the MOU), the VNPF Board met and approved:
- (a) the MESS concept;
 - (b) an annual budget the amount of VT300 million to be used by the MESS;
 - (c) only guarantors would be parents or relatives of students who are current members of the VNPF; and
 - (d) removed the Government as the Guarantor.
17. According to the Minutes of the Board submitted to the Ombudsman by Mr Achary, the members present at this meeting were Mr Willie

Karie, Mr Antoine Boudier, Mr Jack Maite, Mr August Letlet, Mr Alain Lew, Mr John Ezra, and Mr Achary. Mr Alain Lew later submitted documents to the Ombudsman that stated clearly he was not present at this meeting as shown by the Minutes. During interview he stated *"No mi mi no stap long meeting ia. 2020 mi nomo stap long Board. Am finished. Mi term blong me emi finis lo November."*

6. DISCUSSIONS

18. The first issue that arise in this matter is whether the MOET consulted with stake holders on the proposed new policy
19. At the Budget Committee hearing in early August 2019 for 2020 Budget the MOET was informed that the budget for scholarships cannot be increased.
20. The budget restrictions by the Budget Committee was confirmed by the Minister in his statement as follows –
21. *"budget blong Scholarship emi hitim ceiling and ino save go more" ... "bai yumi no save garem increase. So long ples ia nao yumi mas faenem wan way out."* The Minister went on to say that *"maybe it was not the best thing, [but] we were running against time to find a solution. Long me, mi wantem make sure se I gat wan avenue we ol parents oli hop for."*
22. Interviews with senior officials of the MOET revealed nothing about consultations with other stake holders in Government and elsewhere on the proposed new policy with the VNPF (MESS).
23. Director Anne Rose Tjiobang stated , *"tingting blong MESS ia i kam about from long policy directive blong ministry blong Education blong, yumi kivim partial scholarship opportunity..."*
24. When asked whether the paper had been to Council of Ministers(COM) for discussion, she stated that, *"Yes hemia mi save confirmem, from long time ia tu long 2019, mi attendem a lot of PGOS meeting long behaf blong DG so mi remember paper ia."* However, confirmation received from the COM Secretary stated that she could not find any reference relating to the VNPF MESS Scheme in the COM decisions.
25. Article 16 (1) of the Constitution of the Republic of Vanuatu provides that *"Parliament may make laws for the peace, order and good government of Vanuatu."* In addition, Article 39 stipulates that the Executive power of the people of the Republic of Vanuatu is vested in the Prime Minister and the Council of Ministers and shall be exercised as provided by the Constitution or a law. The Council of Ministers is established by Article 40 (1) of the Constitution. It states that, *"There shall be a Council of Ministers which shall consist of the Prime Minister and other Ministers."*
26. Subsequently, Parliament passed the *Government Act* [CAP 243] which provides for the roles, effective management, and responsibilities of the Executive Government in planning, managing and implementing the Government Strategic Policies. As a process by which such is

carried out, Section 12 established the Development Committee of Officials (DCO) whose functions are:

- (a) advising Council on Council submissions;*
- (b) advising Council on issues submitted to the Council; and*
- (c) improving standards and procedures to be used in preparing Council submissions, and to ensure that submissions and papers put before Council are of the highest quality, are factually correct and have been properly coordinated between interested parties.*

27. Section 13 (6) of the Government Act requires proper consultations to be carried out on any proposed new policy going to Council of Ministers. It states *"...the Chairperson of the DCO must not list a submission or paper for the DCO to consider unless he or she is satisfied that (a) there has been proper consultation with other Ministries in relation to the submission or paper..."*

28. During his interview, the Minister confirmed that there was no CoM Paper for the MESS. He said –

"I no bin occur long mi se bai mi shud tekem paper ia I ko long Council from yumi stap kam long end blong year"... "mi no ting se it was a matter for the Council of Ministers blong emi decide long hem." In addition, he said *"sapos hemi wan samting we yumi yumi fundem mo yumi mas askem, bae yumi askem long Council blong Council I endorsem. Sapos emi sam mani we blong yumi accessem mo spendem, be mani ia emi blong olgeta [VNPF]"*

29. He further added that VNPF is accountable to the Minister of Finance and the Minister of Finance was also aware of the initiative. He stated –

"VNPF I gat own mechanism blong hem and sapos I feel se I necessary, I mas go through long hem [CoM] wetem Minista blong olgeta... MOU ia ating mifala signem it must be November or December 2019. And then long time ia Government too stap wind down ol activity blong hem, ino been occur long me se bai mi should takem paper ia ko long Council from yumi stap kam long end blong year, at least yumi openem wan door blong Opportunity we time yu walk out whether ol people oli interest long hem o no. Mi no ting se it was a matter for the Council of Ministers blong emi decide long hem."

30. In his statements referred to in the two paragraphs above the Minister mentioned the following –

- (a) he thought it was not a matter for the Council of Ministers to make a decision on; and*

- (b) the VNPF and the Minister of Finance could have taken the matter to Council of Ministers if they considered it necessary to do so.
31. Those comments by the Minister run contrary to the requirement of the law. Section 6 of the Government Act outlines the responsibilities of the Council of Ministers. In subsection (2) it says, inter alia, “the collective responsibility of the Council is to assist in the strategic policy planning of significant matters affecting Vanuatu...(and) making significant administrative decisions”.
32. The education of our young people is an essential requirement to prepare them for their future and the future of this nation. Vanuatu 2030 – The People’s Plan identify “increase higher education opportunities” as a major objective under society pillar 2. The implementation of programs and other arrangements to achieve this goal is a significant matter affecting the lives and education of our young people and any decision in this regard is also a significant administrative decision in my view. And it must be taken to the Council of Ministers for a decision in line with section 6 of the Government Act.
33. Mr Achary said that for MESS, VNPF did not consult with VNPF members but he and his team had conducted awareness meetings publically on the matter. Particularly for MESS, he as Manager reports to the VNPF Board and does not see why the MOET did not do a CoM Paper accordingly for endorsement. *“But I consulted quite on the media, and one person go all over the place to do awareness,”* he said. He further added that there was *“no CoM paper, but they [MOET] have to do it, not me. Mine is [to do a] Board paper which has been done.”*
34. In implementing the MOU, Director Anne-Rose Tjiobang said that there are gaps within the operation and management of the MOU concerning the MESS and the roles that the parties should play. She said –
- “MOU ia ino gat guideline in place se I blong guidem yumi se VNPF I kasem wea [mo] Scholarship Office I kasem wea.”* She added that in their 2020 workplan, she had tried to include a way forward for a guideline as to how the MESS should be managed. She mentioned some of the gaps identified as:
- (a) *“if student igo [long University] and fail, wanem rule nao I fall under long hem?”*
- (b) *[taem] Gavman I sponsarem yu and yu fail long Uni, hemi responsibility blong who blong pem bak bifo Gavman I save take ova?”* VNPF last year mi long lukluk blong mi, oli bin step ova wanem we mifala [MOET] I shud mekem, things like going to Fiji

with the students. Hemia I sud stap long mifala from mifala isave better for we [have] been dealing this for many years. Mifala nao I mekem hemia, mifala I accompany student, putum olgeta long Fiji afta kambak."

35. Mr Achary agreed that there are gaps and defects in the implementation of the MOU. He said –

"There was another defect because in the MOU the Ministry has given guarantee or something like that. The guarantee had to be withdrawn after DG Letlet came to Board and said that government guarantee signed by other institution is totally wrong..."

36. A copy of the MOU document that was supplied to the Ombudsman lacked the date of signing. The signatories did not initial the pages and there was no clear start date and end date. Mr Achary said-

"The MESS scheme should have ended in 2020. It's for 2 years. I wanted to concentrate more on partnership."

37. In addition, there was no mention of the amount of funding that both parties to the MOU were going to work with in the MOU. According to Mr Achary, he said-

"I thought this MOU will go, because this MOU is not binding. I thought this MOU will last for 3-4 months"

38. According to the Principal Education Officer in the Scholarships & Training Unit, arrangements for students under the MESS are such that VNPF funds airfares, accommodations, and tuitions, while the MOET provides the stipends or allowances. He said *"from VNPF I pem skul fee, I pem airfare, I pem housing, ... allowance nao mifala [Scholarships Unit] I tekem."*

39The MESS is not a VNPF Scholarship, but a student loan which funding is accessed on commercial terms for a monthly interest of 4% after a student graduates, which would run for 5 years or until the loan repayment is completed.

39. The MOU was signed by the Minister on behalf of the Government and Mr Achary on behalf of the Vanuatu National Provident Fund Board. The MOU is an important initiative for the Minister and MOET in finding extra places at higher institutions in the region –

(a) due to the higher number of students coming through the high schools and eligible for further studies but the Government has insufficient funds to fund their continuing education; and

(b) in ensuring that it meets its duties and obligations under the NSDP where it states at Policy Objective Soc 2.4 to *“Increase higher education opportunities, including technical and vocational training and skills”*

40. This is not just a concern for the MOET alone – it is a significant policy initiative of the Government of the day in line with the goals of the NSDP.
41. The signed MOU however, bears some irregularities in as far as execution of such an agreement is concerned that could contribute to uncertainties or confusion when implementing the MOU.
42. First, it is signed but not dated. This could give rise to doubt as to when exactly it was signed and consequently when it came into force.
43. Second, Clause 4 has not been completed. That clause concerns the term or life of the MOU.
44. As a consequence, because the MOU was not dated on the day it was signed it is not clear when it came into force and it is not clear when the term of the MOU will expire.
45. How can a Minister of State and his advisers overlook such small but important requirements when signing the MOU. This could amount to negligence.
46. A ministry of the Government and its officers including the Minister have a duty to ensure that anything it undertakes must do so professionally and protect the government from liabilities that may arise from its undertakings. The standard of duty required of a Ministry of the Government to meet under the Government Act is very high. The quality of the paper going to Council of Ministers must be of the highest standard and further, proper consultations had taken place to map out the new policy properly including its implementation, and the accuracy of information in the paper going to the Council for a decision.
47. Article 16(1) of the Constitution of the Republic of Vanuatu provides that *“Parliament may make laws for the peace, order and good government of Vanuatu.”* Article 39 states that the Executive power of the people of the Republic of Vanuatu vests in the Prime Minister and Council of Ministers. The Council of Ministers is established by Article 41 (1) of the Constitution. Subsequently, Parliament passed the *Government Act* [CAP 243] to provide for the role the Executive Government has in planning, managing and implementing the Government Strategic Policies. As a matter of public law and good administrative processes , Section 12 established the Development Committee of Officials (DCO) whose functions are:

- (i) *advising Council on Council submissions;*
- (ii) *advising Council on issues submitted to Council; and*
- (iii) *improving standards and procedures to be used in preparing Council submissions, and to ensure that submissions and papers put before Council are of the highest quality, are factually correct and have been properly coordinated between interested parties.*

48. The main reasons behind section 12 can be said to be as follows –

- (a) new policies to be introduced by different Ministries must be taken to the Council of Ministers for a decision as it also amounts to information to all the Ministers on what each Ministry is doing;
- (b) proper consultations must be carried out in advance with stake holders to properly determine the new policy. This is to ensure that when it comes to implementation, the new policy should be rolled out with minimum challenges or not at all;
- (c) matters that must be considered to determine the new policy were considered including existing laws or policies. This is to ensure that the new policy can be implemented and as it will fit nicely within existing policies, laws and other arrangements;
- (d) the policy paper going to Council of Ministers is of the highest quality standard, factually correct and have been properly coordinated between interested parties. This is to ensure that the COM decision is sound and cannot be challenged.

49. Further to the above reasons, this is to ensure that the whole Government is aware of a new policy being proposed by a certain Minister or Ministry and the implications of the new policy on the Government and financial implications, if any. In the last 10 years or so we have continued to have coalition governments comprising many political parties. In such climate, the reason behind section 12 of the Government Act becomes more obvious. Failing to comply with that section can give rise to a situation in Government where the right hand does not know what the left hand is doing.

50. The Minister stated that-

“I no bin occur long mi se bai mi shud tekem paper ia I ko long Council from yumi stap kam long end blong year”... “mi no ting se it was a matter for the Council of Ministers blongemi decide long hem.” In addition, he said *“sapos hemi wan samting we yumi yumi fundem mo yumi mas askem, bae yumi askem long Council blong Council I endorsem. Sapos emi sam mani we blong yumi accessem mo spendem, be mani ia emi blong olgeta [VNPF]”* He further added that VNPF is accountable to the Minister of Finance and the Minister of Finance was also aware of such a Scheme. *“VNPF I gat own mechanism blong*

hem and sapos I feel se I necessary, I mas go through long hem [CoM] wetem Minista blong olgeta.”

51. The above responses clearly showed that the Minister, failed to adhere to both legal and administrative process of good governance established by the Constitution and the Government Act.
52. MESS is an initiative that stems from the NSDP platform and as such is a priority Government strategic policy. Of course, any such policies that would improve the education standards of the people and as a consequence enhance peace, order and good governance in the Government and the people of Vanuatu would require a policy paper that must be endorsed by the Council of Ministers through the DCO.
53. As alluded to earlier, the MOET failed to produce a MESS policy paper before COM for endorsement. Even Mr Achary said that he did not produce a COM paper either as this was the responsibility of the MOET.
54. Mr Archary confirmed that he did some consulting through the media. However, this was not the type of consultation that would require a project of VT300 million funding from the members fund.
55. In addition, the Minister’s response also showed that he was in a rush to establish a scheme during his term since the term of the Government of the day was ending. He said –

“MOU ia ating mifala signem it must be November or December 2019. And then long time ia Government too stap wind down ol activity blong hem, ino been occur long me se bai mi should takem paper ia ko long Council from yumi stap kam long end blong year, at least yumi openem wan door blong opportunity we time yu walk out whether ol people oli interest long hem o no. Mi no ting se it was a matter for the Council of Ministers blong emi decide long hem.”
56. Under such circumstances, common sense would dictate that the matter should wait until a new government is formed. Most probably, the rush to source the VNPF members fund may have been for other aspirations. It begs the question to be asked - why didn’t the initiative be established earlier during the term of the Government or that particular year as adequate funds for scholarships is a continuing challenge for the Ministry of Education and the Government. The answer to this question remains for another time.
57. Although there have been consultations between the MOET and VNPF, there is no evidence suggesting that there was proper consultations –

(a) with VNPF members about MESS. As it stands, VNPF funds are not government funds for MOET and VNPF to be the only parties to the negotiations. VNPF members who have sole right

to the funding and VNPF, being the trustee of the funds should have created worthwhile consultations with members before entering into the MOU with MOET;

(b) carried out by the MOET with other stake holders in Government. This, in my view, is in breach of the requirements of the Government Act.

58. According to Mr Achary, the MOU was not a binding document. If such was the case, it is ludicrous as to why it was signed between 2 parties. By law of contract, parties to an agreement binds obligations through consensus ad idem and their signatures to abide by the same. In addition, Paragraph 13 of the MOU clearly states "*This MOU shall be construed in accordance with the laws of the Republic of Vanuatu*". Given this circumstances, the MOU is a binding agreement. Clause 5 of the MOU states as follows –

"The parties acknowledge that no contractual relationship is created between them by this Memorandum, but agree to work together in the true spirit of cooperation to ensure that there is a visible and responsive leadership of the scheme and to demonstrate responsible financial, administrative and managerial commitment to the scheme."

59. That clause contains an agreement to do various things despite the proviso at the start. It imposes leadership and administrative responsibilities. Mr Archary, in my view, is back tracking and not being truthful about the matter.
60. Mr Achary provided a copy of the Board Minutes that approved Vt300 million as funding for the MESS each year. Upon close examination of the records it indicated that the Board meeting convened on 20th February 2020. The MOU was signed, as confirmed by Mr Achary and through media reports examined, on 16 January 2020. Clearly the MOU was signed between the MOET and VNPF Board a month before the Board approved the Vt300.000.000. It raises the question whether the Board was properly informed of the proposal and approved it.
61. Following that approval, Mr Achary executed the MOU with the Minister. It raises another issue whether VNPF, through its Managing Director, failed to follow its own process to obtain prior approval before execution of the MOU. These issues are not followed through in this investigation and remains for another day.
62. It would have been proper that such administrative arrangements are in place before the signing of the MOU. This, in my view, reflects the lack of preparation between MOET and VNPF for MESS to be established and rolled out properly.

63. Furthermore, because the MESS Scheme was established in a rush, the signatories to the MOU failed to initial the pages of the MOU as well as there is no start and end-dates to effect the same.
64. According to Mr Achary, the MOU was intended for a term of 2 years only. However, in the absence of a decision by COM approving the proposal and a proper policy guideline to support the initiative, this opinion piece, in my view, cannot hold water.
65. It is still not clear whether the MOU has come into effect. Students currently accessing the scheme are not enjoying the scholarship privileges as per the scholarship agreement. This gives rise to doubt as to whether or not the copy of the MOU provided to the Ombudsman is a valid and credible document as it lacked certain important information that would have made the MOU fully complete.
66. Further revelations into the Board Minutes supplied was that a Board member listed to have been present at that meeting of 20 February 2020 was false as he had ceased to be a member of VNPF Board on 02 November 2019. It appears also that Mr Achary was giving false and misleading documents and information to the Ombudsman, as he did not want to be seen to be supporting a Scheme that was not properly established, raising questions of mismanagement of the Members funds. As Manager of VNPF and a leader, Mr Achary's integrity is called into question by remaining in that Office, in my view. Although he was thinking more of a partnership agreement, which would happen at a later stage, he had to agree to MOET's rush to find funding to fill in the gap for the shortage of scholarship funding by the Government.
67. The answer to the first issue, in my view must be answered in the negative. The then Minister of Education and Training had failed to carryout consultations with stakeholders.
68. The second issue is whether the Ministry of Education and Training sought and obtained the approval of the Council of Ministers in accordance with the requirements of the Government Act in matters of substantive or strategic government policy initiatives before signing the MOU with VNPF.
69. From the discussions above in relation to the first issue it is clear in my view that this issue must be answered in the negative.
70. There has been no evidence forth coming from those who made statements in response to the investigation of the Ombudsman that a policy paper was produced on the subject matter and approved by the Council of Ministers.

71. The third issue is whether VNPF conducted proper consultations with its stake holders before signing the MOU signifying the agreement between the MOET and VNPF to proceed with MESS?
72. Below is an extract of part of the General Manager's evidence on this issue –
- “But I consulted quite on the media, and one person go all over the place to do awareness,” he said.*
73. There was no further evidence from the VNPF to qualify this short reference to consultations. He further added that there was *“no CoM paper, but they [MOET] have to do it, not me. Mine is [to do a] Board paper which has been done.”*
74. Following the discussions in relation to the first issue above it is clear in my view that the answer to this issue must also be in the negative.
75. The fourth issue is whether MESS is administered and managed properly.
76. In the first issue both Director Anne-Rose Tjiobang of the MOET and Mr Achary in their statements to the Ombudsman agree that there are gaps and defects in the implementation of the MOU
77. As alluded to in discussions under the first issue, the MOU records understandings reached between the two institutions on the implementation of the Scheme known as MESS. Further the MOU records the roles to be played by each party to the MOU to ensure the attainment of the goals of the MOU. And further under clause 5 of the MOU it states as follows –
- “The parties acknowledge that no contractual relationship is created between them by this Memorandum but agree to work together in the spirit of cooperation to ensure that there is visible and responsive leadership of the scheme and to demonstrate responsible financial, administrative and management leadership of the scheme.”
(underlined mine)
78. The first leg of the MOU is clear, ie, that it creates no contractual relationship. For instance, if one of the parties decides to walk away from the MOU after the signing and before implementing it, can do so, in my view.
79. The next leg of the clause is concerned with the implementation of the understandings created by the MOU. That when and if they decide to proceed to implementation, then the second leg kicks in. In other words, they must be able to “demonstrate responsible financial, administrative and management leadership of the scheme” whilst carrying out their roles under the MOU.

80. Have they complied with the high standard required of them provided for in the second leg in clause 5?

81. Director Tjiobang of the MOET went further to say that there are loopholes in the MOU making the same difficult to implement. She told the Ombudsman's inquiry that –

“MOU ia ino gat guideline in place se I blong guidem yumi se VNPF I kasem wea [mo] Scholarship Office I kasem wea.” She went on further to say that due to this the VNPF had stepped over its boundary into a specific area the MOET is currently playing. In her own words she stated – *“VNPF last year mi long lukluk blong mi, oli bin step ova wanem we mifala [MOET] I shud mekem, things like going to Fiji with the students, hemia I sud stap long mifala from mifala isave better for we [have] been dealing this for many years. Mifala nao I mekem hemia, mifala I accompany student, putum olgeta long Fiji afta kambak.”*

82. One of the major functions of the VNPF under the Clause 5.4 of the MOU is to “provide funds for the scheme...”. There is nothing in the MOU about VNPF being responsible for students in the area complained of by Director Tjiobang. The logical conclusion that is available behind that complaint and the fact that the MOU is silent on the area complained of is that managing students applications, travelling arrangements and academic performances falls under the jurisdiction of the MoET.

83. The Minister in his statement in relation to the implementation of the MOU said that *“after we mifala signem MOU, that was an MOU, how blong rolem out, how blong implementem i totally up long olgeta [VNPF] nao.”*

84. It appears the Minister, for some reason, completely forgot about the functions of his Ministry, Departments under his Ministry, and other institutions also under his Ministry who have statutory and administrative functions flowing from requirements of the Education Act relating to scholarships.

85. The Minister's words also fly in the face of the undertakings of the parties to the MOU regarding their respective roles in implementing the undertakings.

86. Mr Achary agreed that there are gaps and defects in the implementation of the MOU. He said –

“There was another defect because in the MOU the Ministry has given guarantee or something like that. The guarantee had to be withdrawn after DG Letlet came to Board and said that government guarantee signed by other institution is totally wrong...”

87. The general idea that MESS is a Scholarship is wrong and misleading. MESS is not a scholarship per se. Director Tjiobang said –

“... really hemi wan student loan be yumi no usum student loan be yumi usum VNPF scholarship...” Director-General of Education, Mr Bergemans Iati agreed and said, *“ yumi no forcem VNPF se bae emi givim money. Be wan samting nomo nao se ol man oli misunderstanding nomo se emi no wan scholarship. Emi wan scheme blong help.”*
88. No one in the Ministry of Education nor the VNPF talked to could point out internal guidelines issued to guide the smooth implementation of the scheme. VNPF had its internal Guidelines approved after the MOU was signed.
89. The answer to the final and fourth issue in this matter must also be answered in the negative. MESS is currently not being administered properly in accordance with the terms of the MOU and the Education Act.

7. RESPONSES BY THOSE WITH FINDINGS AGAINST THEM

81. Before starting this enquiry, 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.
82. Responses to the Working Paper were received from Mr Kaltau, Mr Achary and the former Minister.
83. Mr John Kaltau, former Principal Education Officer – Scholarships Coordination Unit, said in his response that he has no comments as to the content of the Working Paper but requests that his name should not appear in the report, except for his title.
84. Ombudsman’s reply to Mr Kaltau’s response - I decided that Mr Kaltau’s name should not be removed from the report as there are no adverse findings against him personally.
85. Mr Achary’s response acknowledged the opportunity to comment on the Working paper. He stated that VNPF has decided that as from beginning of next year (2022), VNPF will not work with the Ministry of Education (MOE) but will operate the Members Education Support Scheme (MESS) under its own rules and policy.

Mr Achary further stated that VNPF has completed the following documents:

- i. Legislative changes – reflecting the new scheme;
- ii. Board Charter for direct loan scheme;
- iii. Policy and Procedures relevant for the scheme; and
- iv. MESS IT system which is completed and will be live from 1st August 2021.

Mr Achary added that they will be working further on the following:

- i. Request Government Guarantee for a sum of VT1.5 billion to cover any future defaults for borrowers;
- ii. The legislative changes will be submitted to the COM before end of July, so that it can be approved and legislated in the second session of Parliament;
- iii. This Scheme will operate under direct loan scheme;
- iv. Meanwhile the current arrangement with the MOE will cease from 1st of January 2022.

- 86. Ombudsman's reply to Mr Achary's response – In response to the Working Paper, Mr Achary on behalf of the VNPF Board acknowledged the poor handling of MESS and laid out VNPF plans to sort out the situation.
- 87. Mr Jean-Pierre Nirua, former Minister of Education and Training, responded to the Working Paper and said that the MESS was the instrument of the VNPF, not MOET. Internally, he has held consultations with colleague ministers through the MBC and informally with COM. He said that all senior management of MOET was aware of the MESS paper.

He confirmed that there was no COM paper specifically for the MESS, however, there were a series of COM paper that he had tabled before the Council on the issue of scholarships. He said that should a COM paper be initiated on MESS, it would have been the collaboration of the Ministry of Finance and Economic Management which is responsible for VNPF and also the MOET, but not solely the MOET.

Mr Nirua reiterated that to him, it was important that he as Minister responsible for MOET, negotiate an arrangement to find an avenue for scholarships to meet the increasing demand and also to cater for the high influx of students completing year 13 around the country who were still interested in furthering their studies but with limited Government funding of scholarships, they were unable to go further.

He added that tapping in with the VNPF regarding MESS was because the Government was unable to approve further funding

for scholarships thus further actions had to be taken, thus the arrangement with VNPF. He questioned that if MESS was non-existent, what was the avenue that the Government would create to cater for the situation? To his knowledge, a lot of parents and students have benefitted from the MESS scheme.

88. Ombudsman's reply to the former Minister's response - Firstly, I say thank you to the former Minister of Education and Training for his responses to the Working Paper.

Second, the former Minister explained that he had internally held consultations with colleague Ministers through the MBC and also informally with COM. He continued that there were series of COM paper that he had tabled before COM on the issue of scholarships.

To these I say – such consultations may have indeed taken place. But that takes us nowhere. The matter at the heart of the investigation is MESS. When the decision was made to introduce MESS, the obligation on the Minister was to hold consultations within Government and introduce the proposal to COM for a decision.

It is clear from evidence of the Minister that the intention behind the introduction of MESS is a good one – to give an opportunity to students to further their education who otherwise will not get one.

Because MESS was not introduced in accordance with the requirements of the Government Act my findings and recommendations remain unchanged.

8. FINDINGS

Finding 1: The then, Minister of Education and Training, and the Ministry of Education and Training failed to carry out consultations with stake holders on the new policy. This is in breach of the requirements of the Government Act (CAP 243) in particular section 13 (6) (a).

Finding 2: The then, Minister of Education and Training and the Ministry of Education and Training failed in their duty to take the policy containing the new initiative being developed pursuant to the “Vanuatu 2030 -People’s Plan” under Society Pillar 2 regarding “...increase higher education opportunities...” to the Council of Ministers and obtaining its approval on the policy. This is in

breach of the requirements of the Government Act (CAP 243).

Finding 3:

The General Manager of the VNPF Board failed to carry out consultations with members of the Fund and other stake holders before finalizing the policy of the MESS.

The Board is the trustee of the National Provident Fund pursuant to section 15 of the VNPF Act. As a trustee its obligations include –

- (a) to act honestly, reasonably and in good faith in every decisions and actions taken concerning the FUND;
- (b) to act with care and diligence at all times; and
- (c) to avoid conflict of interest at all times.

The lack of –

- (a) proper consultations with stake holders; and
- (b) agreeing to internal policies and guidelines with the Ministry of Education and Training to guide the implementation of MESS,

in my view, amounts to a breach of the duty of care of the Board as a trustee of the Fund under (a) and (b) in the paragraph immediately above.

Finding4:

No internal rules or guidelines were agreed to by the parties to the MOU to ensure the smooth implementation and administration of the scheme in line with clause 5 of the MOU regarding obligations of the parties.

Finding 5:

MESS has not been approved by the DCO nor the Council of Ministers.

Finding 6:

MESS is not a VNPF Scholarship per se but a student loan scheme with a 4% monthly interest repayment after a student graduates.

Finding 7:

MESS has been created by the Ministry of Education and the Vanuatu National Provident Fund Board outside the requirements of the law – The Government Act (CAP 243).

Finding 8:

The MOU in itself is legally okay. However, when seen against the duty and obligations of the Minister of Education and Training to comply with the Government Act (CAP 243) it begs the question to be asked and answered as follows: Is the MOU valid? In my considered view, it is not a valid MOU as it has been enforced in breach of the requirements of the Government Act.

9. RECOMMENDATIONS

I make the following recommendations:

1. Terminate the MESS Scheme and re-negotiate the terms and conditions. However, if the parties insist on its continuation, parties must take the matter for approval to the Council of Ministers.
2. VNPF to continue its support for current recipients but avoid new recipients until the scheme is properly set up.
3. MOET concentrates on VANGOV Scholarships and leave MESS to VNPF under its commercial arrangements.

Dated 23 September 2021



Hamlison BULU
OMBUDSMAN OF THE REPUBLIC OF VANUATU