



OFFICE OF THE OMBUDSMAN

PUBLIC REPORT

ON THE SUSPENSION OF THE MARITIME REGULATOR BY HON. JAY NGWELE, MINISTER OF INFRASTRUCTURE AND PUBLIC UTILITIES

Date: 17 December 2021



REPUBLIC OF VANUATU

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- 3.4.1 the importation form must be filled in by the person intending to import the vessel to Vanuatu;
 - 3.4.2 all documents including the current registration, survey and vessel particulars of the vessel must be submitted with the importation form to the Office of the Maritime Regulator (OMR) for verification; and
 - 3.4.3 the Maritime Regulator must be satisfied with the recent survey report before shipper send in crew on board to Vanuatu Health Authorities for verification.
- 3.5. Further to that, there are COVID- 19 important rules as interim measures for maritime shipping. This includes:
- 3.5.1 Any person intending to import a vessel into Vanuatu must, prior to the vessels arrival in Vanuatu, cause the vessel to be inspected and surveyed on a dry dock by an independent surveyor at a foreign port;
 - 3.5.2 Upon completing an inspection and survey under paragraph 3.5.1 above, the surveyor must produce a survey report and submit to the Office of the Maritime Regulator; and
 - 3.5.3 In the event that the Maritime Regulator is satisfied with all documents provided, the Maritime Regulator shall inform the Minister of Climate Change about the importation of the vessel and proceed to approve the vessel into Vanuatu and issuing the Certificate of Provisional Registration.

4. OUTLINE OF EVENTS

- 4.1. On 23rd March 2021, the Executive Assistant of the Vanuatu Ferry Ltd, Mr John Mark Bell sent a letter of grievance to the Minister concerning the registration hold up and importation of the vessel from Indonesia to Vanuatu by Mr Siba.
- 4.2. On that same day 23 March 2021, the Legal Officer of the OMR strongly suggested to Mr Siba via email to proceed in with approval of the importation and issuance of the Certificate of Provisional Registration.
- 4.3. On 29th March 2021, the Minister dispatched a letter to Mr Siba, expressing the grievances caused by Mr Siba in holding up the registration and importation of the vessel belonging to the Vanuatu Ferry Ltd.
- 4.4. On 30 March 2021, Mr Siba informed the Minister at his Office that the OMR awaits the submission of the dry dock report prior to approving the importation and issuance of the Certificate of Provisional Registration. The Minister then informed Mr Siba of the great need for such type of trade route.

- 4.13. On 19th July 2021, a response to the Working Paper was received by the Office of the Ombudsman from the Minister.

5. DISCUSSION

The issue that arise in this matter is whether the suspension of Mr Siba on 6 April 2021 was made in accordance with the Sections 9 & 11 of the MSR Act.

5.1. Section 9 of the MSR Act, outlines the grounds on which the Maritime Regulator may be suspended or terminated on. It is stated as follows:

“9 Suspension or termination of appointment of Regulator

- (1) The Minister may, on the recommendation of the evaluation committee, by written notice, suspend or terminate the appointment of the Regulator if the Regulator:*
- (a) is or becomes ineligible for appointment under section 8; or*
 - (b) is determined by an independent inquiry to have committed a serious breach of the terms and conditions of his or her appointment; or*
 - (c) is determined by an independent inquiry to have persistently breached one of the terms and conditions of his or her appointment; or*
 - (d) is determined by an independent inquiry to have failed to fulfil the responsibilities, functions, duties and powers of the Regulator under this Act; or*
 - (e) after being medically assessed by a medical practitioner the medical practitioner certifies that he or she is mentally or physically unfit to discharge all of his or her duties, for a period exceeding 28 days.*
- (2) The Minister may suspend the Regulator for the duration of the period on which an independent inquiry is being carried out.”*

5.1.2. Section 9(1) of the MSR Act clearly provide five (5) grounds whereby the Maritime Regulator maybe suspended or terminated upon recommendation given by the Evaluation Committee to the Minister. The Minister may then act on the recommendation by written notice to the Maritime Regulator. Section 9(2) of the said Act, further states that when an independent inquiry is being conducted on the conduct of the Maritime Regulator, the Minister may suspend the Regulator.

5.1.3. On 6 April 2021, the Minister suspended Mr Siba on the grounds stated in paragraph 4.5 above.

- 6.5 Ombudsman's reply to the Ministers response- In response to the working paper, the Minister acknowledged and affirmed no recommendation was given by the Evaluation Committee prior to the suspension letter on 6 April 2021. However, the Minister claimed that the requirement of s.9 of the MSR Act was fulfilled on 1st June 2021 after recommendation was given by the Evaluation Committee on 27 May 2021.

The Minister also stated that his reason to suspend the Maritime Regulator on 6 April 2021 is to ensure that the problem or mistake is not prolonged which could have drastic effect on his Ministry, MIPU.

To this I say- that the Ministers decision to suspend Mr Siba is to protect the reputation of his Ministry, MIPU. However the essence of this investigation is whether legal procedure under the MSR Act was adhered to in the suspension of Mr Siba on 6 April 2021.

As identified and discussed above, the process in the suspension of Mr Siba was made contradictory to the MSR Act as outlined in my findings below followed by my recommendations.

7. FINDINGS

- Finding 1:** Minister Ngwele suspended the Maritime Regulator, Mr Siba before and without the recommendation of the Evaluation Committee on 6 April 2021.
- Finding 2:** The Minister suspended Mr Siba before the independent enquiry was appointed, before the commencement of an enquiry into the conduct of Mr Siba and before a report was given by the independent enquiry to the evaluation committee to ascertain the conduct of Mr Siba.
- Finding 3:** As a Leader, Minister Ngwele has breached Section 13 (1(a)(b)(d)) of the Leadership Code Act for failure to comply and observe the law and for influencing and exerting pressure on the Maritime Regulator for carrying out his lawful duty under the Maritime Sector Regulator Act, particularly section 18.
- Findings 4:** The suspension of the Maritime Regulator was unlawful. It was done contrary to section 9 and 11 of the requirements of the Maritime Sector Regulatory Act.

8. RECOMMENDATIONS

I make the following recommendations: