FINAL REPORT

THE COMMISSION OF INQUIRY INTO THE NATIONAL PROVIDENT FUND

Friday, 8 November 2002

This report contains **127** pages

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LIST OF ABBREVIATIONS

ACOM	-	Ambusa Copra Oil Mill Limited
Amalpack	-	Amalpack Limited
ANZ	-	Australia & New Zealand Banking Group (PNG) Limited
ASIC	-	Australian Securities and Investments Commission
ASX	-	Australian Stock Exchange
BoH	-	Bank of Hawaii
BSP	-	Bank South Pacific
CD	-	Compact Disc
CID	-	Commercial Investments Division
Crocodile	-	Crocodile Catering (PNG) Limited
Cue	-	Cue Energy Resources N.L.
CXL	-	Collins & Leahy Limited
DoF	-	Department of Finance [& Treasury]
HGL	-	Highlands Gold Limited
HPL	-	Highlands Pacific Limited
IBD	-	Interest Bearing Deposit
ILR	-	Indicator Lending Rate
IMF	-	International Monetary Fund
Kumagai	-	Kumagai Gumi Co Ltd
LGL	-	Lihir Gold Limited
Macmin	-	Macmin N.L.
MBI	-	Maluk Bay Investments
NCDC	-	National Capital District Commission
NEC	-	National Executive Council

NGIP	-	New Guinea Islands Produce Company Ltd
NGPHL	-	New Guinea Plantations Holdings Ltd
NGPL	-	New Guinea Plantations Ltd
NIC	-	Niugini Insurance Corporation Ltd
NML	-	Niugini Mining Limited
NPF	-	National Provident Fund
OML	-	Orogen Minerals Limited
OSL	-	Oil Search Limited
PAC	-	Pacific Architects Consortium
PF(M) Act	-	Public Finances (Management) Act
PMFNRE	-	Port Moresby First National Real Estate
PNG	-	Papua New Guinea
PNGBC	-	Papua New Guinea Banking Corporation
PNGHB	-	Papua New Guinea Harbours Board
POSF	-	Public Officers Superannuation Fund
PwC	-	Pricewaterhouse Coopers
SHPG	-	Southern Highlands Provincial Government
STC	-	Steamships Trading Company Limited
Swires	-	John Swires and Sons
Vengold	-	Vengold Inc.
Walmetke	-	Walmetke Ltd

(i) FOREWORD

▪ ***Acknowledgements***

The Commissioners wish to express their gratitude to the following persons:-

The Right Honourable Sir Mekere Morauta Kt. MP, who, as Prime Minister, established the Commission of Inquiry and for the duration of his term as Prime Minister until August 2002 gave his full support to the Commission and meticulously honoured its independence.

The Right Honourable Sir Michael Somare Kt. MP, who, since his appointment as Prime Minister, in the closing stages of the Inquiry, has given similar support and honoured the Commission's status as an independent body established under the *Commission's of Inquiry Act*.

His Honour, the Chief Justice of Papua New Guinea Sir Arnold K. Amet CBE LLD (Hon), for his support throughout the Inquiry and for making available a Courtroom at the National Courthouse for a period of more than one year while the Commission was in the active public hearing phase of its inquiry and for making available the Court Reporting Service throughout the Inquiry to record and publish a daily transcript of proceedings which number 10,500 pages.

Mr Dean Henderson, manager of the Court Reporting Service and his staff for their unfailing cooperation, courtesy and efficiency in recording and transcribing the transcript of the Commission's public hearings.

Mr Robert Igara, former Chief Secretary of the Department of the Prime Minister for the sensitive and responsive way he ensured that all the Commission's administrative requirements were met, without ever intruding into the area of the Commission's independence.

Mr Gerard Dogimab and Mr Borone Isana, successive Secretaries to the Commission for the courteous and efficient way they have provided for all the Commission's administrative requirements, often in very difficult times and circumstances and for their care for and supervision of the Commission's staff.

Mr John Reeve, Counsel Assisting the Commission, for his unfailing energy, professionalism and loyal support and assistance throughout the years, months and long, long daily working hours of the Commission's existence.

Ms Annette Kora and Mr Molean Kilepak, junior counsel assisting the Commission for their professional and painstaking assistance to the Commission and for their cooperation and good humour.

Ms Fiona Speedy and Deanna Dawanincura for highly efficient *"state of the art"* crafting of the hundreds of thousands of words created by the Commissioners, Counsel and Consultants and for processing and editing those words month by month to form the Commission's many volumes of reports, schedules, summaries and appendices. The Commission thanks them for their long hours of dedicated service, which were usually performed in very difficult physical circumstances.

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Ms Sheila Roberts, Ruth Kondi, Dianne Ravu and Konu Poni for typing and secretarial duties performed at earlier stages of the Inquiry.

Messrs Paul Posu and Ben Kaupa erstwhile drivers, process servers and general *"jack of all trades"* assistants. They performed a variety of tasks far beyond their actual employment as drivers.

Mr Richard Kuna of KPMG the Commission's longest serving, full-time consultant, for his professional skills and dedicated efficient service during incredibly long working days without break for months and years on end. His active interest in everything occurring and his cheerful, forceful positive energy has been inspirational.

Mr Mark Tomlinson of KPMG consultant for his dedicated work over long hours and months as a forensic accountant and always available adviser to the Commissioners on matters relating to accountancy, business, information technology and any daily affairs within his wide area of competency.

Mr Rob Southwell, managing partner of KPMG (PNG) for his efficient provision of services from his firm within and sometimes beyond the terms of the consultancy agreements.

Mr David Wardley senior partner with KPMG (PNG) for painstaking and meticulous attention to detail in his work as a forensic accountant and in presentation of reports to the Commission.

Ms Lisa Bremner of KPMG Brisbane for her professional expertise and assistance in running the Seminar on the weaknesses and reform of NPF's structure under the *NPF Act*.

Messrs Alan Sing, Peter Beaton and Craig Ricato of KPMG Brisbane.

First Legislative Council and ***Sir James Frazer*** for help and advice regarding legislation and for preparation of Statutory Instruments.

The Government Printers for printing services.

Mr Reeves Papaol – Information Technology Services in the ***Department of the Prime Minister*** for managing and maintaining the Commissions computer hardware and software and advising on our information technology needs.

- ***Commissioner Siaguru's Service***

Commissioner Lady Siaguru was appointed as a Commissioner in April 2000 and thereafter fully participated in the work of the Commission at all its hearings and deliberations until October 2001. After this date she was unable to attend the commission's public hearings for personal reasons. She continued on however as a Commissioner in an honorary capacity and was able to consult the daily transcript of proceedings and to deliberate with the Commission on its reports.

- ***Commissioner Manoa's conflict of interest***

Commissioner Manoa declared a conflict of interest regarding the ANZ Banking Group of which he was formerly a Board member. He thereafter took no part in hearings or deliberations specifically related to the ANZ Bank.

- ***The death of Henry Fabila***

Just prior to the completion of the inquiry the Commission was saddened to hear of the death of Mr. Henry Fabila, the former Managing Director of the National Provident Fund during the latter part of the period under review. By then the bulk of the Commission's voluminous reports had been printed and it was not possible to alter the text to record the fact of Mr. Fabila's untimely death.

Mr. Fabila appeared many times before the Commission, sometimes when his state of ill health was readily apparent. He was an extremely co-operative witness at all times.

- ***The death of Mete Kahona***

The Commission was also saddened to hear of the untimely death of Mr. Mete Kahona a former senior officer in the Department of Treasury. Mr. Kahona had also been of great assistance to the Commission and was a very honest and co-operative witness.

1. GUIDE TO THE FINAL REPORT

The scope of the Commission's inquiries were very wide, as required by its Terms of Reference. The detailed results of its inquiries are reported in 34 schedules, which are attached to this Final Report. The schedules are listed and their contents are briefly described in **paragraph 4.5.4** below. Executive summaries of all the schedules, except numbers **3A**, **4I** and **7A** have been bound together in a single volume entitled *"Executive Summaries of Schedules"*.

Paragraph 7 of this report *"Summary of Events"* narrates some of the main events and recurring themes concerning the NPF, which occurred between 1st January 1995 and 31st December 1999. It contains liberal references to the schedules, which must be consulted to find the full discussion and the Commission's findings on these matters.

Paragraphs 8, **9** and **10** respectively, provide a more detailed overview of the NPF's borrowings, which though illegal, funded NPF's disastrous investments; NPF's reckless attempt to issue a A$54 million bond to a dangerously unsuitable purchaser; and various methods by which NPF was asked to provide funds to the State. **Paragraph 12** narrates the story of NPF's largest loss-making investments – Steamships Trading Company and Collins and Leahy (*STC and CXL*), Highlands Pacific Ltd (*HPL*) and Vengold Inc. **Paragraphs 12** and **13** describe other equity investments and **paragraph 14** introduces NPF's investment in Crocodile Catering (PNG) Pty Ltd (Crocodile) and Ambusa Copra Oil Mill Ltd (Ambusa).

The overwhelming cause of NPF's losses was its unwise debt funded equity investments most of which were in volatile and risky PNG resource stock. To read the detailed listing of these investments it is once again necessary to turn to the relevant schedules and executive summaries. Only a very small proportion of NPF's losses resulted from criminal activities (about K5 million).

Detailed reports on each of the Commission's Terms of Reference are contained in **paragraph 15** which examines each in turn and provides paragraph cross references to the relevant schedules and summaries.

The NPF Tower, the Waigani Land fraud, Crocodile Catering and the Maluk Bay resort in Indonesia, each of which was the subject of a separate Term of Reference, are reported upon, respectively, in **sub paragraphs 15.11**, **15.12** and **15.13**. Again the details and findings are recorded in the relevant schedules and summaries (NPF Tower – **Schedules 2B** & **6**, Waigani Land - **Schedule 5**, Crocodile – **Schedule 4L**). **Schedules 5** & **6** contain charts, which illustrate the trail of *"fraud moneys"* which the Commission traced.

1.1 Recommendations for Structural reforms

The Commission was requested by its terms of reference to consider the adequacy of various structural matters and to make recommendations for reform. This is discussed at **paragraphs 5** and **15.21** below.

The Commission's recommendations are reported in **Schedule 1** at paragraph 22.3.1.1 (and **Executive Summary** paragraph 15.5) and at paragraph 15.21 of this report (below).

1.2 Referrals of people to other authorities

During its investigations the Commission discovered evidence of criminal activities notably regarding the Waigani Land and NPF Tower frauds (**Schedules 5 & 6**) and many instances of improper conduct and breaches of fiduciary duty. It has accordingly recommended to the Prime Minister that various people should be referred to the Commissioner for Police, the Ombudsman Commission and other authorities. (Recommended referrals). In cases where people have committed an offence to hinder the Commission's inquiries the Commission has itself referred those people to the Commissioner for Police or other authority. (Direct referrals).

The Commission has also repeated in this Final Report the following referrals:-

- referrals to various authorities of people concerned with the NPF Tower fraud – paragraph 15.11.2.9 (below).
- referrals to various authorities of people concerned with the Waigani Land fraud – paragraph 15.12.4.1 (below).
- complete list of referrals recommended to the Prime Minister or made directly by the Commission itself – paragraph 15.18 (below).

2. ESTABLISHMENT OF COMMISSION OF INQUIRY

During the latter part of 1999, it became apparent that there were serious irregularities in the running of the National Provident Fund (*"NPF"*), that many millions of Kina of realised and unrealised losses were occurring and that the Fund was in a state of financial crisis. This was apparent from two special reports from Pricewaterhouse Coopers (*"PwC"*) in February and November 1999 and from a report by KPMG, which had been commissioned by the Auditor General (**Schedule 1** paragraphs 10.5.6, 10.5.7 **&** 10.5.8 **and Schedule 2E**, paragraph 2). Also the Secretary of the Department of Finance (*"DoF"*) directed the Finance Inspectors to inquire into aspects of the Waigani Land and NPF Tower issues in late 1999. Their excellent investigation and report disclosed many irregularities and this led to the establishment of this Commission of Inquiry.

The NPF Board had commenced its own inquiry also which came to a head in the Special meeting of the Board on 8th October 1999 at which newly appointed Trustee John Jefferey and new Investment Manager, Mr Rod Mitchell, publicly challenged the NPF Board chairman, Mr Jimmy Maladina, and Corporate Secretary / Legal Officer, Mr Herman Leahy, with very serious misconduct (**Schedule 1** paragraph 8.3.10). There were rumours of a pending 50% write down of members' accounts.

The trigger for establishing the Commission of Inquiry was when the Auditor General in February 2000 provided to the Minister responsible for the NPF a special audit report on the NPF for the year ending 31st December 1999 (based on the KPMG report).

In the report, a number of matters of substantial concern were raised regarding the probity of actions taken by the Board of Trustees and management of the NPF over a number of years, the absence of key documentation concerning critical decisions by the Board of Trustees and management and inappropriate political intervention.

A number of actions were considered in the report as a breaches of the *National Provident Fund Act* and Rules of the *Public Finances (Management) Act* and the *Central Banking Act*, particularly in connection with:-

- the borrowing of funds for investment;
- the placement of charges over members assets;
- the investment of monies offshore;
- failure to obtain approval for foreign currency transactions;
- failure to declare conflict of interest;
- breaches of investment guidelines issued by the Minister;
- failure to maintain proper accounts and records; and
- failure to provide the prescribed reports.

In the Inspectors Report, these actions and breaches were assessed to have contributed to the substantial decline of the Fund's assets by K153 million since January 1996, leading to the consequent recommended substantial write down of K125 million in the value of members assets and the liquidation of assets to meet severe cash flow demands.

This led the then Prime Minister the Rt. Hon. Sir Mekere Morauta, to establish this Commission of Inquiry into the operation of the NPF under the *Commission of Inquiries Act (Chapter 13)*. The instrument of appointment is dated 13th April 2000 and it appointed Sir Charles Maino KBE as Chief Commissioner with Mr Donald Manoa and Lady Wilhelmina Siaguru as Commissioners.

Mr John Reeve of Counsel was appointed as Counsel Assisting the Commission, with Ms Annette Kora and Mr Molean Kilepak as junior counsel. Mr Gerard Dogimab was appointed as Executive Secretary to the Commission and accountants KPMG were appointed as consultants. Messrs Mark Tomlinson and Richard Kuna from that firm were engaged full time at the Commission's office in Morauta House, Waigani and other consultants from KPMG worked on an *"as needed"* basis.

The Commission commenced its work with three secretarial staff and a driver who also acted as process server.

Public hearings were held initially in a Courtroom, made permanently available at the National Court House, for which the Commission expresses its gratitude to the Honourable the Chief Justice Sir Arnold Amet CBE LLD (Hons), who also provided the services of the National Court transcription service headed by Mr Dean Henderson.

On Friday 19th May 2000, Sir Charles Maino resigned as Chief Commissioner to contest an election in the Kairuku / Hiri electorate, which resulted from Sir Charlies' successful petition to the Court of Disputed Returns. He was replaced as Chief Commissioner by retired Judge of the Supreme Court of Papua New Guinea (*"PNG"*), Mr Thomas Edwin Barnett OBE, who was appointed by the Prime Minister by instrument dated 12th June 2000, chairing his first hearing on the 6th July 2000.

2.1 Statement of Case on which the Inquiry into the National Provident Fund was ordered

On the 13th of April 2000, the Prime Minister, Hon. Sir Mekere Morauta, signed the original Terms of Reference of the Inquiry. They were subsequently amended on the 26th July 2000. The Statement of Case and amended Terms of Reference are:-

1. *In February 2002, the Auditor General provided to the Minister responsible for the National Provident Fund a Special Audit Report in respect of the National Provident Fund for the period ended 31 December 1999 ("the report") from a Special Audit conducted by KPMG under the authority of the Auditor-General.*

2. *In the Report, a number of matters of substantial concern were raised concerning the probity of actions taken by the Board of Trustees and management of the National Provident Fund over a number of years, the absence of key documentation concerning critical decisions by the Board of Trustees and Management, and inappropriate political intervention.*

3. *Pursuant to the **National Provident Fund Act** and Rules thereunder a number of actions were considered in the Report as in breach of the Act and Rules, or of the Public Finances (Management) Act, or of the Central Banking Act, particularly in connection with the borrowing of funds for investments, the placement of charges over member's assets, the investment of monies offshore, failure to obtain approval for foreign currency transactions, failure to declare conflicts of interest, breaches of investment guidelines issued by the Minister, and failure to maintain proper accounts and records and provide the prescribed reports.*

4. *In the Report, these actions and breaches have been assessed to have contributed to the substantial decline since 1 January 1996 of K153 million in the valuation of members' assets, leading to the consequent recommended substantial write down of K125 million in the value of members' accounts, and the liquidation of assets to meet severe cash flow demands.*

COMMISSION OF INQUIRY

KNOW you that I, MEKERE MORAUTA, Prime Minister of Papua New Guinea, reposing confidence in your integrity and ability do, by virtue of the powers conferred by Section 2 of the Commissions of Inquiry Act (Chapter 31) appoint you -

Sir Charles Maino, KBE, to be Chief Commissioner;
And you Donald Manoa and Lady Wilomina Siaguru to be Commissioners,

under the Act, and authorize you to inquire into and report on the following matters:-

<u>TERMS OF REFERENCE</u>

1. *Whether, in connection with the management of the National Provident Fund, there has been illegal or improper conduct by any person, company, business, legal entity or agency between 1st January 1995 and 31st December 1999, concerning, but not limited to the following:-*

All amendments herein under Section 2 of Commission of Inquiry Act. Repealed and replaced by instrument of 20 July 2000

(a) *the failure by the Trustees officers or employees of the National Provident Fund to carry out the expected fiduciary duties of Trustees and Management under the* ***National Provident Fund Act****;*

(b) *Breaches of the* ***National Provident Fund Act*** *and* ***National Provident Fund Rules*** *relating to borrowings and placement of charges over members' assets;*

Replaced by Item 1 (iii) by instrument of 26.7. 00

(c) *the provision of false or misleading information by or to Trustees and Management generally, and specifically over the financial state of the Fund and in relation to the provision of year end performance bonuses, and attempts to conceal relevant information on the state of the Fund and investments, or to interfere with internal investigations;*

(d) *Repealed by item 1(iii) of instrument of 26.7.00*

Replaced by Item 1 (iv) of Instrument of 26.7.00

(e) *the failure to adhere to prescribed Investment Guidelines*

(f) *the failure to adhere to prescribed foreign exchange regulations under the* ***Central Banking Act,*** *particularly with respect to the investment in Maluk Bay Resort in Indonesia;*

Replaced by Item 1(v) of Instrument of 26.7.00

(g) *all investment transactions including those relating to Highlands Pacific Limited, Itemus Inc. (formerly Vengold Inc.), Lihir Gold Limited, Cue Energy Resources N.L, Macmin N.L, Steamships Trading Company Limited and Collins & Leahy Limited, and the failure to inform the full Board of Trustees of the transactions;*

Replaced by Item (iv) A & B of Instrument of 26.7. 00

(h) the decision to finance the Poreporena Freeway, and the role of any Trustee or officer or employee of the Fund or of any other person or entity in reaching this decision;

Repealed and replaced by paragraph vii of Instrument of 26.7.00

(i) by deleting Paragraph (I) and replacing it with the following:
"(I) whether there was any manipulation or attempted manipulation of the Fund's financial results or its financial position and whether any such transaction benefited any Trustee, officer or employee of the Fund or any other person or entity;" and

Deleted and replaced by paragraph viii of Instrument of 26.7.00

(j) the construction, contract negotiations and renegotiations of the Tower building, and the role of any Trustee or officer or employee of the Fund or of any other person or entity;

Deleted and replaced paragraph ix of Instrument of 26.7.00

(k) the Waigani land proposal, and the role of any Trustee or officer or employee of the Fund or of any other person or entity taking account of the Department of Finance & Treasury ("DoF") inspectors' recent investigation report;

Added by paragraph A of Instrument of 26.7.00

(l) the purchase and subsequent conduct of the business of Crocodile Catering, and the role of any Trustee or officer or employee of the Fund or of any other person or entity;

Repealed and replaced by paragraph xl A&B of 26.7.00

(m) The participation in the resort complex in Indonesia, and the role of any Trustee or officer or employee of the Fund or of any other person or entity;

Repealed and replaced by paragraph (xii) A&B of 26.7.00

(n) Whether there was any non disclosure of a conflict of interest by a Trustee or officer or employee of the Fund in respect of any investment or transaction to which the Fund or the any of the subsidiary companies was a party;

Repealed and replaced by paragraph (xiii) of 26.7.00

(o) the failure to comply with prescribed tendering processes, and whether such failure benefited any person and if so who, and the role of any Trustee or officer or employee of the Fund or of any other person or entity.

2 Whether there was any inappropriate intervention by persons or entities in relation to illegal or unsuitable borrowings and investments, or other improper actions.

Repealed and replaced by paragraph (b) (i) and (ii) of 26.7.00

3 Whether, in connection with action or failure to act of any Trustee, officer or employee of the Fund or any other person would be referred to the relevant authorities for investigation with a view to criminal prosecution or other action; and

Replaced by paragraph (c)(i), (ii) & (iii) of Instrument of 26.7.00	*4*	*Whether, in connection with any failure to act in good faith, any Trustee or officer or employee of the Fund or any other person should be held personally responsible for decisions and outcomes;*
Replaced by paragraph (d) of Instrument of 26.7.00	*5*	*Whether, under the* ***Constitution*** *or any Act, the responsible Government agencies, including the Department of Finance & Treasury and the Auditor General and failed in their regulatory, supervisory or reporting responsibilities, and what was the extent of this failure.*
Added by paragraph (e) of Instrument of 26.7.00	*6*	*Whether the present reporting, monitoring and supervisory regime is adequate and whether any, and if so what, structural reforms should be implemented".*

And I *direct that the inquiry be held in the National Capital District, or at such other place or places in Papua New Guinea or elsewhere as to you may appear necessary and expedient.*

And I *direct that you may report during the course of the inquiry on matters arising from the inquiry, which require attention prior to the presentation of the final report.*

And I *further direct that the inquiry shall be held in public, but I approve that you may permit to be given in private, any evidence that in the course of your inquiry you, in your absolute discretion, consider needs to be given in private in accordance with Section 2(5) of the Commissions of Inquiry Act.*

And I *further direct that you shall commence the inquiry without delay and proceed therein with all dispatch and render to me your preliminary report on or before 31 May 2000 and your final report on or before 31 July 2000.*

Dated this 13th day of April 2000.

(Signed)
PRIME MINISTER*".*

3. METHODOLOGY

The main concerns of the Commissions have been to:-

(a) fully inquire into all relevant facts
(b) act in accordance with natural justice
(c) be transparent.

3.1 Topic categories

The issues covered by the Terms of Reference were divided into 34 topics, which were categorised and numbered in order to provide a structure for the investigations, as follows:-

1.		**STRUCTURE**
2		**BORROWINGS**
	A	- General Introduction & Papua New Guinea Banking Corporation (*"PNGBC"*) Overdraft
	B	- National Provident Fund (*"NPF"*) Tower Financing & Construction
	C	- Bank of South Pacific (BSP) Borrowings)
	D	- NPF proposed borrowing from Leverage Equity to on lend to Cue Energy Resources NL (*"Cue"*)
	E	- Australia & New Zealand Banking Group (PNG) Ltd (*"ANZ Bank"*) Facilities
	F	- Attempt to issue Australian Dollar Bond
3		**EXCESS OF POWER**
	A	- Guarantees - Wilson HTM and Crocodile Catering (PNG) Ltd
	B	- Donations & Promotional Advertising
	C	- Entertainment & Board expenses
4		**EQUITY INVESTMENTS**
	-	**Listed**
	A	- Vengold Inc. / Lihir Gold Limited
	B	- Highlands Gold Ltd / Highlands Pacific Ltd
	C	- Cue Energy NL
	D	- Steamships Trading Company Ltd (*"STC"*) & Collins & Leahy Ltd (*"CXL"*)
	E	- Macmin NL
	F	- Niugini Mining Ltd (*"NML"*)
	G	- Oil Search Limited
	H	- Orogen Minerals Limited
	I	- Lihir Options
	-	**Unlisted**
	J	- BSP (Investment in)
	K	- Westpac PNG / SP Brewery / Toyota Tsoshu (PNG) Ltd
	L	- Crocodile Catering & Maluk Bay Investments
	M	- Amalpak Ltd
	N	- Ambusa Copra and Oil Mill Ltd
	O	- New Guinea Plantations Holdings Ltd, New Guinea Plantations Ltd, Walmetke Ltd, New Guinea Islands Plantations Ltd - Plantation and Agriculture Holdings
5		**WAIGANI LAND**
6		**NPF TOWER INVESTIGATIONS**

7 **GOVERNMENT SECURITIES**
- **A** - Niugini Insurance Corporation (*"NIC"*)
- **B** - Poreporena Freeway Loan
- **C** - National Capital District (*"NCD"*) Water & Sewerage
- **D** - Southern Highlands Project 4 Roads Project

8 **TRANSFERS FROM PUBLIC OFFICERS SUPERANNUATION FUND BOARD (*"POSFB"*)**

9 **TENDER PROCEDURES & NEPOTISM**

10 **EXEMPTIONS**

3.2 Representation before the Commission

The following persons and institutions, upon application, were granted the right to be represented by Counsel before the Commission:- Mr Herman Leahy, Mr Peter O'Neill, Mr Barbara Perks, Mr Iairo Lasaro, ANZ Bank, BSP, CXL, STC, NPF management and Board, Mr David Lightfoot, Carter Newell Lawyers, Mr Kenneth Frank, Mr Noel Wright,

Mr Jimmy Maladina, the State, Mr Isikeli Taureka, Mr Gerea Aopi, Mr Nathaniel Poya, Mr Ken Yapane, Mr Robert Leahy, Mr Philip Eludeme, Fund members, Mr Kenneth Barker, Mr Maurice Sullivan, PMFNRE and Mr William Skate.

Commission staff as well as the Consultants then inquired into each topic and prepared detailed opening addresses to the Commissioners.

3.3 Summonses and Commission Documents

The Commission issued over 546 summonses to attend the Commission and to produce documents. All documents received were numbered as *"Commission Documents"*, generally in the order in which they were received.

3.4 Witnesses

During the inquiry stage, witnesses were summonsed and questioned to help build up the factual basis in relation to each topic.

3.5 Opening

When a topic was sufficiently prepared, Counsel Assisting *"opened"* the topic at a public hearing.

The opening addresses were often long and detailed, setting out all the evidence in support of Counsel's submissions. Selected Commission Documents were handed up as Tender Documents. They were marked with symbols representing the particular topic and generally numbered chronologically or to an alternative logical sequence.

3.6 Notification to persons adversely affected

All persons referred to or adversely affected in the opening were then notified about the nature of the reference and invited to inspect the transcript, the tendered documents and the relevant commission documents. Photocopying facilities were made available. Copies of the day's transcript were given each day free of charge to parties who had been granted the right of representation and *"at cost"* to other interested persons, including the press.

Persons adversely affected were invited to respond in writing, in person or by appearing at the public hearing and giving evidence.

3.7 Posting transcripts on the Prime Minister's website

Within a few days of a public hearing, the full transcript was posted on the Prime Minister's website and has been left there throughout the Inquiry.

3.8 Witnesses evidence and cross-examination

During the period after a topic was opened, witnesses appeared voluntarily or under summons to give evidence on oath and to be cross-examined in open hearing. Once again, a full transcript was recorded and posted on the Prime Minister's website. Hearings were well covered by the national press. In two instances, a witness was allowed to give evidence *"in camera"* and this evidence, of course, was not posted on the website.

3.9 Closing a topic

After a reasonable period (usually several months), when all persons so wishing had been heard, the topic was formally closed and the tender documents were accepted into evidence as Exhibits bearing their same TD number (Thus, for instance, Tender Document W23 was marked Exhibit W23).

3.10 Commissioners' deliberations and preparation of report

After closure of each topic, the Commissioners deliberated upon it, taking into account the opening submissions and documentary evidence and all other submissions and documentary and oral evidence placed before the Commission.

If a person who had been properly notified of adverse matters chose to remain silent, the Commission interpreted that silence as indicating the person did not wish to reply to or comment upon the matters before the Commission. In some instances, the Commission then invited or if necessary summonsed the persons to appear and give evidence.

The Commissioners then prepared a topic report, which referred to the evidence in detail and listed the Commission's findings and recommendations, including recommendations to reform the structure of NPF and referrals of people for investigation by other authorities such as the Commissioner for Police, the Ombudsman Commission and relevant professional bodies such as the PNG Law Society and the PNG Institute of Accountants. All of these topic reports are attached to this report as Schedules and will be referred to hereafter as Schedules.

In these ways, the Commission has ensured that all interested parties were informed of proceedings, which concern them and were given ample opportunity to be heard.

4. THE REPORT, SCHEDULES AND APPENDICES

The Commission's reporting to the Prime Minister consists of:-

4.1 The Final Report

The final report presents the background to the establishment of the Commission; its formal constituting documents; an introduction to the structure of the NPF and its background; an introduction to major themes and topics which occurred during the period under review; a response to each Term of Reference, a discussion of major findings and recommendations for structural reform and a list of people recommended to be referred to other authorities for further investigation.

4.2 The Schedules to the Final Report

The 34 topic schedules to the report set out the detailed evidence in relation to each topic and list the Commission's comments and findings on each theme in the body of the Schedule. At the conclusion of each Schedule, the findings are brought together and grouped in accordance with the Commission's Terms of Reference.

4.3 Executive Summaries of the Schedules

Thirty-one (31) executive summaries of the schedules have been compiled as an easy introduction to the particular topic.

These summarise the main themes of each Schedule and reproduce the Commission's findings on that topic, referring to the relevant paragraphs in the particular schedule. (There are no executive summaries of three short schedules; **3A**, **4I** and **7A**).

4.4 Appendices

Some schedules contain appendices and there is also an appendix to the Final Report.

4.5 Presentation of the Report

4.5.1 Electronic presentation

A Compact Disc (*"CD"*) has been prepared which contains the Report, the Schedules to the Report, Executive Summaries of the Schedules, the entire Transcript of the daily public hearings and an Index to the Transcript (in which each days hearing is treated as a separate file identified by date and page numbers).

4.5.2 Hard copy

There are a limited number of full *"hard copy"* forms of the report. In this format each Schedule is bound separately from the Final Report and each Executive Summary is bound at the front of the Schedule summarised. A copy of the CD containing the Report, Schedules, Executive Summaries and Transcript, is attached inside the cover of the Report. Points made are illustrated by frequent references to paragraphs in the various schedules.

4.5.3 Combined hard copy / CD presentation

Presentation to the members of the National Parliament is intended to be in the format of a hard copy of the Final Report and all Executive Summaries of the Schedules together with a copy of the CD containing the entire report, including the Schedules, and full transcript of proceedings (The Schedules are not presented in hard copy in this format).

4.5.4 Categorisation and brief description of schedules and Executive Summaries

The Schedules are prepared and numbered with the prefix *"S"* according to categories of topics. Executive Summaries are given the same number as the Schedule summarised but are referred to in the text with the prefix *"ES"*.

S	ES	Title	Details
1	1	Structure	Description of the legislative structure of the NPF and its demonstrated weaknesses with recommendations for structural reform. There are cross references to the other Schedules.

BORROWINGS BY NPF			
2A	2A	General Introduction to Borrowings and Papua New Guinea Banking Corporation (*"PNGBC"*) Overdraft Facility	Introduces the various borrowings made by NPF and their illegality. It studies the PNGBC overdraft facility in detail.
2B	2B	NPF Tower Financing and Construction	Reports on the PNGBC loan facility, which financed the construction of the NPF Tower and NPF's administration of the loan. It reports on the contract with the builder Kumagai and the progress of the works and variations. It also introduces matters which required investigation (The investigations are reported in **Schedule 6**).
2C	2C	Bank of South Pacific Borrowings (*"BSP"*)	The history of NPF's borrowings from the BSP and the purposes for which the drawdowns were used.
2D	2D	Proposed borrowings from Leveraged Equities for onlending to Cue Energy Resources Ltd	Discarded attempts by NPF to borrow A$1 million to onlend urgently to Cue Energy. Money was eventually advanced to Cue Energy from NPF's overseas account with Wilson HTM in contravention of Foreign Exchange Regulations.
2E	2E	ANZ Facilities	Describes the massive loans provided to NPF by ANZ which powered NPF's high-risk investment strategies and how ANZ called in the facilities when NPF was unable to service the debt, leading to the sell off of NPF's assets at massive realised loss.
2F	2F	Attempt to issue an Australian Dollar Bond	The history of NPF's failed attempt to issue an AUD54 million Bond for sale to Warrington International. (See **paragraph 9** below)
3A		The Equitable mortgage to Wilson HTM and Guarantee of PNGBC's loan to Crocodile Catering	Evidence that NPF mortgaged shares to Wilson HTM as security for advances and accommodation provided to NPF by Wilson HTM. It describes how NPF guaranteed a loan from PNGBC to NPF's fully owned subsidiary Crocodile Catering (PNG) Pty Ltd.
NPF'S EXPENDITURE ON DONATIONS, ADVERTISING AND BOARD FEES AND ALLOWANCES			
3B	3B	Donations and Promotional Advertising	This is a history of illegal donations made by NPF 1994 - 1999 and expenditure on promotional advertising in overseas publications.
3C	3C	Entertainment and Board Expenses	Describes how the Board illegally increased its sitting fees and allowances and presents the Finance Inspector's report into irregularities in payment of sitting fees and entertainment and other allowances.

INVESTMENTS LISTED ON STOCK EXCHANGES			
4A	4A	Investment in Lihir Gold Ltd and Vengold Inc (*"LGL"*) and (*"Vengold"*).	The Schedule describes how NPF swapped its shares in Lihir Gold for shares in Vengold and then invested heavily in that risky company in the hope of obtaining indirect interests in Lihir and the chance to benefit from corporate takeover activities. NPF suffered a net loss of A$29,559,580 on its Lihir and Vengold transactions (**paragraph 11.3** below).
4B	4B	Highlands Gold Ltd / Highlands Pacific Ltd (*"HGL"*) and (*"HPL"*)	How NPF swapped its shares in HGL in order to acquire shares in the newly floated HPL then invested very heavily in that company - to a total investment of A$70 million. HPL's share price fell steadily however and when forced to sell its HPL holdings, NPF suffered realised and unrealised losses of A$49.8 million (**paragraph 11.2** below).
4C	4C	Cue Energy Resources NL (*"Cue"*)	NPF invested a total of A$11.7 million in this risky, speculative investment and continued to invest despite Cue's continuing cash flow crisis, failed ventures and falling share price. Messrs Copland and Kaul served on the Cue Board and they and Mr Wright held personal interests in Cue, thereby having an undisclosed conflict of interest. NPF lost A$7.4 million on the investment.
4D	4D	Steamships Trading Company Ltd and Collins and Leahy Holdings Ltd (*"STC"*) and (*"CXL"*)	NPF attempted to takeover STC and CXL. It invested A$25 million in STC and A$29 million in CXL. When NPF was obliged to selloff these investments in 1999, it suffered a loss on its CXL investment of A$16.3 million and A$9.5 million on its STC investment (**paragraph 11.1** below).
4E	4E	Macmin NL (*"Macmin"*)	NPF invested approximately A$4.4 million in this small exploration company, acquiring a 19.35% share of its capital and a seat on the Board. NPF lost A$3.47 million on the investment.
4F	4F	Niugini Mining Ltd (*"NML"*)	NML was the discoverer and largest shareholder in Lihir Gold. NPF made a small passive investment of A$4.9 million (1.34% of issued shares). It sold the shares in 1987 making a profit of A$522,718 (10.6% return on its investment).
4G	4G	Oil Search Ltd (*"OSL"*)	NPF made a small passive investment in Oil Search (1.30% of issued shares) in 1994. It sold the shares in 1996 for a profit of A$3.03 million in order to invest in NML.
4H	4H	Orogen Minerals Ltd (*"OML"*)	NPF made a passive investment in Orogen of A$29.5 million, which was sold for a profit of A$1.32 million (10% on investment). The investment was marred by management's breaches of duty to the NPF Board.

S	ES	Title	Details
4I	-	Review of option investments in Lihir Gold	NPF conducted options trading in Lihir through Wilsons HTM. NPF earned net option premiums of A$1.3 million but had margin calls of A$1.09 million having a net return of A$187,989. Option trading was outside the investment guidelines. Management acted beyond delegated power and in defiance of a Board direction to cease the practice. Management failed to keep the Board informed.
NPF'S EQUITY INVESTMENTS IN UNLISTED ENTITIES			
4J	4J	NPF's investment in the Bank of South Pacific Ltd	In 1995, NPF owned 812,500 shares in BSP, being 8.55% of issued shares and had a seat on the BSP Board. In 1995, 1996 and 1998 it made a further investment of K1.5 million. It receives profitable dividends each year. The failed attempt by Finance Pacific to acquire these shares is described (see **paragraph 8.2** of **Schedule 4J**).
4K	4K	Westpac Bank (PNG) Ltd / SP Holdings Ltd / Toyota Tsusho (PNG) Ltd	NPF held small passive investments in these three companies, which have earned moderately profitable dividends each year.
4L	4L	Crocodile Catering (PNG) and Maluk Bay Investment (*"Crocodile"*)	Describes NPF's investment in Crocodile as a wholly owned subsidiary, the Maluk Bay project in Indonesia and the unorthodox and uncontrolled methods of financing Crocodile, which resulted in an investment by way of loan and equity investments of K7.4 million for nil return (**paragraph 15.13** below).
4M	4M	Amalpak Ltd (*"Amalpak"*)	A small prudent passive investment of K1.235 million (net) in a well managed commercial enterprise returning good dividends each year.
4N	4N	Ambusa Copra Oil Mill Ltd (*"ACOM"*)	NPF initially invested K400,000 in ACOM. This was followed by further (unauthorised) payments, a bridging loan and a guarantee of a PNGBC loan facility. It resulted in a loss to NPF of K1.1 million and a lawsuit by Odata, the contracted construction and management company.
4O	4O	New Guinea Plantation Holdings Ltd / New Guinea Plantations Ltd / Walmetke Ltd / New Guinea Islands Produce Company Ltd	NPF had invested in NGPHL, NGPL, Walmetke and NGIPL well before 1995. The plantations became unviable for various economic reasons (including the Bougainville crisis). In difficult circumstances, which were not of NPF's making, NPF sold off the investments in an orderly fashion, making an unavoidable loss.

INVESTIGATIONS INTO OFFENCES AND MISCONDUCT			
5	**5**	Waigani Land	The history of the fraud perpetrated on the NPF by its chairman Mr Jimmy Maladina and Mr Herman Leahy over the attempted sale to NPF of the *"Waigani Land"* by Mr Maladina's company Waim No. 92 Pty Ltd. It also involved the managing director Mr Henry Fabila and other persons. Messrs Maladina, Leahy and others have been referred to the Commissioner for Police. The fraud concerned sharing the excessive fees for valuing the Waigani Land at an inflated price. The valuation fees aspect of the NPF Tower fraud are also included in this Schedule (See further description below) (See list of referrals at **paragraph 15.6**).
6	**6**	Investigation into specific matters concerning the financing and construction of the NPF Tower	This Schedule reports on the following matters concerning the construction of the NPF Tower which required further investigation:- • In ground works variation of K3,006,220 • Acceleration claim of K1.4 million • Currency fluctuation claim of K3.3 million • Second acceleration claim of K2.505 million • Professional fees of K3,568,298 • Tracing the K2.65 million generated by the agreement between Mr Maladina and the construction company Kumagai Gumi • The proposed sale to the PNG Harbours Board This Schedule describes the criminal fraud perpetrated by Messrs Maladina and Leahy, with the involvement of many others and how the proceeds were laundered through the books of Port Moresby First National Real Estate (*"PMFNRE"*) and Carter Newell lawyers. Referrals to the Commissioner for Police and other authorities are recommended. The excessive valuation fees aspect of the NPF Tower fraud are reported in **Schedule 5**. (See further description below and list of referrals at **paragraph 15.6**).
INVESTMENT LOANS BY NPF			
7A	-	Niugini Insurance Corporation K2 million loan (*"NIC"*)	NPF agreed to lend K2 million to NIC on the security of property in Lakose Place. Required Ministerial approval was not obtained. By December 1999, K699,999.84 had been received by NPF by way of repayment. NPF has no record that interest on the loan has been paid.

S	ES	Title	Details
7B	7B	Poreporena Freeway Loan	NPF provided K62 million loan funding to the State (largely borrowed from the BSP at variable Indicator Lending Rate *("ILR")*) to finance the Poreporena Freeway. It was mainly paid through Curtain Burns Peak Ltd as an intermediary between NPF and the State. The Schedule describes the improper pressure by DoF and the Minister and the conflict of interest of some NPF Trustees. NPF management acted without delegated authority and failed to fully advise the NPF Board. The assignment and unwinding of the loan to the Bank of Hawaii (*"BoH"*) is described. The investment, at a fixed 14.67% was reasonably profitable until the ILR, which NPF was paying to the BSP, rose towards that rate while interest being received by NPF from Curtain Burns Peak remained fixed. This 'losing' situation prompted the assignment of the loan to the BoH.
7C	7C	NCD Water & Sewerage Ltd / Eda Ranu loan funding	When Eda Ranu was established, the National Executive Council (*"NEC"*) exerted pressure on NPF management to provide loan funding. NPF management did not fully advise the Board and no independent expert advice was obtained. The DoF and the Minister had a severe conflict of interest and failed to ensure NPF received independent advice. NPF's legal adviser's concerns about the security provided by the State were not properly addressed. The loan was later assigned to the BoH together with the Freeway loan. A further K1 million was lent in July 1997, despite previous rejection by the NPF Board of the proposal.
7D	7D	The K17 million Southern Highlands Four Roads Project	In July 1998, the State urgently required loan funds to construct roads in the Southern Highlands Province. The State was unable to guarantee the loan because of constraints imposed by the World Bank and International Monetary Fund (*"IMF"*). Alternative forms of security proposed by the State were unacceptable to NPF and its legal adviser's proposal was unacceptable to the State. The Commercial Investments Division (*"CID"*) of the DoF brokered the loan, despite its severe conflict of interest. Only K1 million had been drawn down before the Southern Highlands Provincial Government (*"SHPG"*) defaulted on the loan conditions and NPF then cancelled the deal. NPF is suing for unpaid interest.

S	ES	Title	Details
8	8	Transfer of employees of corporatised State entities and their entitlements from POSF to NPF	When the National Airlines Commission and the Post and Telecommunication Corporation were corporatised to become Post PNG Ltd, Telikom PNG Ltd and Air Niugini Pty Ltd, the employees and their entitlements needed to be transferred from the POSF to the NPF. As the State was unable to pay its *"employers"* share of the former public servants entitlements, amounting to K24 million, NPF agreed (reluctantly and under pressure) to provide loan funding to the State at 12.67% interest to cover the amount owing to NPF by the State. This Schedule describes the improper pressure, the undeclared conflicts of interest and the illegal payouts of entitlements, which occurred; as well as the poor administration of the loan by NPF (which undercharged interest owing).
TENDERS PROCEDURES			
9	9	Tenders Procedures and Nepotism	This Schedule reports on the unsatisfactory failure to apply proper procedures for tendering for acquiring goods and services and disposing of assets in the areas of:- • Motor vehicles • Property and property management services • Legal services • Security services • Accounting services • Other professional services • Disposal of assets • Computer hardware and software • Stationery and office supplies. The complete failure by management and the Trustees to ensure that orderly procedures were in place resulted in nepotism, criminal conduct and loss to the NPF. It is recommended that all Trustees be referred to the Ombudsman Commission to consider whether their long-standing breach of fiduciary duty in this respect constitutes a breach of the Leadership Code. Other recommended referrals to the Commissioner for Police and other authorities are listed (See further description at paragraph 9 below and list of referrals at paragraph 15.6).

EXEMPTIONS			
10	10		Under the *NPF Act*, it was obligatory for all employers employing more than 20 employees to contribute the employer's contributions to the NPF and to collect and pay in the employees' contribution. This Schedule reports upon the administration of the two provisions allowing employers to claim exemption. Section 3(6) allowing the Minister to exempt a class of establishment and Part VII which empowers the managing director to exempt an individual establishment if the Minister is satisfied it has a superannuation scheme, which is comparable to that of NPF. The Schedule reports upon confusion surrounding uncompleted attempts to repeal these provisions, the exemptions granted to classes of establishments and to individual establishments and the unsatisfactory handling of outstanding applications by NPF. The improper interference by Minister Iairo Lasaro to gain exemption for the Masurina Group is described in detail as well as his inconsistent handling of a similar application by Kambang Holdings. The Commission has recommended that Mr Lasaro be referred to the Ombudsman Commission for possible breach of the Leaderships Code.

4.5.5 Further information

More details on the above matters can be accessed by turning to the relevant hard copy executive summary, which will refer to relevant paragraphs in the Schedule, which it summarises. Alternatively, the information can easily be accessed on the CD by clicking on the Executive Summary or Schedule number required.

5. STRUCTURE OF THE NPF UNDER THE *NPF ACT*

This subject is reported in great detail in Schedule 1, which gives a full description of the formal structure of the NPF under its enabling *Act* and surrounding laws and arrangements. Structural weaknesses are explained and illustrated by reference to relevant events described in the Schedules. Recommendations for structural reform appear at paragraph 22.3.1.1 in **Schedule 1** and at paragraph 15 in the **Executive Summary**. The report of a Seminar on Structure, which was conducted by the Commission, is set out at Appendix 23 to **Schedule 1**.

5.1 Constitution of the NPF Board

The *NPF Act* established the NPF as an accumulated benefits superannuation Fund for private employees employed by establishments having more than 20 employees.

Its governing body is the NPF Board of Trustees consisting of:-

(1) The Secretary of the DoF as Chairman or his nominee approved by the Minister responsible for financial matters (referred to throughout this report as the Minister or the Minister for Finance);

(2) Two public service Trustees appointed by the Minister (the practice was to appoint a senior officer from DoF and one from the Labour Department);

(3) Three representatives of employers appointed by the Minister from a panel of names proposed by organisations of employers;

(4) Three representatives of employees appointed by the Minister from a panel of names proposed by organisations of employees;

(5) The managing director of the NPF, appointed by the Minister after prior consultation with the Board.

As Trustees, the members of the NPF Board were bound by the onerous duties of Trustees at common law and under the *Trustee Act*, which may render them personally liable for loss caused by a breach of fiduciary duty and prohibits them from benefiting from the Trust fund.

5.1.1 Board appointments and terminations

Throughout the period under review there were very serious defects in the way the Trustees were appointed to, or terminated from, the Board caused by negligent omission, failure to apply the provisions in the *Act* and by improper political interference.

The defects in appointment procedures were so significant that it raises questions about the constitutional validity of the Board and the legality of some of its decisions. The defects are set out in the following table from **Executive Summary 1, paragraph 2.8**, which also sets out the dates of appointment and termination of NPF officers and Trustees and of successive Ministers (and see chart at **Appendix 22** of **Schedule 1**).

DATES OF APPOINTMENT AND VACATION OF OFFICE NOTING MAJOR IRREGULARITIES

Position	Name	Period	Irregularity	Paragraph
Minister	Chris Haiveta	01/01/95 - 26/08/97	None	
	Iairo Lasaro	29/09/97 - 02/08/99	None	
	Sir Mekere Morauta	01/08/99 - 31/12/99	None	
Chairman	Gerea Aopi	01/01/95 - 03/10/95	Held position of Chairman by virtue of being Secretary of the DoF and vacated the chairmanship on ceasing to be Secretary.	
	Rupa Mulina	03/10/95 - 11/01/96	Mr Mulina became Chairman by virtue of his appointment as Secretary of the DoF. He sensed a conflict of interest and willingly complied with Minister Haiveta's request to nominate Mr Lalatute in his place. Minister Haiveta proceeded, however, to appoint Mr Lalatute himself, illegally on 13 December 1995. On 19 January 1996 Mr Mulina then signed a nomination of Mr Lalatute which was backdated to December 1995	Appendix 1
	Evoa Lalatute	11/01/96 - 18/04/96	Minister Haiveta's appointment of Mr Lalatute was beyond power and invalid. This mistake was purportedly corrected when Mr Mulina nominated Mr Lalatute on 19 January 1996 by backdated nomination. Mr Lalatute's appointment was later wrongly terminated by Minister Haiveta. Only the Secretary of the DoF, Mr Mulina, had the power to terminate Mr Lalatute's chairmanship, which he should have done by revoking his nomination. The termination of Mr Lalatute's appointment by Minister Haiveta was, therefore, ineffective.	4.3.3 4.3.4 and Appendix 2
	David Copland	18/04/96 - 15/01/98	Mr Copland's initial appointment as Chairman was tainted by the failure to properly terminate Mr Lalatute's appointment. Mr Copland's appointment was probably ineffective. Mr Copland's subsequent periods as Acting Chairman was made by resolution of Board meetings from which Mr Morea Vele was absent (the ex-officio chairman). Mr Copland's appointment was purportedly terminated by Minister Lasaro but no proper ground was stated and it was not gazetted as required by the Act.	4.3.4.1 and Appendix 2

Position	Name	Period	Irregularity	Paragraph
	Morea Vele	15/01/98 - 04/08/98	Mr Vele assumed the role of Chairman after his appointment as Secretary of DoF. He then absented himself for 9 months without nominating a successor.	4.3.5.2 to 4.3.5.4.
	Brown Bai	01/09/98 - 27/01/99	Mr Bai actively assumed the role as Secretary of the DoF / Chairman when appointed as Secretary DoF. Under pressure from Minister Lasaro and Prime Minister Skate, he stood down and nominated Mr Maladina as Chairman.	4.3.6. 4.3.6.1 to 4.3.6.2. and Appendix 5
	Jimmy Maladina	27/01/99 - 31/12/99	Mr Maladina's appointment was planned by Prime Minister Skate and Minister Lasaro with the assistance of Mr Herman Leahy. Mr Maladina's appointment as Chairman (and as employer representative Trustee) was strongly opposed by the Employers Federation which issued a Writ seeking a Court injunction.	4.3.6.1 - 4.3.7 and Appendices 5 and 12.
Public Service Trustees (Not more than 2) Section 10(1)(d) *NPF Act*				
	Vele Iamo	12/02/93 - 19/01/99	Mr Iamo was a senior officer in the DoF. He was frequently absent without permission for more than three consecutive Board meetings, which should have resulted in obligatory termination of his appointment by the Minister (Section 10 - *NPF Act*). This did not happen. He was eventually terminated for political reasons by Minister Lasaro for no stated ground and without gazettal as required under the *Act*. The termination was invalid.	4.5.1. - 4.5.1.2 and Appendix 7
	Alphmeledy Joel	28/01/94 - 09/02/95	No irregularities	
	Evoa Lalatute	18/05/95 - no formal termination	Carried on as Trustee after his chairmanship was revoked. No resignation, formal termination or gazettal. Uncertainty about cessation of his appointment taints the appointment of his successor with legal uncertainty.	4.5.3.1.- 4.5.3.2 and Appendix 8
	Gerea Aopi	08/02/96 - 28/08/98	Mr Aopi was appointed as public service representative Trustee prior to completion of Mr Lalatute vacating office as a Trustee. As there were still two public service Trustees there was no vacancy for Mr Aopi in this category, so his appointment was invalid.	4.5.4 4.5.4.3. and Appendix 9

Position	Name	Period	Irregularity	Paragraph
	Abel Koivi	01/04/96 - 10/01/99	Appointment was invalid because there was no vacancy in this category of Trustee. Mr Koivi was an officer with Air Niugini when it was privatised at which time he ceased to be a public servant and was no longer qualified to be a public servant representative Trustee, but he remained in the position. Two years five moths later, Mr Herman Leahy attempted to rectify the situation by having Mr Koivi's Air Niugini position declared to be an office in the public service. The termination of his office as Trustee by Mr Skate as Acting Minister was without prescribed ground and was not gazetted as required.	4.5.5.3 4.5.5.4 and Appendix 11
	Brown Bai	19/01/99 - 31/12/99	After he stood down as Chairman (under pressure) Mr Bai remained Secretary of the DoF and he was also appointed as a public service representative Trustee. Whether Mr Bai's appointment was valid depends upon whether the irregular termination of the appointments of Mr Iamo and Mr Koivi were effective. After appointment Mr Bai absented himself without permission from many more than 3 consecutive meetings making himself liable for obligatory termination by the Minister. This did not happen.	4.5.6 and Appendix 5
	Mickey Tamarua	19/01/99 - 29/10/99	The validly of Mr Tamarua's appointment depends on whether the termination of the appointments of Mr Iamo and Mr Koivi were valid - otherwise there was no vacant public service representative Trustee position for him to fill. Mr Tamarua's termination as a Trustee was sudden, with no grounds given and no gazettal. Consequently, formal date of his termination and its legality is uncertain.	4.5.7

Position	Name	Period	Irregularity	Paragraph
Three Employee Representative Trustees				
	John Paska	12/2/93 - 07/02/99 and 18/02/99 - 31/12/99	Mr Paska's appointment was allowed to expire on 6 February 1999, leaving a gap before his reappointment. Messrs Fabila and Leahy exploited this situation to reintroduce the proposal to buy the Waigani land and settle the Kumagai Gumi claims on the NPF Tower in Mr Paska's absence	4.6.1. and Schedule 5
	Michael Gwaibo	12/02/93 - 07/02/99	No irregularity. His appointment was allowed to expire. For a long period, there was no third employee representative Trustee.	
	Henry Leonard	18/05/95 - 17/05/98 and 19/01/99 - 31/12/99	The only irregularity is that after his first term expired on 17 May 1998, a period of seven months was allowed to elapse before his reappointment. During that period, there were only two employee representative Trustees.	
Three Employer Representative Trustees				
	Graham Hogg	12/02/93 - 11/02/96	No irregularities	
	Isikeli Taureka	12/02/93 - 12/97	Mr Taureka apparently resigned in about December 1997. It was not gazetted as required by the *NPF Act*. The vacancy was not filled for over 12 months.	
	David Copland	- 01/09/98	Mr Copland was allowed to continue as an employer representative Trustee long after he ceased to be an employer - in contravention of the Act. The stated ground for termination was not a prescribed ground under the *Act*.	4.7.4.2. - 4.7.4.3.
	Tau Nana	08/02/96 - 07/02/99 and 20/04/99 - 31/12/99	Once again, there was a gap between the end of Mr Nana's first term and his reappointment. For a period Mr Nana was the only employer representative Trustee. Mr Nana's second appointment was invalid as there was no vacant employer Trustee position available.	4.7.4 4.7.8
	Nathaniel Poiya	19/01/99 - 31/12/99	No irregularity	
	Jimmy Maladina	19/01/99 - 31/12/99	This controversial appointment was opposed by the Employers Federation on the ground that his name had not been put forward by an organisation representing employers. Court action was settled on the basis that Mr Maladina would resign as Trustee but remain as Chairman. He did not resign as Trustee.	4.7.6. and Appendix 5

Position	Name	Period	Irregularity	Paragraph
	Wayne Golding	18/02/99 - 13/03/99	Mr Golding was appointed by Minister Lasaro as an employer's representative Trustee. The appointment was invalid as there was no vacancy for an employer's representative Trustee and because his name had not been put forward by an organisation representing employers. When the Employers Federation threatened Court action, his appointment was terminated.	4.7.7.
Managing Director	Robert Kaul	05/07/93 - 05/05/98	His initial appointment was in accordance with the *NPF Act* but his conditions of employment were agreed by way of a personal contract of employment, with generous early termination clause. This was contrary to the provisions of Section 15 of the *NPF Act*, which required a Ministerial determination after prior consultation with the NPF Board. Revocation of his appointment by Minister Lasaro was improper and ineffective. It coincided with conflict between Mr Kaul and Mr Lasaro over the claim for exemption by Masurina Group of Companies, which Mr Lasaro strongly supported.	4.4.1. 4.4.1.2.
	Henry Fabila	May 1998	His initial appointment was invalid as Mr Kaul had not vacated the position. The signing of personal contract of employment was contrary to the *NPF Act*.	4.4.2. 4.4.3.1 (and see below 2.12.2)

The table refers to paragraphs in **Schedule 1**, which discuss each appointment and termination **(Schedule 1 paragraphs 4.1 to 4.8 and see graph at Schedule 1, appendix 22)**.

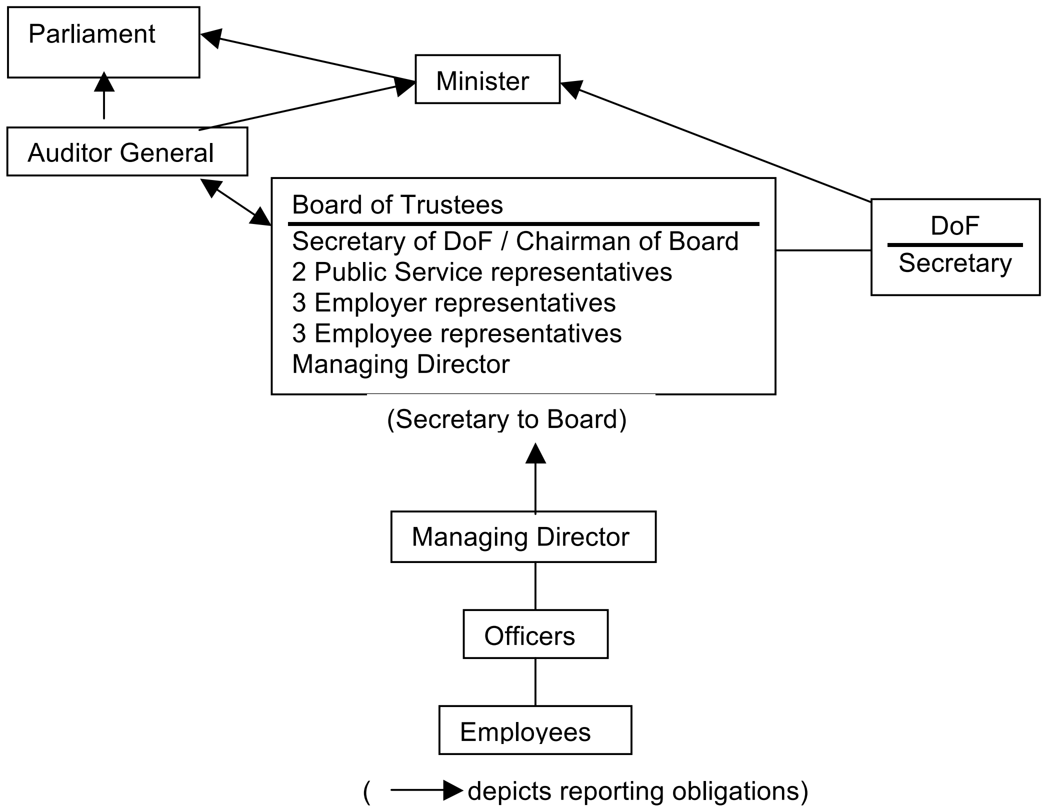
5.2 Reporting and external supervision

Although the NPF is designed to be independent of government control and interference, the legislation provides for a framework of external monitoring and supervision and for broad policy guidelines and directives on investment policies to be issued by the Minister (Section 26(2)) within which the NPF Board and management are obliged to operate.

The *NPF Act* specifies rules for banking and investing the funds and the Minister is empowered to issue policy guidelines on investments (Section 26 of the *NPF Act*). Section 30 (now subsumed by Section 63 of the *PF(M) Act*) requires NPF to submit an annual report to the Minister and to also submit the report to the Auditor General who, pursuant to Section 29, shall report the result of his audit to the Minister, who, in turn, is obliged to submit the audited report to Parliament each year. The Auditor General is also required to report directly to Parliament under Section 214 of the Constitution.

Section 63(2)(b) of the *PF(M) Act* requires NPF to report quarterly to the Minister on all investment decisions and to provide an annual report on investment performance and an updated 5 year rolling plan on investment strategies and administrative systems. How this structure, which requires NPF to have in place and to report upon investment strategies and plans, was ignored, is set out in **paragraph 16** of **Schedule 1.**

The formal legislative and administrative structure in place for NPF between 1995 and 1999 is shown in **Table 1** below.



Under the *PF(M) Act* Section 61, the NPF was obliged to obtain Ministerial approval before entering into transactions in excess of K300,000 (later increased to K500,000).

On paper the NPF appears to have had a well-balanced Board containing the skills and experience of the Secretary of the DoF, senior public servants and experienced employers and trade unionists, all of whom were subject to the strict duties applicable to Trustees at Common Law and under the *Trustee Act*. Although independent in day-to-day decision-making, the NPF Board and its managers were bound to follow prudent investment guidelines issued by the Minister and constrained from expending funds on purposes outside its statutory powers.

In theory, the management of NPF under the leadership of a managing director, who was himself also a Trustee and member of the Board, was obliged by common law duties to report to the Board and to obtain the authority of the Board for decisions on all major matters, unless authority had been explicitly delegated in writing by the Board.

According to the legislation, the NPF Board was also bound to maintain and update annually a 5 year Development Plan and to strictly follow the investment guidelines issued by the Minister in 1993 (as varied by Minister Haiveta in 1996). The Minister's approval was required for major transactions and the NPF was obliged to report quarterly and annually to the Minister and its financial statements audited by the Auditor General were to be tabled in Parliament annually.

In addition to this carefully contrived structure, the Chairman of NPF was to be the Secretary of the DoF, who would also be advising the Minister on financial matters and the full resources of his department would be available to make reports and recommendations on NPF's proposals, requests and affairs.

What could go wrong? The Commission's report in **Schedule 1** shows that just about everything went wrong. For instance:-

(a) appointments and termination of appointments to the NPF Board were not properly monitored so it was invalidly constituted for much of the period **(Schedule 1 paragraph 4.1 to 4.7, overview at paragraph 4.8 and table above)**;

(b) appointments were subject to serious politicisation and manipulation to appoint Trustees and Chairmen acceptable to the Prime Minister and Minister for Finance most notably the removal of Mr Bai as Chairman and his replacement by Mr Jimmy Maladina **(Schedule 1 paragraph 4.3.6 et seq and Appendix 5).**

(The irregularities in the appointment of Trustees and senior officers are set out in tabular form at **paragraph 4.1.1** above and in **Executive Summary 1 paragraph 2.8**).

(c) the Trustees appointed generally lacked expertise or understanding in the prudential management of a superannuation fund and did not appreciate their role to supervise the activities of NPF's management. Some Trustees were not fit and proper persons for the role of Trustee.

(d) The Secretary of the DoF rarely acted as Chairman. He was subjected to political directions from the Minister and Prime Minister as to nominating his replacement. The prime example was Prime Minister Skate's direction that DoF secretary Brown Bai must nominate Mr Maladina to replace him as chairman of the NPF **(Schedule 1 paragraph 4.3.6.4) (Appendix 5) (Executive Summary 1 paragraph 2.9.6).**

(e) The senior officer of DoF who represented DoF on the NPF Board of Trustees during the 5 years under review, Mr Vele Iamo, was rarely in attendance at NPF Board meetings.

(f) The Trustees, particularly the union representatives, were overawed by the (apparent) expertise of Trustee and frequent chairman, Mr David Copland, who betrayed that trust.

(g) Senior management failed their duty to act within the bounds of their delegated power, failed to consult advise and inform the Board and frequently made major decisions in excess of their power.

(h) The Trustees failed to criticise, reprimand or control management in these matters.

(i) The NPF Board and management frequently failed to obtain required Ministerial approval before (or even after) making major decisions requiring such approval.

(j) the NPF Board and management failed to maintain an updated 5 year Development Plan and failed to obey the reporting requirements of the *PF(M) Act,* so that the external monitoring and reporting provisions broke down completely **(Schedule 1 paragraphs 7.4; 15.4.1; 15.4.2.1 to 15.4.2.9; 15.4.3)**;

(k) the NPF Trustees and management failed to comply with the investment guidelines. Instead, they invested in high-risk PNG resource stock and other inappropriate investments such as Crocodile Catering and Ambusa Copra Oil Mill, which led eventually to NPF suffering massive losses.

(l) the Secretary of the DoF and the public service representative Trustees had a serious undisclosed conflict of interest whenever the State required loan funding. The Minister and the public servant Trustees applied strong pressure on the NPF to provide loans to fund Government infrastructure development **(Schedule 7B, Poreporena Freeway, paragraph 2.1(c))** to invest in government securities and to fund the State's obligation to pay its contribution to NPF for former POSF members transferring to NPF from corporatised Air Niugini, Post PNG and Telikom **(Schedule 8, Transfer from POSF, paragraph 4).**

(m) The Chairman of NPF, Mr Jimmy Maladina, conspired with senior officers of NPF and others to defraud NPF in relation to the Waigani land **(Schedule 5)** and the NPF Tower **(Schedule 6)** resulting in an overall loss to NPF of approximately K5 million.

5.2.1 Recommendations for Structural reform

At **paragraph 22.3** of **Schedule 1**, the Commission examines and discusses in detail the structural weaknesses which undermined the good governance and effectiveness of NPF and makes recommendations under the following headings:-

(a) Selection, qualifications and quality of Trustees **(paragraph 22.3.1)**;
(b) The appointment and termination of appointment of Trustees **(paragraph 22.3.2)**;
(c) Managing Director **(paragraph 22.3.3)**;
(d) Corporate Secretary **(paragraph 22.3.4)**;
(e) Management of investments - weaknesses **(paragraph 22.3.5)**;
(f) Powers and obligations of the NPF Board of Trustees **(paragraph 22.3.6)**;
(g) Investment guidelines and directions **(paragraph 22.3.7)**;
(h) Investment guideline Part (e) approval delegations **(paragraph 22.3.8)**;
(i) Minister Haiveta's K1 million approval to trade in equities **(paragraph 22.3.9)**;
(j) Minister's approval given without seeking or obtaining DoF advice **(paragraph 22.3.10)**;
(k) Failure by DoF to provide expert advice to the Minister **(paragraph 22.3.11)**;
(m) Approvals under Section 61 of the *PF(M) Act* **(paragraph 22.3.12)**;

(n) Applying the *PF(M) Act* (**paragraph 22.3.13**);
(o) Deliberate failure by Board and Management to comply with legislation (**paragraph 22.3.14**);
(p) Management exceeding delegated powers (**paragraph 22.3.15**);
(q) Circular resolutions (**paragraph 22.3.16**);
(r) Unauthorised expenditure of Trust funds outside the investment guidelines (**paragraph 22.3.17**);
(s) Validation provisions (**paragraph 22.3.18**);
(t) Compliance (**paragraph 22.3.19**);
(u) Pressure to invest in Government Bonds and Roadstock (**paragraph 22.3.20**);
(v) Corporatisation exercise (**paragraph 22.3.21**);

The list of recommendations (only) is listed in **Executive Summary 1** from **paragraph 15.4** onward.

A full discussion leading up to each recommendation is reported in **Schedule 1, paragraph 22.3**.

Broadly, the major recommendations were, to:-

(a) remove the NPF from the control of the Minister and the DoF;
(b) reduce the degree of external control over NPF's affairs and investment;
(c) vest control in a better qualified Board of Trustees and
(d) establish the Bank of Papua New Guinea (*"BPNG"*) as the external regulator of NPF with adequate staff, powers and facilities to carry out the task.

The Commission's recommendations for structural reform are presented in **paragraph 15.21** below dealing with **Term of Reference 6.**

6. THE SUPERANNUATION TASKFORCE AND THE *SUPERANNUATION ACT 2000*

During the course of the Commission's inquiries, the Prime Minister, Sir Mekere Morauta, established a Task Force to propose reform of superannuation in PNG.

The Commissioners, Counsel Assisting and staff, met with the Task Force and exchanged ideas. We also gave them access to the results of the Commission's seminar on Structure.

Subsequently, the *Superannuation Act 2000* was enacted.

The main features of the new *Act*, are:-

1. The *Act* provides for licensing and regulation of the superannuation industry.

2. BPNG is the Regulator to:-

   - Authorise existing fund to continue to operate;
   - License Trustees, investments managers and fund administrators;
   - Determine prudential standards;
   - Supervise compliance with the *Superannuation Act* and prudential standards;
   - Promote, encourage and enforce proper standards of conduct.

3. It obliges authorised Funds to have a licensed Trustee, a licensed investment manager and a licensed fund administrator.

4. The BPNG will inquire whether applicants for licences and their officers are fit and proper persons and will apply a *"fit and proper person test"* before granting a licence. It may issue binding directions to licence holders and other persons engaged in the superannuation industry.

5. The *Superannuation Act* provides for contributions to be paid to the Fund by employees and employers and for transfers of member entitlements.

6. The *Act* provides for mandatory and voluntary codes of conduct and penalties for breach.

7. The BPNG is empowered to prosecute and commence civil actions.

8. The *Act* provides for the amendment and repeal of the *NPF Act*, the *POSF Act*, the *DFRBF Act* and for the replacement of existing Trustees and the transfer of employees.

The final structure and the preparation of prudential guidelines and control and monitoring mechanisms are still evolving.

The NPF has subsequently been licensed under that *Act* as Nasfund Ltd and has restructured itself so as to have a Board of Directors, an operations management company and an investment management company.

It is not the role of this Commission to assess or make comments on the new *Act* other than to recommend that it be reconsidered in the light of the Commission's findings, which concern events that occurred under the *NPF Act* and its structure between 1995 and 1999.

The Commission's findings demonstrate that it is not sufficient merely to have a good formal structure provided by legislation. In many ways, the previous structure seemed good. The trouble was that it was ignored, by-passed, defied, misinterpreted and avoided.

No one agency accepted responsibility to monitor and enforce compliance with the legislation and guidelines. The DoF lacked the expertise to monitor NPF's investments and proposals. Few people seemed able to successfully stand up to and reject political interference.

Even the Governor of the BPNG was placed under pressure to approve NPF's wild schemes and on at least one or possibly two occasions seems to have been influenced **(Schedule 2F AUD Bond, paragraphs 12.1, 12.3, 13.1, 13.2, 14.5 and 14.5.1).**

7. SUMMARY OF EVENTS - 1995 - 1999

7.1 Pre 1995 - background

The NPF commenced operations in 1980. After troubles with the management of the Fund in the late 1980's involving unauthorised expenditure by management and serious cost blowouts, the management of operations and investments was contracted in 1988 to Niugini Asset Management, a subsidiary of McIntosh Securities Ltd for a five-year period.

At the end of the contract period in 1993, the period of external management ceased and NPF carried on as a self-managing entity. According to the Five Year Development Plan 1995-99 **(Schedule 1, paragraph 6.1)** the Niugini Asset Management regime had stabilised the Fund and introduced good corporate governance, with management reporting properly to the NPF Board and being properly supervised by the Board. It had been intended that senior management positions would be staffed by experienced expatriates tasked with training nationals as middle level management to replace them when ready.

NPF was unable to recruit and hold the expatriate senior managers. In July 1993, Mr Robert Kaul was appointed as Managing Director with expatriates Messrs Brendan Kelly and Jeffery Bunn as General Manager and Operations Manager, respectively.

Mr Noel Wright, a former employee of Niugini Asset Management, stayed on as Finance and Investment Manager. The Chairman of the Board was the experienced Secretary of the DoF, Mr Gerea Aopi. The other members of the management team were Mr Herman Leahy as Corporate Secretary / Legal Counsel and the following inexperienced officers, Mr Ian Tarutia (Assistance Compliance Manager), Mrs Nellie Andoiye (Assistant Operations Manager) and Ms Salome Dopeke (Assistant Finance and Investment Manager).

7.2 Appointment of new management team - 1995

This team did not last because Messrs Kelly and Bunn departed the NPF before the end of 1995. Mr Wright was soon promoted to Deputy General Manager and Ms Andoiye, Ms Dopeke and Mr Tarutia were promoted into senior management positions for which they did not have the training, skills or experience.

Mr Aopi ceased to be Secretary of the DoF and Chairman of NPF on the 3rd October 1995 and was succeeded in both roles by Mr Rupa Mulina on 4th October 1995. Mr Mulina preferred not to act as Chairman of the NPF (perceiving a conflict of interest in the two roles of Secretary of the DoF and Chairman of the NPF Board).

Mr Mulina agreed to be replaced as Chairman by Mr Evoa Lalatute who was irregularly appointed by Minister Haiveta on 11th January 1996 **(Schedule 1, paragraph 4.3.3.2.1 and paragraph 1 in Appendix 1)**. Mr Lalatute chaired only one meeting before his appointment was revoked by Minister Haiveta who wished to appoint Trustee David Copland as Chairman. DoF Secretary Mulina gave evidence that he cooperated willingly and nominated Mr Copland as Chairman and this was promptly approved by Minister Haiveta on 18th April 1996 **(Schedule 1 paragraph 4.3.4.1 and Appendix 2, Paragraph 2)**.

7.3 1996 team with Mr Copland as Chairman

Thus, by 18th April 1996, the key players in the management of the NPF were Mr David Copland (former Managing Director of Steamships Trading Company Limited *("STC")*) as Chairman of the Board of Trustees, Mr Robert Kaul as Managing Director, Mr Noel Wright as Deputy General Manager / Investment Manager and Mr Herman Leahy as Corporate Secretary / Legal Counsel. This team had a close relationship with Minister Chris Haiveta, who frequently used an office in the NPF premises (The names of the Trustees at any time can be ascertained from the table set out at paragraph 5.1.1 above) or from the graph at **Schedule 1, Appendix 22 (Also at Appendix of this report).**

Prior to this date, NPF was following a conservative investment strategy and its only borrowing was that it operated on a K6.5 million-overdraft facility granted by the PNGBC **(Schedule 2A, paragraph 2.4)**. (There was no power for NPF to operate on overdraft and this overdraft had never been disclosed to or approved by the NPF Board) See the opinion of Allens Arthur Robinson at **Schedule 2E, Appendix 6** referred to at **Schedule 2E paragraph 14.6** and the Commission's findings at **Schedule 2E paragraph 18.3**.

7.4 New investment strategy approved by Minister Haiveta

The new NPF team of Messrs Copland, Kaul, Wright and Leahy prepared a strategy to increase the growth of the Fund by investing in PNG resource stock, which could be sold off profitably to make a tax-free capital gain. They also determined to take advantage of an imminent sale by the Defence Force Retirement Benefits Fund Board (*"DFRBF"*) and POSF of their holdings in STC and CXL. This strategy was devised in order to take advantage of existing market and interest rate conditions and with a nationalistic but misguided intention to enable Papua New Guineans to be able to participate (through their NPF membership) in the resource companies with interests in PNG.

The intention was to obtain significant holdings in some of the smaller companies, so as to acquire seats on their Boards and a massive holding in STC and CXL, in a bid to take them over and amalgamate and manage them as one company. This latter aim was related to Mr Copland's personal agenda, which was rooted in the circumstances of his departure from his former position at STC.

Rather than selling NPF's holdings in IBD's (which were then producing a good investment return) they opted to fund the proposed purchases of PNG equities by massive borrowings from the commercial banks, as interest rates were then favourable.

Utilising borrowed funds for this purpose had been discussed previously in 1994 and Mr Leahy had then given totally wrong advice that it was within NPF's power to borrow **(Schedule 2A paragraph 2.2)**. There seems to have been no consideration that interest rates on borrowed capital might rise or that share prices might fall.

The strategy was discussed with an enthusiastic Minister Haiveta who gave immediate verbal approval at a meeting at the Gateway Hotel in April 1996. Formal Board approval was given on 30th May 1996 with no briefing papers for the Board and little discussion. This was followed by immediate Ministerial approval by Mr Haiveta, who did not seek the advice of the DoF. In this way, with little thought and no expert advice, the NPF Board and Minister Haiveta approved the use of funds borrowed illegally from the ANZ Bank to purchase K39.7 million worth of shares in STC and CXL. It was improper conduct for which the Commission has recommended that Minister Haiveta and the NPF Trustees in office at the time, should be referred to the Ombudsman Commission to investigate whether there has been a breach of the Leadership Code **(Schedule 4D, paragraphs 4.4.1 to 4.4.6)**.

7.5 Borrowings-based investments

During the rest of 1996 and 1997, the NPF proceeded to increase its borrowings in order to invest in PNG Resource stock and in STC and CXL. It also invested in unlisted companies such as Crocodile Catering **(Schedule 4L)** BSP **(Schedule 4J)** and made investment loans to the State to fund the Poreporena Freeway **(Schedule 7B)** and Eda Ranu **(Schedule 7C)**. In 1997, NPF borrowed K50 million from the PNGBC to construct the NPF Tower (increased to K59 million in 1999 - **Schedule 2B, paragraph 13.15**).

Although a few of these investments were moderately successful (namely, **Schedule 4H**, OML and **Schedule 4F**, NML) most of them resulted in massive losses for the NPF.

7.6 Failures of management

Throughout the period 1995 - 1999 common features of the equity investments included management's failure to keep the NPF Board informed of its activities and management making decisions in excess of their delegated authority. Management made many investments without ever specifically advising the Board of Trustees.

The main responsibility for such matters lies with the Managing Directors, Messrs Kaul and Fabila and with the Deputy General Manager and Investment manager, Mr Noel Wright, all of whom committed frequent breaches of their fiduciary or common law duties. These events are chronicled in detail in the relevant Schedules to this Report.

7.7 Failures of the Trustees

The Trustees must also bear responsibility for failing to oversee and control the management. Even when the Trustees were eventually informed of management's unauthorised activities, they failed to criticise or reprimand. Also had they bothered to examine the Schedules of investments tabled at each Board meeting, the Trustees could have ascertained what was going on. Their failure to do so was a breach of their fiduciary duty to the members.

7.8 Failure to report and breach of investment guidelines

NPF was bound by Section 26(1) of the *NPF Act* to invest its funds only in accordance with the 1993 Investment Guidelines, as varied by Minister Haiveta in April 1996 (regarding overseas investment in equities listed on a stock exchange up to K1 million per transaction) **(Schedule 1 paragraph 8.4 and Appendix 21)**. The NPF was also bound by Section 63(2)(b) of the *PF(M) Act* to maintain, update and report annually on a Five-Year Rolling Development Plan. It was also bound to report quarterly on all investment decisions and on investment performance annually **(Executive Summary 1, paragraph 10)**. The NPF management and Board of Trustees failed to meet any of these requirements. Adhering to no expressed investment policy, NPF seems to have merely followed the gambler investor's instincts of Mr Wright and Mr Copland and invested many millions of illegally borrowed funds in high-risk, volatile, non-earning PNG resource stock. It did this without independent expert advice. The advice it sometimes received from its share broker, Wilson HTM, was not independent, as Wilson HTM was itself benefiting from NPF's high-risk buying spree **(Schedule 4B paragraph 7.6)**.

NPF management and Trustees completely lost sight of the Investment Guidelines, as can be seen from the graphs and working documents appended to **Schedule 1** as **Appendix 24** NPF's portfolio changed alarmingly from having only 8% of its portfolio invested in high-risk equities in 1994, increasing to 20% in 1995 which had risen to 58% in 1996, 64% in 1997 and 60% in 1998.

During the same period, debt as a percentage of net assets rose from 5% in 1994 to 70% in 1998. By that stage, because of NPF's heavy illegal borrowings, the debt to equity ratio was 69.9%.

There was one fleeting attempt by managing director Robert Kaul to raise the awkward question of the disregarded Investment Guidelines in April 1996 **(Schedule 1 paragraph 12.3.7)**.

This warning was simply ignored by Messrs Copland and Wright, except that at the 104th Board meeting in December 1996, the Board resolved to seek amendments to the Investment Guidelines to distinguish between long term and speculative investments **(Schedule 1 - paragraphs 12.3.7.1 and 12.3.7.3)**. It did not bother them that their expenditure of NPF funds on investments which were outside the Investment Guidelines, was illegal and was also a breach of their fiduciary duty as Trustees, for which they could be personally liable. When Mr William (Bill) Skate replaced Sir Julius Chan as Prime Minister in July 1997, Mr Iairo Lasaro also replaced Mr Haiveta as the Minister responsible for the NPF.

7.9 Financial crisis looming in 1998

By early 1998, there were signs that NPF was in financial trouble because of the extreme imbalance and volatility of its investment portfolio, its falling value and the increasing burden of the interest being paid on the loans.

The chronic weaknesses in NPF's governance continued with management under the control of Mr Kaul continuing to make significant decisions beyond their delegated powers and still failing to keep the NPF Board properly informed on NPF's borrowings and investments. The Trustees continued to give undue deference to chairman Copland and Deputy managing director Noel Wright and failed their fiduciary duty to maintain supervision over management.

As reports by the Auditor General, PwC and KPMG **(See Schedule 1 paragraphs 10.5.2 to 10.5.8)** demonstrate, senior management was incompetent and failing in the basic duties of maintaining a proper system of accounts, maintaining proper records of member's contributions and administering proper procedures for acquiring goods and services and disposing of assets **(Schedule 1 and Schedule 9)**. There were also gross abuses of the payments of Board fees and allowances **(Schedule 1 paragraph 5.3.7 & 5.3.7.1 and Appendixes 16 and 19 referred to where irregularities are described in detail regarding Trustees and officers).**

7.10 Appointment of Mr Skate's protégé, Mr Henry Fabila, as Managing Director

In May 1998, Prime Minister Skate arranged for his good friend and former colleague at the National Capital District Commission *("NCDC")*, Mr Henry Fabila to replace Mr Kaul as managing director thereby invoking a substantial wrongful termination payout **(Schedule 1, paragraph 4.4.1.5)**. Although Mr Fabila had experience as a former banker and public administrator, he did not succeed in injecting strict rules of governance and accountability into the NPF. He found himself powerless to control his deputy, Mr Wright, and unable to work with Mr Wright's protector, Chairman Copland. Together with Mr Leahy, he set about obtaining the removal of both men. Mr Fabila was also beholden to Prime Minister Skate for his job, which compromised his independence as managing director and Trustee of the NPF.

Meanwhile, the economic tide had turned well and truly against NPF. As described in **Executive Summary 2E paragraph 13 and Appendix 5**, the value of NPF's substantial concentration of investments in PNG resource stock was tumbling, the interest rates were rising and the value of the Kina was falling. NPF had used borrowed funds to acquire its risky equity portfolio and was obliged to pledge more and more of its assets to the banks as security for its increasing debt burden, as it had undertaken to maintain a very high ratio of security to debt with the banks **(This is described in detail in Schedule 2E, paragraphs 3.2; 5 & 6).**

7.11 Banks seek to call in NPF's debts - 1998

The ANZ was becoming alarmed at the increasingly frequent breaches by NPF of its loan covenants and was demanding that NPF reduce the debt. The Asian economic crisis was in full swing and NPF had encumbered itself with the huge NPF Office Tower construction project, funded by a K50 million loan from the PNGBC. The project struck time-consuming trouble with the beneath ground foundations **(Schedule 6, paragraphs 4.1-4.9 & Executive Summary 3.2)** and chose to pay a K1.4 million acceleration payment to make up the lost time. Then the falling Kina eroded into the profits of the construction company Kumagai Gumi Co Ltd (*"Kumagai"*), leading to a K6.6 million Kina devaluation claim, which was settled by agreement at K3.3 million. As the construction costs mounted and the completion date blew out, NPF was faced with the fact that it had not secured in advance a single tenant and the demand for office space in Port Moresby was contracting with the economic crisis (The final cost of the Tower was K59.68 million).

With the lender banks turning hostile towards the end of 1998, Mr Wright desperately sought to bring his impractical and misguided attempt for NPF to issue a 54 million AUD Bond to completion, so as to raise much needed cash **(Schedule 2F and see paragraph 9 below).**

7.12 Dismissal of Mr Copland and resignation of Mr Wright

In September 1998, Mr Fabila's attempt to rid himself of Mr Copland as chairman succeeded and he was terminated because he had long ago ceased to be an employer in PNG and was therefore no longer qualified to be a Trustee. He was succeeded by Mr Brown Bai, the newly appointed Secretary of DoF, as chairman.

At the 115th NPF Board meeting on 6th November 1998, the new Chairman, DoF secretary Mr Brown Bai, jolted the NPF management and Trustees out of their apparent stupor by asking if they knew what they were doing. He asked how they intended to tell the members of the mounting losses then believed to be in excess of K40 million. The NPF Tower was incomplete and was suffering cost overruns. There was a cash crisis and Mr Wright was failing to bring the unworkable AUD54 million bond to fruition. Mr Copland had gone and Mr Wright was forced to resign in January 1999.

Also in January 1999 at Mr Bai's instigation, PwC was commissioned to report upon NPF's financial situation. Mr Paul Marshall of PwC soon told the NPF Board about the disastrous imbalance in the investment portfolio. NPF was trapped in a vicious circle caused by the tumbling value of its equity portfolio (which required more and more scrip to be pledged as security for the bank loans) and the rising interest rate burden on NPF's massive debts to the banks, then running at over K1 million per month. Even before his report was published, Mr Marshall was proactively negotiating with the banks and this led eventually to the commencement of the massive selldown of NPF's assets agreed to by the NPF Board by circular resolution in March 1999.

While these attempts to save the financially stricken NPF were under way, others had a very different agenda.

7.13 Appointment of Mr J Maladina as Chairman of NPF orchestrated by Prime Minister Skate – January 1999

Prime Minister Skate had already decided to have Mr Jimmy Maladina appointed as Chairman of the NPF and this was known to both Mr Maladina and Mr Leahy by September 1998.

7.14 The NPF Tower and Waigani land frauds

In December 1998, Mr Maladina contacted Mr Tanaguchi of Kumagai, the NPF Tower construction company and put in motion a scheme, using that company, to defraud NPF of K2.5 million.

In December 1998, Prime Minister Skate directed Mr Bai to stand down as NPF Chairman and nominate Mr Maladina in his place. This was done and Mr Maladina was appointed Chairman on 27th January 1999. Together with Mr Herman Leahy they immediately arranged (by trickery) for the NPF Board to reverse its previous decision and it resolved to purchase the Waigani Land (by purchasing shares in Waim No. 92 Pty Ltd which held the lease). This would bring a fraudulent profit of several million Kina to Mr Maladina who secretly owned the shares in Waim No. 92 Pty Ltd.

Thus, even prior to his appointment to the NPF Board Mr Maladina, in criminal association with NPF's legal officer / Corporate Secretary, Mr Herman Leahy, was involved in two attempted frauds against the NPF, concerning the NPF Tower (**Schedule 6**) and the Waigani Land (**Schedule 5**) both of which are reported upon at **paragraphs 15.11 and 15.12** respectively, below.

When news of the proposed sale of the Waigani Land to the NPF broke in the national press, Prime Minister Skate publicly forced the NPF to pull out of the deal.

7.15 Full extent of NPF's financial crisis emerges

In February 1999, NPF engaged PwC to review its investment portfolio. In March, PwC reported on the volatile imbalance of NPF's high-risk portfolio and the burden of the heavy borrowings. PwC was engaged to address the cash flow crisis and by mid March was discussing selldown of assets with the banks. The selldown strategy was approved by circular resolution and began immediately.

The conspirators, meanwhile, were trying to sell 50% of the NPF Tower to the PNG Harbours Board (*"PNGHB"*), thereby hoping to make a fraudulent commission (through Mr Maurice Sullivan of PMFNRE) of 5% aggregating K5 million (see **Schedule 6, paragraph 13.1.4 and paragraph 15.11.1** below).

By mid-year, Mr Rod Mitchell had been appointed as General Manager, in place of Mr Noel Wright, and Mr John Jeffery had been newly appointed as a Trustee. They were in close contact with Mr Paul Marshall of PwC. Mr Bai, as Secretary of DoF, appointed a team of Finance Inspectors to inquire into the financial affairs of the NPF and to look at worrying aspects of the proposed Waigani Land deal, which were becoming public knowledge. To start with, Messrs Fabila and Leahy failed to cooperate with the Finance Inspectors, until threatened with serious consequences by Mr Bai.

Around this time, the balance of power and the atmosphere at NPF headquarters began to change. A second PwC report was commissioned, the Finance Inspectors report was published and Messrs Mitchell and Jeffery raised questions about Messrs Maladina and Leahy in September 1999. At an October meeting of the NPF Board, Messrs Mitchell and Jeffery tabled a special report on many irregularities including the Waigani land deal. Mr Maladina sought, unsuccessfully, to block the meeting and did not attend.

7.16 Complaints levelled at Messrs Maladina and Leahy

Serious charges were levelled at both men especially about their part in the Waigani land affair. This led eventually to the termination of their appointments as Corporate Secretary and Chairman of NPF respectively.

To conclude matters, KPMG were appointed by the Auditor General to carry out an audit and report on the NPF as there was talk about a forced 50% write down of members' assets.

7.17 Assets selldown amidst confusion

The selldown of assets was completed at huge realised losses to NPF in the vicinity of K150 million. As 1999 drew to a close, NPF, with Mr Fabila as Managing Director, was in a state of confusion and near bankruptcy. It closed down Crocodile's Maluk Bay operation without providing a caretaker budget for the assets.

While trying to sell off assets to raise much needed cash it nevertheless continued to try and finance the doomed Ambusa Copra Oil Mill project under Mr Mekere's insistence (**Schedule 4N**) and unexpectedly purchased a new motor vehicle fleet (**Executive Summary 9, paragraph 2.6**). Gradually, Mr Mitchell brought financial reality to the fore and then was appointed as Managing Director to replace Mr Henry Fabila on 17th July 2000.

7.18 Establishment of Commission of Inquiry

Amidst great disturbance, amongst NPF members and significant political unrest, Sir Mekere Morauta then established this Commission of Inquiry into the affairs of the NPF in accordance with the Terms of Reference published above at **paragraph 2.1**, which include a requirement to recommend structural reforms.

7.19 Superannuation Taskforce

Without waiting for the Commission to report, the Prime Minister set up a Superannuation Taskforce to make recommendations for a new *Superannuation Act*. The commissioners, Counsel Assisting and Consultants held consultations with the Taskforce and the Commission provided a forum by way of a Seminar on the structural reform of NPF where there was a very good exchange of ideas by people with experience in the affairs of NPF and superannuation generally.

The Taskforce recommendations led to the drafting of the Superannuation Bill 2000, which was enacted into law, coming into force in 2002. The Commission is in general agreement with the provisions of the new Act as discussed at **Schedule 1, paragraph 21**.

7.20 Attempts to *"cover-up"* Mr Maladina's offences and interfere with the Commission of Inquiry

During the Commission's investigations into these two frauds in 2000, there were attempts made to *"cover-up"* the activities of Mr Maladina. These involved two lawyers, Messrs Simon Ketan and Jack Patterson, who, at Mr Maladina's instructions, fabricated documents and removed documents from files, which had been summonsed by the Commission. Both admitted the offences and have been referred to the Commissioner for Police for investigation. Mr David Lightfoot and Ms Barbara Perks, both of Carter Newell Lawyers, have also been referred to the Commissioner for Police to investigate their possible role in this *"cover-up"*.

7.21 Possible similar scams to defraud other PNG institutions

While investigating these matters and while examining bank accounts of the companies and persons involved, the Commission located evidence that other very large sums of money were being *"laundered"* during that period through the books of Carter Newell and PMFNRE and that similar scams involving the Investment Corporation, the PNG Harbours Board and the DFRBF were occurring.

The Commission is aware and has taken judicial notice of the fact that this was the period leading up to the time when a vote of no confidence against the Prime Minister in the National Parliament would be possible under the law. It is usual that large sums of money change hands during such times in order to obtain support from members. There was evidence that *"political camps"* were established and that Mr Maladina was an active political organiser at that time. Perhaps some of the moneys raised in the two frauds against the NPF were intended for political purposes, but the Commission lacks the evidence to make such a finding.

A second Commission of Inquiry has been set up to investigate the funds lost from the DFRBF and the affairs of its chairman, Mr Kelly Naru, who is one of Mr Maladina's fellow legal partners in Carter Newell lawyers (now Pacific Legal Group).

7.22 Sale of the Waigani Land and tracing the proceeds

The Commission investigated the subsequent sale of the Waigani land to a Rimbunan Hijau subsidiary company by sale of shares in Waigani City Centre Ltd (formerly Waim No. 92) and reported upon further corrupt procedures and crimes in the Lands Ministry and the Lands Board involving Dr Pok, Mr Guise and Mr Maladina, for which all have been recommended for referral to the Police and the Ombudsman Commission (See **Schedule 5**, **paragraph 31.4** and the list of referrals below at **paragraph 15.6**).

The Commission also traced the way the moneys obtained by the NPF Tower fraud were *"laundered"* through the books of Carter Newell and PMFNRE. This showed up the involvement of Mr Peter O'Neill as one of those who benefitted from the Waigani Land and NPF Tower frauds.

The investments that caused the greatest losses and those which illustrate outstanding examples of corporate maladministration will be examined briefly below in **paragraph 10**. The detailed histories of all investments are set out in the Schedules and Executive Summaries listed above.

8. BORROWINGS

8.1 Commissioner Manoa's conflict of interest

From the mid 1990's to 2000, Commissioner Manoa was a member of the Board of ANZ. He declared this to the Commission at a public hearing on 9th August 2000 (**Transcript p.1352**) and thereafter took no part in hearing or deliberations involving the ANZ.

8.2 Features of the borrowings

Each of the main borrowings (from PNGBC, ANZ and BSP) is reported upon in the Schedules in category 2. The features common to all the borrowings include:-

(a) The banks failed to perform adequate due diligence and so entered into loan facility agreements without ascertaining that NPF lacked the power to borrow or to pledge its assets **(Schedules 2A, 2B and 2C)**. ANZ eventually obtained this advice from Allens Arthur Robinson on 26th May 1999 **(Schedule 2E paragraph 19.6 - Appendix 6)**.

Being ultra vires the *NPF Act* the loans were invalid and it is doubtful whether interest was payable. As a result of the loans, which were advanced for specified purposes agreed between the banks and the NPF, money was spent on those purposes, interest payments were made and, during 1999, the NPF was obliged to sell off shares and other assets at a massive loss in order to repay the banks. This applied particularly to the ANZ, which obliged NPF to transfer share scrip as securities and to embark upon the big asset selldown.

It is possible that the ANZ would be vulnerable to a suit brought by or on behalf of the NPF members directly for losses suffered by way of interest and bank charges and possibly for losses incurred as a result of ANZ's pressure on NPF to sell off its assets at a loss **(Schedule 2E see discussions at paragraph 11.2 and the criticisms of ANZ in paragraph 17)**.

The NPF Trustees were also in breach of their fiduciary duty to the members by entering the loan agreements with the various banks without obtaining independent expert advice about NPF's power to borrow. They also could be liable to the members for losses suffered by their breach of duty (unless they can establish that they acted in good faith). If such an action was brought by the members as a class action against the NPF Board, the bank could perhaps be joined as a third party (**Executive Summary 2E, paragraphs 10.5, 13**).

(b) On many occasions, management failed its duty to fully inform the Board and seek approval before entering the loan facility agreements and before making drawdowns **(Schedule 2A, paragraph 8.4, Schedule 2E, paragraph 5.10 and paragraph 5.21 and 6.2)**. For instance, the PNGBC overdraft, which had risen to K6,770,000 million by 1998, had been in existence for several years before management made even partial disclosure of its existence to the Board. In fact, its existence had been hidden in the NPF books of account by incorrect accounting procedures **(Schedule 2A, paragraphs 4.1, 4.3, 8.4 & 9.10)**.

(c) There were several instances when loans were agreed or drawdowns were approved by the Bank concerned without required Ministerial approval **(Schedule 2A, paragraph 9.3 and Schedule 2E, paragraph 5.15)**.

(d) NPF management rarely kept the Board informed about the state of the loan accounts **(Schedule 2E, paragraph 5.10 failure to advise Board of additional K20 million facility obtained from ANZ; Executive Summary, paragraph 8.5.1)**. It was normal, for instance, that ANZ managers had far more knowledge of NPF management's plans and strategies for using the drawdowns than had been disclosed to the NPF Board.

(e) Mr Wright frequently pledged large parcels of share scrip to banks as security without consulting or advising the NPF Board **(Executive Summary 2E, paragraph 8.5.1(d))**.

(f) The DoF was rarely consulted by NPF or the Minister and provided minimal input **(Executive Summary 2E, paragraph 8.7.1)**.

(g) The ANZ's review of the loan facilities extended to NPF were often superficial, without considering obvious risk factors **(Executive Summary 2E, paragraph 8.10)**.

9. ATTEMPT TO ISSUE AUD 54 MILLION BOND

9.1 Management fails to advise the NPF Board about negative expert advice

In October 1997, Messrs Copland and Wright supported by then chairman, Mr Gerea Aopi, proposed the idea of issuing an AUD54 million bond. If this happened, it would be the first such bond issue in PNG and NPF management lacked the necessary skills. It was also commercially impractical.

Expert advice from Consultant Jacob Weiss, BPNG and the ANZ opposed the idea, believing NPF could lose heavily if the Kina depreciated in value. Messrs Copland and Wright persevered however and gained the NPF Board's immediate approval of the idea on a simplistic Board submission, without disclosing the cautionary advice from the experts. The Board accepted the idea enthusiastically, without insisting on expert opinion.

The dubious Canadian, Jai Ryan, (associated with Ambusa Sawmill) introduced an even more dubious Canadian Mr Rudi Cooper of Warrington International, a company registered in the tax haven of Antigua. Warrington became the proposed purchaser of the bond.

Every inquiry and every step taken raised further suspicion about Warrington, which was pointed out by NPF's international lawyer, Clifford Chance. However, Messrs Copland and Wright kept up the pressure to proceed with the bond.

9.2 Governor of the BPNG intervenes under pressure

For a while the BPNG delayed the scheme when its Foreign Exchange Controller, Mr Benny Popoitai, withheld essential approvals. This blockage was removed when Mr Copland, using his influence as a former director on the BPNG Board, approached the Governor of the BPNG, Mr Tarata, directly and applied pressure. Mr Popoitai was then overruled by the Governor, who signed the approval papers himself **(Schedule 2F, paragraphs 14.15, 13.1 and 13.2)**. Similar pressure was later brought successfully on Mr Tarata's successor as Governor, Mr John Vulupindi, when NPF was seeking an extension of the approval given by Mr Tarata **(Schedule 2F, paragraph 14.15)**.

9.3 Mr Wright acts without authority

Negotiations to complete the agreement with Warrington proceeded for many months. During this process, Mr Wright frequently exceeded his authority in his desperate endeavours to complete the deal (He needed the money to pay outstanding interest on NPF's debts and to provide more securities for the banks). Mr Wright's unauthorised actions included:-

- Approaching Nara Investments (Mr Ryan) and granting a 5% commission **(Schedule 2F, paragraph 6.1)**;
- Paying Mr Ryan an unauthorised advance of USD15,000 **(Schedule 2F, paragraph 6.3)**;
- Assuring Warrington that its profits would be tax free and giving a guarantee that NPF would itself meet any tax liability imposed on Warrington
- Offering NPF share scrip worth AUD77 million as security for the Bond **(Schedule 2F, paragraph 11.3)** and transferring share scrip without authority **(Schedule 2F, paragraph 14.3 & 14.8)**.

Advised by Clifford Chance, NPF's lawyers held out against Warrington's pressure by insisting that an appropriate security guarantor must be found.

9.4 Mr Brown Bai leads NPF to terminate negotiations

When Warrington notified NPF it intended to assign NPF's securities to a shady entity known as the RH Foundation of Anacirema, Messrs Leahy and Fabila confronted Messrs Wright and Copland in an endeavour to have NPF withdraw from the negotiations. Eventually, on the eve of the signing of the agreement, Mr Brown Bai, who had recently become chairman of NPF, guided the NPF Board to terminate the agreement with Warrington at the 115th NPF Board meeting on 6th November 1998.

It had, however, been a wild and giddy ride and Messrs Wright and Copland almost succeeded in exposing NPF to a dubious international organisation, which may well have been involved in illegal activities and money laundering. Had the bond been issued there seems no way that NPF could have met the AUD54 million bond plus 14.67% interest in 9 years time. This would have endangered NPF assets.

Messrs Wright, Copland and Leahy and all NPF Trustees at the time were in serious breach of fiduciary duty to the members of the Fund (See comments and findings **Schedule 2F**, **paragraph 16** titled concluding comments and **paragraph 17** which discusses the roles and responsibility of the major participants).

Fortunately, it did not succeed but in the process it showed the BPNG can be moved by insistent lobbying. The attempt to issue the bond cost the NPF K244,762 in legal fees and a great deal of management time and effort.

The Commission has found that Mr Wright was guilty of improper conduct by making false representation and by exceeding his authority on many occasions. There were numerous serious breaches of fiduciary duty by the Trustees and by Mr Leahy, who failed to advise the Trustees that NPF had no power to borrow or issue a bond and by Mr Wright for not passing on Gadens lawyers advice that NPF lacked the power to borrow.

10. FUNDING THE STATE

Occasions arose throughout the period under review when the NPF was called upon to provide money to the State to fund state infrastructure projects and to meet other requirements or obligations of the State. Occurrences of this nature which the Commission was asked to investigate were the:-

- loans to fund the Poreporena Freeway (**Schedule 7B**)
- NCD Water and Sewerage loan (**Schedule 7C**)
- K17 million Southern Highlands 4 Roads Project (**Schedule 7D**) and
- Niugini Insurance Corporation K2 million loan (**Schedule 7A**).

There was also a loan component associated with the transfer of former POSF members to NPF upon the corporatisation of Air Niugini, Post PNG Ltd and Telikom PNG Ltd. This was because the State was unable to fund its obligation to pay its unpaid employer's contributions and, in effect, NPF *"loaned"* back the K24.4 million due to NPF at a commercial rate of interest (**Schedule 8**).

In each of these loan to the State projects there were common features:-

(a) The Government's need was great and considerable political pressure was therefore applied to NPF to provide the funds.

(b) NPF had to borrow the funds from the commercial banks at a commercial rate of interest in order to be able to on-lend to the State.

(c) There were serious conflicts of interest when senior DoF officials made recommendations to the Minister advising the Minister to approve loans from NPF to the State. Both the Minister and the public servants had duties to consider the interest of the State as well as to the NPF.

The conflicts of interest were particularly acute for the Secretary of DoF, who was also the Chairman or nominator of the chairman of NPF as well as being responsible for administering the finances of the State. Mr Vele Iamo as Deputy Secretary for DoF and a very long time Trustee of the NPF had a similar conflict.

(d) The loan arrangements and even the Ministerial approvals were often put in place between DoF officers and NPF management prior to consultations with the NPF Board.

(e) NPF management failed to keep the NPF Board properly informed and to always obtain Board approval.

(f) NPF management and Trustees failed to seek independent expert advice outside of DoF (which in these situations was biased in favour of the State and unable to give truly independent advice to NPF).

(g) There was a mismatch between the arrangements between NPF and the lending banks on the one hand, which were at variable rate of interest repayable at call and the arrangements between NPF and the State on the other hand, which were at a fixed interest rate for a fixed term of years. There was thus a potential risk for NPF if interest rates payable by NPF to the bank rose, as it would erode the profit on its fixed rate of interest from the State.

This potential risk eventuated and these *"investment loans"* became less and less profitable for NPF. There was also the problem that the so called *"road stock"*, which NPF acquired through the Poreporena Freeway loans aggregating K62 million, were not readily assignable, as the State guarantee was not transferable.

(i) Because of Government pressure for NPF to provide funding in this way NPF distorted the balance of its portfolio in favour of this government *"stock"*.

(j) Despite these problems these investment loans were *"safe"* and provided a reasonable return, in marked contrast to most of NPF's other investments.

Each of these loans to the State is reported upon in detail in a separate schedule (as shown above). The Executive Summaries provide easy access to the Schedules by stating main themes and giving references to relevant paragraphs in the Schedules.

The transfer of members from POSF to NPF described in **Schedule 8**, raises many other issues as well as the issue of the loan which NPF was reluctantly obliged to provide.

The whole transfer process was badly planned and it started before basic political and administrative decisions had been made. The State had not been paying its employer contributions to POSF so members transferring to NPF were justifiably anxious about their entitlements and did not trust the State's intention or ability to pay them. This stimulated demands for extra-legal payouts of entitlements under threat of industrial action. NPF was pressured by the Sate to agree to payouts to some employees, which were contrary to the *NPF Act*. This raised serious questions of improper political interference **(Schedule 8, paragraphs 4.22, 4.22.1)**. Having reluctantly organised the lending of K24.4 million of borrowed funds to the State, NPF management was negligent in administering the loan, causing a loss of K4 million.

As further corporatisation of public institutions is likely, these issues need to be addressed. See concluding comments **(Executive Summary 8, paragraph 33)**.

11. THE BIG LOSS-MAKING EQUITY INVESTMENTS

11.1 STC and CXL - Schedule 4D

11.1.1 Acquisition of STC shares "on-market"

NPF commenced to buy STC and CXL shares on-market in March 1996. The NPF Board had approved by circular resolution, the purchase of K1 million worth of STC shares in 100,000 share lots for a price between A$2.85 and A$3.00 per share. Mr Kaul, however, misrepresented this resolution and obtained Minister Haiveta's approval to buy 1 million shares at that price. He also failed to mention the limitation on the size of the parcels, which had been imposed by the Board. Minister Haiveta approved the application without seeking or obtaining DoF or any other expert advice. Management then proceeded to buy one million shares in larger sized parcels. This was far more shares and at far greater cost than the Board had authorised. The authorisation had been by circular resolution, which was not a valid means of decision-making. The purchase was not subsequently ratified by the Board at a face-to-face meeting.

This single approval demonstrated many of the faults which plagued NPF investments throughout the period:-

(a) It was a risky and inappropriate investment.

(b) The NPF Board approved the resolution by way of illegal circular resolution with little briefing by management and no expert financial advice.

(c) Management then misrepresented the limited nature of the Board's approval and obtained Ministerial approval for the expenditure of a far larger sum

(d) Minister Haiveta neither sought nor received expert advice from DoF or elsewhere before granting the excessive approval.

(e) Management then purchased the excessive number of shares at prices, which sometimes exceeded the maximum price approved by the Board

(f) the circular resolution was not ratified by a subsequent face-to-face Board meeting

(g) The NPF Board of Trustees did not criticise or reprimand management for failing its duty to the Board by exceeding their authority

(h) BPNG foreign currency exchange approval was not obtained for all of the transactions (**Schedule 4D, paragraphs 4.1 and 4.2**).

11.1.2 Acquisition of CXL shares *"on-market"*

Also in April, the NPF approved, by circular resolution, the purchase of up to K1 million worth of CXL shares. Again, Mr Kaul twisted the wording of the Board's resolution and obtained Minister Haiveta's approval to buy 1 million CXL shares. This time the DoF did provide a recommendation to the Minister. However, it contained no critical analysis of NPF's request but merely repeated the points made by NPF. Minister Haiveta then gave an open-ended approval for NPF to acquire CXL shares for prices between A$2.20 and A$2.50 in 100,000 share lots without setting a total purchase limit. Again, management acquired many more shares than authorised by the Board for significantly more cost. The Minister's open-ended approval purported to give management the authority to far exceed the NPF Board's modest approval of *"up to K1 million worth"*.

11.1.3 Approval to mount take-over attempt of STC and CXL

In early April 1996, Messrs Kaul and Copland met with Minister Haiveta at the Gateway Hotel (**Schedule 4D, paragraph 4.4.1**) and obtained the Minister's instant verbal approval to mount a campaign to buy a controlling interest in STC and CXL and to then amalgamate and manage the two companies. This would require the expenditure of approximately K40 million of funds borrowed from the ANZ to buy the STC and CXL shares then on offer from the DFRBF and the POSF.

Incredibly, the NPF Board approved the purchase after only 30 minutes discussion. There were no briefing papers and the Board took no expert advice.

The Boards of DFRBF and POSF did not even meet face-to-face to discuss the proposed sale to NPF and Minister Haiveta approved the sales by DFRBF and POSF and the purchase by NPF without seeking or receiving DoF or other expert advice (**Schedule 4D, paragraph 4.4.1**). It seems the Minister was not even given a written brief on these transactions, which he had already approved verbally at the Islander Hotel. Both POSF and DFRBF approved the sale by circular resolution and Minister Haiveta gave his immediate approval without even waiting for a request.

Clearly, Minister Haiveta was very proud of his achievement in promoting these transactions as demonstrated in his self-congratulatory letter to Prime Minister Sir Julius Chan on 4th June 1996 and in his explanation to Parliament on 30th July 1996 **(Schedule 4D, paragraphs 4.4.5 and 4.4.6).**

11.1.4 Minister Haiveta's improper conduct and referral

The Commission, however, finds that Minister Haiveta's active role in these matters, his instant approvals and total failure to seek expert advice amounts to improper conduct and may constitute a breach of the Leadership Code. Similarly, the Trustees who voted for this circular resolution to spend K39.7 million of borrowed funds, without seeking any independent expert advice, were guilty of a gross breach of their fiduciary duty to the members of the Fund, for which they may be personally liable.

11.1.5 Breach of fiduciary duties by all Trustees

When considered together with their many other similar breaches of fiduciary duty, the Commission has recommended that all Trustees, with the exception of Mr John Jeffery, who was only appointed late in 1999, should also be referred to the Ombudsman Commission to consider whether they were in breach of the Leadership Code (**Schedule 1, paragraphs 10.5.5 & 18.5(c)**). As Trustees of the NPF Board, they were subject, as leaders, to the Leadership Code. Some are still leaders in some other leadership position whereas some are no longer leaders. If any of the former Trustees are being considered for subsequent leadership positions, however, their previous failure of fiduciary duty to the NPF members should be taken into account and assessed by the Ombudsman Commission.

11.1.6 Continued *"on-market"* purchases without Board approval

The NPF continued to purchase STC and CXL shares during 1997, often not informing the Trustees.

In 1998, Mr Wright continued to purchase STC and CXL shares on market. The STC purchases were frequently without Board approval and totalled A$4.1 million. The CXL purchases which totalled A$793,839 did not require specific NPF Board approval because of the its previous open-ended approval **(Executive Summary 4D, paragraph 4.1).**

11.1.7 Referral of Mr Ben Semos and Mr Wright to ASIC

At **Schedule 4D, paragraph 8.3**, the Commission recommends the referral of Mr Semos of Wilson HTM and Mr Wright to Australian Securities and Investment Commission (*"ASIC"*) to investigate whether they acted to manipulate the share prices of STC and CXL.

During 1997 and 1998, NPF was the major buyer of CXL and STC shares on the Australian Stock Exchange (*"ASX"*) and no doubt helped to maintain the price above its natural level **(Schedule 4D, paragraph 8.3.3).**

11.1.8 Mr Wright fails to review investment as share prices fall

By July 1998, CXL performance was poor. At that stage, NPF owned 38% of the equity in CXL. Mr Wright should therefore, have reviewed CXL's results and instigated a reconsideration of NPF's takeover strategy.

In November 1998, CXL's profits were still very low and falling. Instead of reconsidering the investment, Mr Wright purchased an additional 43,280 shares at $5 per share.

By the end of 1998, NPF held 38% of CXL's share capital and 21% of STC and the profitability of both companies was under pressure. Their share prices were being maintained by NPF's own acquisitions. NPF management and Trustees remained inactive despite CXL's rapidly deteriorating performance. This amounted to a paralysis of management, which plagued NPF's management regarding all its investments during this time of financial crisis.

In January 1999, NPF was facing up to its own serious unrealised losses caused mainly by the crippling burden of interest payments on its huge debts to PNGBC and ANZ, the fall in the value of the Kina and in the value of its non-producing investments in PNG resource stock. Mr Semos recommended the sale of NPF's CXL holdings and a partial sale of STC.

11.1.9 Attempts to sell STC and CXL shares as price falls

The hopeless march to take over STC and CXL was now put into reverse because of NPF's own financial crisis. Holding such large holdings in both these relatively small companies, however, was making it very hard for NPF to selldown without promoting a significant fall in the market share price. Meanwhile, John Swire and Sons *("Swires")*, which owned STC and CXL, sat and waited until it could buy back NPF's holdings in its companies at rock bottom prices. There seemed to be no other potential buyers.

In March 1999, NPF was under extreme pressure from ANZ to sell equities in order to repay debt, as it was repeatedly in breach of its agreement to maintain a 160% security cover. By July 1999, NPF's unsuccessful attempts to sell its CXL holdings had brought the price down and prompted a take over bid by John Swire and Sons at A$1.50 per share. NPF obtained an independent opinion from KPMG in favour of accepting the Swire offer. NPF then sold its CXL holdings to John Swire and Sons making a realised loss of A$16,322,647 as follows:-

Total shares acquired	8,236,179	
Total shares sold	8,236,179	
Cost of shares sold	28,676,916	
Consideration received	(12,354,269)	
Total loss on sale		**A$16,322,647**

(Schedule 4D, paragraph 9.7.6)

NPF experienced similar problems selling off its STC holdings. Its test of the market in September 1999, indicated a market price of A$2.50 per share.

By November 2000, NPF had sold all but 5% of its STC shares to Lemex International Ltd for a realised and unrealised loss of A$9,552,968 as follows:-

Total shares acquired (approx)	7,366,768 costing approx	A$25.9 million
Total shares sold	5,762,023	
Cost of shares sold	20,414,847	
Consideration received	(13,254,170)	
Net loss on sale		**A$7,160,677**
Shares remaining at 31/12/99	1,560,529	
Cost of shares remaining	5,528,954	
Mkt value shares @31/12/99 A$2.70	4,213,428	
Unrealised loss @ 31/12/99		**A$1,315,526**
Total losses incurred (realised/unrealised) @ 31/12/99		**A$8,476,203**
Mkt value shares @3/11/00	3,136,663	
Unrealised loss @ 3/11/00		**A$2,392,291**
Total losses incurred (realised/unrealised) @ 3/11/00		**A$9,552,968**

(Schedule 4D, paragraph 9.9.4)

The sale to Lemex International Ltd attracted complaints by Mr Pratt of John Swire and Sons against Mr Rod Mitchell for failing to accept a better price from Swires. These complaints are reported in **Executive Summary 4D** at **paragraphs 10.5** and **10.6**.

11.1.10 Responsibility for K25,875,615 loss

The Commission finds that it was a combination of Mr Copland's personal agenda against STC, Minister Haiveta's misguided enthusiasm for the nationalistic *"big picture"* approach, Mr Wright's egotistic and misplaced over-confidence and the Trustee's complacent reliance on Mr Copland's reputation as an expert in commercial and financial matters which led NPF into this foolish and risky endeavour to acquire, amalgamate and manage STC's multi-faceted trading enterprise, which caused a loss of K25,875,615 in NPF members' assets.

11.2 Highlands Pacific Ltd - Schedule 4B

11.2.1 The heaviest single loss

NPF suffered a realised loss of A$27.3 million from its investment in HPL and an unrealised loss on shares still held at 31st December 1999, of A$19 million for a total loss of A$42,296,654. It was NPF's single biggest equity investment loss.

This investment was largely motivated by a misguided sense of PNG nationalism and was driven by Messrs Copland, Wright and Kaul, with the very enthusiastic support of Minister Haiveta. These people formed a plan in 1995 to increase NPF's small passive holding in Highlands Gold Ltd (*"HGL"*) with the hope of benefiting from an expected takeover bid for HGL by Placer Dome.

11.2.2 Evidence of share ramping

During its investigations, the Commission uncovered evidence of share ramping in December 1996 directed at raising the price of HGL shares at year-end and thereby increasing the end of year bonus payable to NPF senior management. The Commission recommended that this matter be referred to ASIC for investigation **(Schedule 4B, paragraph 5.11)**.

In January 1997, during the takeover transaction, Placer Dome retained HGL's Porgera interests and Oregon receivables and the new entity Highlands Pacific Ltd (*"HPL"*) was established to acquire and hold HGL's other, less valuable and non-income producing interests.

11.2.3 NPF leads PNG consortium to acquire HPL

In January 1997, **(Schedule 4B, paragraph 5.14.3)** NPF led a consortium of PNG institutions to acquire HPL. NPF applied its takings from the sale of its HGL shares, together with A$22.4 million borrowed from its ANZ facility, to acquire A$50 million worth of HPL shares in January 1996. During 1996 and 1997, NPF purchased further HPL shares on-market for a total investment of A$69.5 million, despite the fact that the market value of HPL shares was steadily falling.

11.2.4 Possible liability of Wilson HTM for recommending high-risk HPL investment

This was an extremely high-risk, speculative investment, with no hope of any income return in the medium term future and it was acquired mainly with borrowed funds, which attracted a rising interest rate, as the ILR rose in succeeding years. It was a totally inappropriate investment for a superannuation fund and well outside the 1993 investment guidelines. The Commission finds at **Schedule 4B, paragraph 7.1**, that NPF's share brokers, Wilson HTM, who advised NPF to make this thoroughly unsuitable investment may have liability at common law or under Australian Security law, for not giving suitable advice to its client, NPF, which it knew was a superannuation fund.

11.2.5 Irregularities in acquisition of HPL shares

The initial investment of A$50 million in HPL was decided by the NPF Board by way of an illegal circular resolution with only Trustee Taureka voting against it. No independent expert advice was given or sought by the Trustees before this so called resolution (Had the matter been considered at a proper face-to-face Board meeting, there is a chance that Trustee Taureka's well founded reasons may have prevailed).

As described in **Schedule 4B**, many of the subsequent acquisitions of HPL shares were either without the NPF Board's knowledge or occurred prior to its approval. Messrs Wright and Kaul were in breach of duty in making these unapproved purchases. No expert investment advice was obtained **(Paragraph 6.7, Schedule 4B)**.

11.2.6 Responsibility of Trustees and Minister Haiveta

The Trustees passively acquiesced in these unauthorised purchases by management and failed to criticise, reprimand or endeavour to restrain management once they became aware of the unauthorised acquisitions after the event. They were thus in serious breach of their fiduciary duty to the members of the Fund.

Once again, Minister Haiveta's conduct in granting approval to massive expenditure on HPL shares, without seeking DoF or other expert advice, was improper conduct and, possibly, a breach of the Leadership Code.

All Trustees who approved or acquiesced in these acquisitions without insisting that management obtain expert advice and who failed to control management's unauthorised share acquisitions, were in breach of their fiduciary duty to the members **(See Schedule 4B, paragraphs 4.3, 5.2 & 5.9)**.

11.2.7 Conflict of interest of Messrs Copland and Aopi

Initially, Messrs Copland and Aopi were appointed as NPF's Trustees on the Board of HPL. They, however, took the view that they were appointed in their own right as independent directors. This placed them in a conflict of interest situation (**Schedule 4B, paragraphs 6.4 & 6.5(a)**). They both received directors' fees and options which they improperly retained for their personal benefit (**Schedule 4B, paragraph 6.8**).

NPF's acquisitions in HPL, commenced at A$1.00 per share and the HPL share price fell steadily thereafter to a low of **A$0.30** per share in 1999.

11.2.8 Management paralysis as value of investment falls

NPF management and Trustees seemed paralysed in the face of this looming financial disaster. By the end of 1998, the HPL shares had so little value that the ANZ refused to accept them as security for the loan facility, describing them as having virtually *"junk bond status"* **(Schedule 2E, paragraphs 12.3.1)**. In August 1998, Deutsche Securities reported very critically upon NPF's unbalanced portfolio and concentration in PNG related investments, but no action was taken.

11.2.9 Selldown at huge realised loss

In March 1999, PwC recommended the sale of NPF's loss-incurring HPL shares and in May 1999, NPF sold one million HPL shares at 30 cents per share. The Board attempted to sell a further 19% of its HPL holdings but this proved very difficult to achieve **(Schedule 4B, paragraph 7.11.2)**.

At 31st December 1999, NPF had suffered a net loss on HPL share sales of A$27,322,554 and an unrealised loss on HPL shares still held of A$18,974,100 for a total loss of A$46,296,654 as follows:-

TOTAL SHARES ACQUIRED	**73,852,175 COSTING A$69,506,855 ***	
TOTAL SHARES SOLD	43,790,000**	
COST OF SHARES SOLD	41,213,481	
CONSIDERATION RECEIVED	(13,890,927)	
NET LOSS ON SALE		A$27,322,554
SHARES REMAINING AT 31/12/1999	30,062,175	
COST OF SHARES REMAINING	28,293,374	
MKT. VALUE SHARES @ 31/12/1999 A$0.31	9,319,274	
UNREALISED LOSS @ 31/12/1999		A$18,974,100
TOTAL LOSSES INCURRED		A$46,296,654

* Refer Attachment 2
** Refer Attachment 3 **(Schedule 4D, paragraph 9.9.4)**

11.3 Investment in Vengold

11.3.1 Foolish investment

This investment was one of NPF's greatest follies. It was driven by the desires of Messrs Copland and Wright and the easily persuadable Mr Robert Kaul to place NPF in a position where it could benefit from a possible takeover bid by Placer Dome, which was trying to maximise its interests in the Lihir Gold Mining venture. Advised and encouraged by Mr Ben Semos of Wilson HTM, NPF swapped its LGL shares for shares in Vengold Inc, a small Canadian mining and mineral exploration company. NPF then invested heavily in Vengold by on-market share purchases. Vengold held significant shares in LGL and this increased NPF's LGL interests through its significant Vengold holding.

NPF acquired A$45 million worth of shares in Vengold between April 1997 and September 1998 **(Schedule 4A, paragraph 6)**. It thereby achieved and maintained a 19.9% share of Vengold's capital and a seat on the Vengold Board of directors. NPF's initial Vengold director was Robert Kaul who was followed by Mr Henry Fabila. These directors very properly paid their directors fees into an NPF account. When Mr Maladina was appointed to the Vengold Board in 1999, on his own insistence, he retained the directors' fees and options paid to him and also exercised the options making an illegal profit of approximately A$852,183 and directors fees of K5000, which is recoverable by NPF **(Schedule 4A, paragraph 8)**.

11.3.2 Trustees fail to reprimand management for unauthorised acquisitions

The NPF management's acquisition of Vengold shares was often without the approval of the NPF Board of Trustees and, once again, the Trustees failed to reprimand and control management for exceeding its authority and failing to keep the Board informed **(Executive Summary paragraph 8 and Schedule 4A, paragraph 5.16)**. This continued into 1998, despite the falling gold price and falling value of Vengold shares **(Schedule 4A, paragraph 6.12)**.

At no stage did management provide the NPF Board with expert advice about this investment and the Board failed to seek it, thereby breaching its fiduciary duty to the NPF members **(Schedule 4A, paragraphs 6.11 & 6.12)**.

This investment advice was badly needed as Vengold was making share issues, which diluted NPF's holding. Vengold also purchased 61.3 million LGL shares from Orogen, which increased the risk to Vengold because of the volatile nature of LGL shares. Also during this period, Placer Dome bought heavily into Vengold. Despite all this activity regarding Vengold, NPF just adopted a *"wait and see"* attitude, when it really needed sound expert advice (**Schedule 4A, paragraph 6.12(d)**).

11.3.3 Mr Wright's illegal trade in LGL options

During the period October 1995 to November 1997, Mr Noel Wright illegally traded in LGL options through the Wilson HTM overseas account. He continued to do this even after a NPF Board direction to cease the practice **(Schedule 4I)**.

11.3.4 Mr Maladina profits from directorship of Vengold - referred to Police Commissioner

Mr Maladina was appointed chairman of the NPF Board in January 1999 and he quickly arranged for himself to replace Mr Fabila as NPF's director on the Vengold Board. By February 1999, Wilson HTM advised NPF to sell 4.2 million Vengold shares, then trading at A$0.50 cents. NPF held onto the shares for a further 4 months. During this period, Mr Maladina was appointed to the Vengold Board but failed to attend several meetings and Vengold share value dropped to between 7 and 10 cents. The company was close to bankruptcy but paid directors fees and distributed options to directors, as it planned to change its focus from mining to an information technology company **(Schedule 4A, paragraph 7.4)**.

Mr Maladina attended his first Vengold Board meeting in December 1999. He collected his fees but failed to notify the NPF, which was desperately selling off its Vengold holdings at 7 to 8 cents, that Vengold was being transformed in a way, which may revitalise its share price.

NPF's sale of the last of Vengold shares was at 27 cents per share, as the price was beginning to rise. Mr Maladina converted his options and then sold his shares when Vengold share price had risen to Canadian $4.50. He made a profit of K1.4 million from the sale, which he did not pass on to NPF. The money was banked to his company Ferragamo Ltd **(Schedule 4A, paragraph 8)**.

NPF made a realised net loss of A$29,559,580 from its investment in Vengold (after taking account of the profits from selling off its LGL shares) **(Schedule 4A, paragraph 7.11; Executive Summary paragraphs 15 and 15.1)**.

The Commission has found that Mr Maladina's conduct in these regards was criminal in nature and has recommended that he be referred to the Commissioner for Police for investigation **(Schedule 4A, paragraph 7.11; Executive Summary paragraphs 15 and 15.1 and 16).**

The full details of the Vengold investment are given in **Schedule 4A** which also has a comprehensive **Executive Summary**.

12. SMALLER LOSS MAKING EQUITY INVESTMENTS

The other loss making equity investments were Cue Energy Resources Ltd (*"Cue"*) reported on in **Schedule 4C** and Macmin NL (*"Macmin"*) in **Schedule 4E**.

In both these small companies, NPF made significant investments and obtained seats on the Board of Directors in order to influence company policy. They were high-risk investments in non-income earning companies and quite inappropriate for a superannuation Fund. With Cue, NPF management went to extreme lengths to support the cash hungry company, even borrowing in order to on-loan to Cue. Messrs Copland, Kaul and Wright all held undisclosed interests in Cue. As Cue made unwise investment decisions in Indonesia, the NPF increased its support for Cue when it should have been selling down the investment in order to protect members' funds. At one stage, acting on the self-interested advice from Mr Semos of Wilson HTM, Mr Kaul exposed A$25 million of NPF member's funds to help Cue acquire assets in Indonesia, by sealing an irrevocable underwriting offer **(Executive Summary 4C, paragraph 2.5).**

These two investments demonstrated all the flaws detailed above. However, as the investments were less massive, the losses as at 31st December 1999 were smaller:-

* in Macmin NPF invested A$4,370,349 and made a realised and unrealised loss of A$3,469,977

* In Cue, NPF invested A$11.7 million and made a net realised loss of A$7.4 million **(Executive Summary 4C, paragraph 2.5).**

13. PROFITABLE PASSIVE EQUITY INVESTMENTS

In contrast to the above loss-making, high-risk aggressively active equity investments in companies listed on registered stock exchanges, NPF also held passive investments in large income earning companies, which were reasonably profitable. They would have been appropriate investments for a superannuation fund if they had formed part of a balanced portfolio.

These included Oil Search Limited (*"OSL"*), **Schedule 4G**, Niugini Mining Limited (*"NML"*) **Schedule 4F** and Orogen Minerals Limited (*"Orogen"*) **Schedule 4H**.

NPF sold off its OSL shares at a modest profit to finance the purchase of shares in NML, which were in turn sold off at a modest profit so that NPF could invest more aggressively in LGL and Vengold. NPF's K29.5 million investment in Orogen resulted in a realised capital gain of K9.9 million when it was sold off between April and June 1999. Dividends of K2.5 million were also received.

14. INVESTMENT IN UNLISTED ENTITIES

During the period under review, NPF also invested in some unlisted entities. Some of these were passive investments in well run companies such as the Bank of South Pacific (**Schedule 4J**), Westpac Bank PNG Ltd, SP Holdings and Toyota Tsusho PNG (**Schedule 4K**) and Amalgamated Packaging / Amalpak (**Schedule 4M**).

These were all safe, profitable and appropriate investments for a superannuation fund.

There were also investments in four (4) plantation companies described in **Schedule 4O**. These had been acquired well before 1995 and for reasons beyond NPF's control, were now non-productive loss-making investments. NPF disposed of them in the best way possible in the circumstances.

There were also two (2) foolish investments undertaken and mishandled during the period under review. The first was Crocodile Catering PNG Pty Ltd (*"Crocodile"*), which is the subject of separate findings pursuant to *Terms of Reference 1(l) and 1(m).* The second was Ambusa Copra Oil Mill Ltd - see **paragraph 4.5.4** at page 15 above and **Schedule 4L** and its **Executive Summary**.

Ambusa was an investment where, prompted by newly appointed investment advisor Mr. Haro Mekere and without due diligence NPF entered a joint venture with Ambusa Pty Ltd to operate a Copra Oil Mill to be constructed by a Canadian Company Odata Pty Ltd. NPF lost K1.1 million which had largely been transferred to the project in an unplanned way. Despite NPF's financial crises in 1999 it guaranteed a K3,150,000 loan from BSP – **Executive Summary 4L**, **paragraph 13**. Mr. Mekere's motive for supporting this inappropriate investment with such fervour may have been influenced by the fact that his wife had been appointed to the Board of Odata (PNG) Ltd, and this fact had not been disclosed (**Executive Summary 4L**, **paragraph 12**).

15. REPORT ON THE COMMISSION'S SPECIFIC TERMS OF REFERENCE

15.1 Term of Reference 1

"Whether in connection with the management of the Fund, there has been any illegal or improper conduct by any person, business, company, legal entity or agency between 1995 and 1999"

The Commission has interpreted *"illegal conduct"* to mean conduct which is prescribed or forbidden according to a law in force in PNG, which includes the *NPF Act*, the *PF(M) Act*, the Criminal Code, the *Organic Law on the Duties and Responsibilities of Leadership* (the *"Leadership Code"*) and the *Trustee Act* and the Common Law as adopted at independence.

"Improper conduct" includes any conduct forbidden by law (criminal conduct) but also conduct, which is a breach of a person's fiduciary or common law duty or a leader's failure to conduct himself in accordance with the requirements of the Organic Law on the Duties and Responsibilities of Leadership. Thus, a Trustees breach of fiduciary duty (as governed by the *Common Law* or the *Trustee Act*) may also amount to improper conduct.

When therefore the NPF Board borrowed money from a bank the Commission has found that was ultra vires the *NPF Act*. That is an example of illegal conduct by an entity, the NPF. The Trustees who resolved to approve the borrowing and pledge NPF's assets, without seeking expert advice on, or even thinking about, NPF's power to borrow are in breach of their fiduciary duty to members of the Fund. Repeated, reckless breaches of fiduciary duty is considered as improper conduct to be referred to the Ombudsman Commission as a breach of the Leadership Code. In the Commission's view, the banks which repeatedly lent money to the NPF to enable it to fund its share acquisitions, without obtaining competent legal advice about whether NPF had the power to borrow, and knowing that NPF was a superannuation fund, are guilty of improper conduct and may in fact have civil liability to NPF members for losses the members have suffered from the bank's negligent failure to carry out due diligence in this respect.

Other examples of illegal or improper conduct include, the criminal offences described in **Schedules 5 and 6**; making false claims and misrepresentations to the NPF Board or the Minister; falsifying minutes of proceedings; creating false invoices; the appointment by Mr Maladina of Mr Petroulas and Mr Barredo to Crocodile **(Schedule 4L, paragraph 11.1.8)** and transferring funds illegally through the Wilson HTM account.

At the end of each Schedule, the Commission provides a final paragraph headed *"Findings in Context of the Terms of Reference"*. This paragraph has a separate sub-paragraph for each Term of Reference, which groups together all findings in the body of the report regarding the relevant term of reference. **Sub-paragraph 1** deals with illegal and improper conduct and major instances of such conduct are referred to.

Subparagraph 2 deals with breaches of fiduciary duty and there is some overlap between **subparagraphs 1 and 2**. Instances when the Commission has recommenced referral to another authority are listed in the subparagraph dealing with *Term of Reference 3*. Instances of personal liability for loss are listed under *Term of Reference 4* and so on.

The Terms of Reference then list specific conduct, activities or situations where such illegal or improper conduct may have occurred and into which the Commission is directed to inquire, such as (a) the failure of the Trustees and management to carry out the expected fiduciary duties of Trustees and management under the *NPF Act*. These are listed as 1(a) to 1(o). Specific findings on these matters are also listed in *"Findings in Context of the Terms of Reference"* paragraph at the rear of each Schedule. *Terms of Reference 2, 3, 4, 5 and 6* are reported upon in the same way in the Schedules.

15.2 <u>Term of Reference 1(a)</u>

"The failure to carry out the expected fiduciary duties of trustees and management under the National Provident Fund Act"

A fiduciary duty is a duty owed by a Trustee to the beneficiary of a Trust. In this context, the Trustees of the NPF Board of Trustees owed a fiduciary duty to the members of the Fund. At law, it is a very onerous duty governed by the *Trustees Act* and the Common Law. The officers of the NPF are not Trustees (except the Managing Director who is a Trustee by virtue of being a member of the Board). Officers owed a Common Law duty to the NPF Board by virtue of their contract of employment.

Each Schedule is liberally sprinkled with findings on breaches of fiduciary duties to members of the Fund by Trustees and of common law breaches of duty to the NPF Board by officers of the NPF (often referred to generically as *"management"*).

When the breach is specific to an individual Trustee or officer the person is usually named. It would not be meaningful to name each specific breach here in the main Report, outside the context in which the breach occurred, so this section deals with such breaches in general and the general consequences of the breaches as a whole. Each individual breach of duty is however dealt with in its context in the Schedules to this report by way of findings paragraph by paragraph. In the paragraph *"Findings in Context of the Terms of Reference"*, at the end of each topic Schedule, these breaches of duty pursuant to *Term of Reference 1(a)* are listed with reference to the relevant paragraph where the breach is described and the finding is made.

Frequently, breaches by *"management"* or individual officers are described first - such as acting in excess of delegated authority (such as unauthorised transactions; failing to obtain required Ministerial approval; failing to keep the NPF Board informed, failing to perform due diligence; failing to obtain expert advice…etc).

These findings will often be followed by related findings against the Trustees for the same failures or for failing to reprimand and control management, failing to insist that management obtain independent expert advice…etc. Some findings are made against individual Trustees for their personal conduct whilst other findings are made against all Trustees in office at a particular time or all Trustees who supported a particular resolution.

For some matters, the failure by the Trustees to address an issue over a long period - for instance the Trustees' continuing failure to address management repeatedly acting in excess of its authority - is found by the Commission to amount to improper conduct by the Trustees. When management's serious breaches of duty have been repeatedly brought to the Trustees attention and they have repeatedly not addressed the matter, the Commission has found that it is not only improper conduct but it should be referred to the Ombudsman as a breach of the Leadership Code (to which all NPF Trustees were subject - (For example see **Schedule 4B, paragraphs 5.12(e); 5.14.2(e); 6.3 & 6.7(b); Schedule 1 paragraph 14.4.4.5**) - where the Trustees deliberately chose to acquire shares outside the Investment Guidelines it was not only a breach of fiduciary duty to the members but was illegal and improper conduct amounting to a breach of the Leadership Code for which the Commission recommended that they be referred to the Ombudsman Commission). In these instances, the conduct is listed as a breach of fiduciary duty and also under the subparagraph dealing with Term of Reference 3 - referral to other authority **(Schedule 1 paragraph 14.4.4.2)**.

Similarly, the Trustees' longstanding failure to notice and rectify management's failure to follow appropriate tenders procedures has been referred to the Ombudsman Commission as a possible breach of the Leadership Code **(Schedule 9, paragraph 14)**.

Some Terms of Reference encompass conduct which is relevant to more than one Term of Reference, thus, the same action might be a breach of duty, a failure to disclose a conflict of interest and benefiting from the Trust property. It could also be an offence or breach of statutory duty (**Schedule 1, paragraph 14** provides a full report on breach of duty and leadership offences regarding repeated, blatant and deliberate breaches of investment guidelines).

15.3 Term of Reference 1(b)

"Breaches of the Act and National Provident Fund Rules relating to borrowings and placement of charges over members' asset"

It is quite clear that the NPF had no power to borrow or pledge members' assets, as these powers are not granted to it under the *NPF Act* or any other law. As NPF was created by statute it possesses only those powers expressly given to it. The legal opinion of Allen Arthur Robinson, with which the Commission is in full agreement, is set out at **Appendix 6** to **Schedule 2E** (The erroneous opinion of Mr. Herman Leahy, which concluded there was a power to borrow, is reported at **Schedule 2E paragraphs 3.9 & 3.10(i)**). Carter Newell's inadequate and incorrect opinion is at **Schedule 2E, paragraph 3.4**.

There being no power to borrow or pledge assets the following breaches of the *NPF Act* with regard to borrowing occurred:-

- Overdraft with the PNGBC which peaked at K6 million (**Schedule 2A**);
- The ANZ loan facilities which peaked at AUD20 million and K40 million fully drawn (**Schedule 2E**);
- The BSP loan facility of K30 million fully drawn (**Schedule 2C**).

As a condition to these loans, NPF was obliged to pledge its assets in the form of share scrip and to maintain an agreed security to loan ratio. As the value of the scrip fell over the years, more and more assets had to be pledged in order to maintain the security to loan ratio.

All these loans and pledges were in breach of the *NPF Act* and were therefore ultra vires.

The Commission believes that the banks were in serious dereliction of their duty by not performing due diligence before entering into the loan agreements to assure themselves that NPF had the power to borrow, especially as the banks were well aware that NPF was a superannuation fund and that it was therefore inherently likely that it would not have power to borrow. The banks were also aware of the purposes for which NPF intended to draw upon the loan funds. The ANZ, for instance, was fully aware of NPF's intention to use the borrowed funds to finance its massive investments in volatile, risky, non-income producing PNG resource stocks. When it finally obtained competent legal opinion from Allens that NPF lacked the power to borrow it kept that information from NPF and aggressively called in the debt, forcing NPF to sell off assets at a loss **(Schedule 2E, paragraph 13).**

NPF members suffered losses in excess of K100,000,000 as a result of those investments. In addition to the losses on the investments, NPF members suffered the loss of many millions of Kina in interest and bank fees and charges. For instance interest and bank fees on the ANZ loan facilities alone amounted to K14,102,276.09 **(Schedule 2E, paragraph 12).**

NPF members may have rights to recover some of these losses in a class action brought against the NPF Board and against individual Trustees who were in breach of their fiduciary duties to the members by entering into these loan agreements. The members may have similar rights against the banks concerned (These possibilities are discussed in **Schedule 2E paragraph 17 and Executive Summary paragraph 13**).

15.4 Term of Reference 1(c)

"Provision of false or misleading information provided by or to trustees and management, including over the financial state of the funds in relation to the provision of the year end performance bonuses"

15.4.1 Misleading silence

The investigations disclosed many instances when particular officers, or management generally, provided false or misleading information to the NPF Board on a variety of topics. Equally importantly, perhaps, was management's misleading silence with regard to things that should have been disclosed. This includes silence about unauthorised overdrafts (**Schedule 2A**), drawdowns, (**Schedule 2E, paragraph 13.3**) acquisitions, (**Executive Summary 4D, paragraph 4.1**) agreements and commitments (**Executive Summary 2E, paragraph 7.7.1**).

15.4.2 False and misleading information generally

Specific instances of giving false and misleading information can be examined by consulting the ***"Findings in the context of the Terms of Reference"*** at the rear of each Schedule under *Term of Reference 1(c)*. Examples include:-

- false information about obtaining SCMC approval **(Schedule 1 paragraph 5.4.4.5)**;
- Mr Leahy lied to the NPF Board about Mrs Andoiye's departure from NPF **(Schedule 1 paragraph 20.1)**;
- Concealing from the NPF Board the existence of an unauthorised PNGBC overdraft by adopting misleading accounting procedures and netting the overdraft against credits in other accounts **(Schedule 2A paragraph 4.3)**;
- Mr Wright falsely told both the BSP and the Minister that the proceeds of a K30 million drawdown were to be used for local infrastructure projects. He did not disclose the intention to use the loan money to purchase Orogen shares (**Schedule 2C paragraphs 4.1.4 and 4.1.5(c)**);
- Mr Kaul falsely advised the NPF Board that the Board had previously approved a K30 million ANZ facility whereas the approval had really been for K20 million (**Schedule 2E paragraphs 5.23 & 5.24**);
- Misleading information given by Mr Wright to the NPF Board about the profits to be expected from issuing the AUD bond (**Schedule 2F paragraphs 5.1; 7; 7.1 & 7.2**);
- False information given by Mr Wright to the BPNG about by NPF Board's approved use for the AUD Bond money **(Schedule 2F paragraphs 11.10; 11.12(b) & (c))**;

- Management provided overly optimistic briefings on Vengold without referring to the risks involved **(Schedule 4A paragraph 10.4)**;
- Mr Kaul misled the NPF Board and the Minister about the date he signed the HPL sub-underwriting agreement (**Schedule 4B paragraphs 5.3 & 5.4(b)**);
- Mr Kaul gave false information to the NPF Board understating the number of unauthorised HPL shares that had been acquired (**Schedule 4B paragraphs 4.2 & 4.3(d)**);
- Mr Leahy falsely advised the newly appointed NPF Board members that the proposal to purchase the Waigani Land had been raised at the previous Board meeting but not resolved - whereas the proposal had been rejected (**Schedule 5 paragraph 21.2.7**);
- Management provided false information to the NPF Board about the purchase of a motor vehicle for the managing director (**Schedule 9 paragraphs 4.4.3; 4.4.4(a) & 4.4.4(d)**);
- Mr Leahy requested the Board to approve the Tower management contract with PMFNRE without disclosing the contract had already been agreed by management (**Schedule 9 paragraphs 5.8 & 5.10(i)**);

15.4.3 False information specifically about the financial state of the Fund and end of year performance bonuses

The two main examples of this type of false information were:-

- Bank of Hawaii transaction.

  The accounts drawn up by Mr N Wright for the 1997 year included the whole of the K18.5 million received from the Bank of Hawaii transaction as profit in 1997 instead of spreading it over the lifetime of the loan. This false reporting resulted in senior management receiving an undeserved end of year bonus based on a falsely reported profit **(Schedule 1 Appendix 20 – paragraph 20.7.2.1 - end of year bonus)**;

- K10 million *"reserve"* provision

  Management set aside a K10 million reserve in 1996, contrary to International Accounting Standard AS26. This reserve was utilised in 1997 thereby showing a false profit with the result that an undeserved end of year bonus was paid to senior management **(Schedule 1 Appendix 20 – paragraph 20.7.2.2)**;

15.4.3.1 Concealing relevant information on the state of the Fund

The Commission's inquiries have disclosed many instances when NPF management concealed relevant information on investments. This regularly occurred when management had made unauthorised acquisitions or sales of shares and then failed to specifically mention this at subsequent Board meetings. For most meetings, however, management-briefing papers would be distributed in advance to Trustees, which would usually include a Schedule of Investments.

This was a list of NPF's investments so a really conscientious Trustee who took the time, should have been able to work out recent transactions by comparing the amount in the Schedule of Investments with the previous Schedule.

Evidence from the Trustees indicates that few, if any, Trustees checked out the Investment Schedules, so management succeeded in concealing information about these investments (Often the Schedules were several months out of date anyway).

Further concealment of relevant information consisted in the endemic failure by management to keep the Board of Trustees informed of the state of the various loan accounts with the NPF's lender banks. This non-disclosure constituted a failure of management's common law duty to make open disclosure to the Board. The main offenders would be the managing director, who had ultimate responsibility for management's performance and Mr Noel Wright who was in charge of finance and investments.

15.5 Term of Reference 1(d)

This Term of Reference was repealed.

15.6 Term of Reference 1(e)

"The failure to adhere to prescribed Investment Guidelines"

After NPF adopted its new aggressive investment strategy in 1995 with firm guidance from Mr Copland and his protégé, Mr Wright, NPF departed further and further from the Investment Guidelines proclaimed by Sir Julius Chan in 1993. The story is told in **Schedule 1, paragraphs 14.1 to 14.5.1 and Executive Summary 1, paragraphs 8 to 8.4.1**. The departure from the guidelines was pointed out by Mr Kaul in 1996 but the Trustees and management determined to proceed with the strategy of acquiring the high-risk PNG resource stock, using borrowed funds to do so (**Schedule 1, paragraph 14.5.1(e)**).

When the Board became aware that NPF was seriously in breach of the guidelines, particularly in having its portfolio weighted heavily in favour of the high-risk equities, the Board of Trustees resolved to try and get the guidelines changed, but to continue with their foolhardy strategy in any event (**Schedule 1, paragraph 14.5.1(e)**).

The result was that the expenditure of NPF's funds in this way was illegal and the Trustees who permitted this to occur were all in breach of their fiduciary duty to the NPF members. Given their awareness of what they were doing and their conscious decision to continue, it is likely that the Trustees would be personally liable for the huge losses suffered by the members from the Trustees' breach of fiduciary duty. It is very unlikely they could succeed in a defence of *"acting in good faith"*. (**Executive Summary, paragraph 8.5 and Schedule 1, paragraphs 14.4.4.1 to 14.4.4.5**).

It was NPF's failure to adhere to the Investment Guidelines and its strategy of borrowing funds to finance these high-risk investments, which accounted for by far the greatest proportion of the K150 million losses suffered by NPF.

15.7 Term of Reference 1(f)

"The failure to adhere to prescribed foreign exchange regulations under the Central Banking Act, particularly with respect to the investment in Maluk Bay Resort in Indonesia"

The NPF management found it convenient at times to utilise unorthodox methods of making payments overseas. The prime example of this was providing funds to support the activities of Crocodile in Indonesia, particularly the construction of the resort at Maluk Bay. Crocodile was not properly registered to carry on business in Indonesia and was therefore unable to operate an Indonesian bank account. Also the NPF Board had never considered a comprehensive strategy for funding Crocodile and that process was occurring on an ad hoc basis, often behind the back of the NPF and Crocodile Boards.

Mr Noel Wright utilised the fact that NPF's sharebroker, Wilson HTM, held money in its accounts for NPF from proceeds of share sales and dividend payments. Rather than account for the money in PNG, as he should have, Mr Wright arranged for Wilson HTM to make payments from this account directly to Crocodile's overseas contractors and creditors. Approximately US$891,773 was transferred in this way (**Executive Summary 4L, paragraph 12, Schedule 4L, paragraphs 7.5.5, 7.5.6, 7.5.7 & 7.7.4**).

NPF management also made payment of A$40,282 to Odata for construction of the Ambusa Copra Oil Mill through its account with Wilson HTM (**Executive Summary 4N, paragraph 7, Schedule 4N, paragraphs 5.6 & 5.7**).

Using the Wilson HTM account to make overseas payments in this way had two advantages for Mr Wright.

Firstly, it enabled him to avoid the time-consuming inconvenience of seeking approval from BPNG's controller of Foreign Exchange (In the AUD54 million Bond affair, the Controller, Mr Popoitai, delayed granting foreign exchange approval because of his well founded concerns about the proposed purchaser of the bond, Warrington International. Mr Copland brought pressure on the Governor of the BPNG to obtain foreign exchange approval (**Schedule 2F, paragraphs 13.2, 13.3 & Executive Summary, paragraph 8**).

Secondly, it enabled Mr Wright to make overseas payments *"behind the back"* of the NPF Board more easily.

It is likely that NPF management made other overseas transactions through Wilson HTM in breach of Foreign Exchange regulations and this should be checked by the BPNG.

15.8 Term of Reference 1(g)

"All investment transactions including those relating to Highlands Pacific Limited, Itemus Inc. (formerly Vengold Inc.), Lihir Gold Limited, Cue Energy Resources N.L., Macmin N.L., Steamships Trading Company Limited and Collins & Leahy Limited and the failure to inform the full Board of Trustees of the transaction"

Each of these investment is reported upon in a separate Schedule to this report, each of which has its own **Executive Summary**.

The major loss making investments of STC and CXL, HPL and Vengold are briefly covered also in this report at **paragraph 11** above, as are the smaller investments in Macmin and Cue. As pointed out repeatedly in the Schedules, the failure by management to inform the full Board of Trustees of the transactions was endemic. This is illustrated by the tables in the Schedules.

15.9 Term of Reference 1(h)

"The decision to finance the Poreporena Freeway, and the role of any Trustee or officer or employee of the Fund or of any other person or entity in reaching this decision"

15.9.1 Creation of intermediary company Curtain Burns Peak

The full report on the loans provided by NPF to finance the construction of the Poreporena Freeway is set out in **Schedule 7B**. The **Executive Summary** is quite comprehensive and refers to relevant paragraphs in the Schedule.

It describes how the State initially intended to borrow the necessary funds offshore but faced opposition from the World Bank. To overcome this opposition, it decided to set up a company to be jointly owned by the State and the construction company (Curtain Bros Papua New Guinea) to be called Curtain Burns Peak Pty Ltd, which would then borrow the funds and finance the construction work, with the State providing a guarantee to the lender.

The State sought loans from DFRBF, POSF and NPF. It was a difficult situation for the State, which had recently failed in a lawsuit with Curtain Bros. The other superannuation funds refused to be involved because their lawyers pointed to possible constitutional problems with the way the State proposed to fund the construction by off-budget, non-appropriated payments through Curtain Burns Peak Pty Ltd as an intermediary.

Blake Dawson Waldron had advised POSF and DFRBF that this method of funding, with a guarantee being given by the State, violated Section 209(1) of the Constitution.

15.9.2 State applies pressure despite conflict of Interest

The Minister for Finance, Mr Haiveta, the Secretary of DoF, Mr Gerea Aopi, and the First Secretary of DoF's Commercial Investments Division, Mr Vele Iamo, were all actively seeking funds to commence the troubled venture and NPF effectively became the banker of last resort.

Mr Aopi and Mr Iamo were also Chairman and Public Service representative Trustee of NPF respectively, so their conflict of interest was acute. The first loan agreement for K3 million was worked out in discussions between Messrs Aopi and NPF Managing Director, Mr Robert Kaul. From then on, it was clear that the State was pushing hard for NPF to provide further funding. The next K10 million loan was approved by Minister Haiveta even before the NPF Board had resolved to seek it.

This was a large commitment for NPF, which rose eventually to a loan of K62 million. There were real doubts about the constitutional validity of the loan and whether the way the loan was structured could eventually be disadvantageous to NPF, as there was a mismatch between the terms of the loan agreement between the NPF and the lender bank (ANZ) and the terms on which NPF on-lent to Curtain Burns Peak.

The NPF Board was divided whether to provide the loan or not.

15.9.3 Contrary Legal opinion withheld from NPF Board

The Blake Dawson Waldron opinion was provided to NPF management and it then sought and obtained a contrary legal opinion from Mr John Batch on 7th November. Although Mr Batch felt the loan was not unconstitutional, he pointed out that if the Court decided otherwise, the loan would not be repayable to NPF nor would the State guarantee be enforceable in favour of NPF. When the NPF Board deliberated on the matter, management did not advise it of the very worrying Blake Dawson Waldron opinion. Nor was any expert investment advice given to, or sought by, the NPF Board.

Messrs Aopi and Iamo played an active part in the NPF Board's deliberations, without disclosing the conflicting double role they were playing. The employee representatives, Messrs Paska, Gwaibo and Leonard, voted against providing the loan. Had Messrs Aopi and Iamo refrained from voting because of their conflict of interest, as they should have, the resolution may not have been carried.

The key players in initiating this loan were Mr Aopi and Mr Iamo, both of whom were in breach of their fiduciary duties to NPF members by taking part in the vote and by not disclosing their conflict of interest. Another key player was managing director Robert Kaul who must have witnessed that conflict of interest in action yet failed to seek independent investment advice for the Board of Trustees. Mr Noel Wright also failed to advise the NPF that there was senior legal opinion that the loan would be unconstitutional and that NPF risked losing the amount of the loan and the interest owing.

15.9.4 Advantages and disadvantages of the investment

As reported in **Schedule 7B**, successive loans raised the amount to K62 million and it seriously distorted NPF's investment portfolio by creating an over exposure to the State. When economic conditions turned against NPF, it proved difficult to *"sell"* the loan as the State guarantee was not transferable. As the *"mismatch"* problem did eventuate, making the loan no longer favourable to NPF, it was eventually transferred to the Bank of Hawaii, at a discounted profit. Later again, the Bank of Hawaii transaction had to be unravelled.

In fairness to those who supported these loans to the State, it needs to be said that they genuinely believed that NPF was getting a good deal. In fact, these Freeway loans turned out to be far more profitable than most of NPF's investments.

All these matters are fully reported in **Schedule 7B** and its **Executive Summary**.

15.10 Term of Reference 1(i)

> ***"Whether there was any manipulation or attempted manipulation of the Fund's financial results or its financial position and whether any such transaction benefited any Trustee, officer or employee of the Fund or any other person or entity"***

The two main instances of manipulating the Funds financial results have been discussed above under term of reference 1(c) namely the:-

- Bank of Hawaii transaction when the K18.5 million profit was all brought to book in 1997 thereby contributing to the payment of a bonus to senior management **(Schedule 1 Appendix 20 paragraph 20.7.2.1)** and;

- The K10 million *"reserve"* provision where, by using incorrect accounting, K10 million of the 1996 large profit was taken out of the 1996 accounts (when maximum bonus was already payable) and brought to account in the less profitable 1997 accounting year which boosted the book value of the 1987 end of profit. This enabled the payment of a bonus of K52,941 for senior management which would not otherwise have been payable. This contributed to an increase in senior staff bonus payments **(Schedule 1 Appendix 20 for a detailed discussion of problems associated with the bonus scheme. The K10 million reserve is reported at paragraph 20.6.4(d)(vi) and findings at paragraph 20.7.2).**

15.11 Term of Reference 1(j)

"The construction, contract negotiations and renegotiations of the Tower building and the role of any Trustee or officer or employee of the Fund or of any other person or entity"

The Commission's investigations into the NPF Tower were greatly facilitated by an excellent report provided by the DoF Finance Inspectors who had previously investigated many matters connected with the construction of the Tower. They pointed the way for this Commission to follow, using its greater powers of investigation. **Schedule 2B** and **6** contain different topics of the report on the Tower.

15.11.1 Schedule 2B - NPF Tower Financing and Construction

Schedule 2B reports on the decision to construct the NPF Tower, the construction contracts and the PNGBC loan facility which financed its construction. The decision to borrow K50 million for this purpose was taken by the NPF Board on a very poor briefing by management, which failed to explore the commercial viability of the large project.

NPF went into this project with no expert advice about the demand for office space in Port Moresby, no pre-agreed *"signed-up"* tenants and no expert advice about the dangers inherent in the terms of the loan agreement. The PNGBC entered the agreement without carrying out adequate due diligence into those matters and above all, without assuring itself that NPF had the power to borrow funds for this purpose.

It was initially intended that PNGBC would lend funds to the Tower Ltd, a company incorporated by NPF to build and own the Tower building. At the last moment, however, the loan agreement was signed with the NPF itself and this invalidated the agreement because NPF had no power to borrow.

Schedule 2B reports upon management's poor performance in reporting to the Board on the administration of the loan and in particular its failure to obtain Board approval for increases in the loan facility, which eventually expanded to more than K59 million. The Schedule introduces six (6) suspicious matters, which the Finance Inspectors thought required special investigations. The Commission's investigation into those matters is reported at **Schedule 6.**

The **Executive Summary** provides a detailed summary of the main themes and paragraph references to **Schedule 2B**.

15.11.2 Schedule 6 - NPF Tower Investigations

Schedule 6 reports upon the six matters, which the Finance Inspectors had reported required specific investigation, as follows:-

15.11.2.1 In-ground works variation costs of K3,006,270.26

These costs were incurred on top of the agreed construction cost because of engineering problems in the foundations caused by the difficult soil substrata on the building site. The Commission concluded that the costs were genuine and recommended no further action.

15.11.2.2 Builders and other works variations

The Commission accepted the professional opinion of Rider Hunt and Pacific Architects Consortium *("PAC")* and found that the variation costs were genuine and recommended no further action.

15.11.2.3 The first acceleration fee - K1.4 million

This fee of K1.4 million was paid in order to speed up the work in order to recover time lost because of the in-ground work delays. Though there is reason to doubt whether NPF gained much benefit from this expenditure, the Commission is satisfied that the decision to seek the acceleration was genuinely made and that the acceleration costs agreed upon were within reasonable bounds.

15.11.2.4 Professional fees

The Commission investigated to see whether NPF had been overcharged pursuant to the consultancy agreement for professional fees. It found that there is ambiguity in the terminology used in the 23-page consultancy agreement and its appendices on the one hand and the wording in an appendix to a letter dated the 23rd August 1994, which is referred to in the consultancy agreement. The ambiguity has caused a difference of opinion about whether or not NPF has been overcharged for professional services.

The Commission finds that it is a genuine dispute, common to such projects, which may need to be resolved through Court processes.

15.11.2.5 A Kina fluctuation claim
15.11.2.6 A second acceleration claim

The contract was a fixed cost agreement with no provision to vary it because of fluctuations in the value of the Kina.

The Kina did, however undergo significant devaluation, which seriously eroded the builders profit margin. NPF's consulting engineers, Rider Hunt, and PAC, advised NPF that it would be advisable to pay Kumagai an appropriate amount to compensate for the Kina devaluation as otherwise it could mean cessation of work on the project. Negotiations occurred which made it clear that an increase in the contract price to K51.5 million would satisfy Kumagai.

At that stage, however, Messrs Maladina and Leahy removed PAC from the negotiations, and discussions continued between them and Kumagai direct. At this stage also a spurious second acceleration claim was introduced.

After hearing evidence from the senior managers of Kumagai and PAC and after thoroughly studying the relevant correspondence and documentation, the Commission found that Mr Leahy deliberately misled the (newly appointed) NPF Board members to agree to a settlement price between K53 million and K55 million to settle both the Kina devaluation and the second acceleration claim; when K51.5 million was on record as being Kumagai's agreed settlement price.

The result was that an extra K2.5 million of NPF's funds was paid to Kumagai. This had previously been agreed by Kumagai management at the insistence of Mr Maladina just prior to his appointment to the NPF Board of Trustees. He had threatened to deny Kumagai the currency depreciation payment (after his expected appointment) unless they cooperated. The agreement between Messrs Maladina and Leahy with Kumagai managers was that Kumagai would return the extra K2.5 million of NPF funds to Mr Maladina plus an extra K150,000 of Kumagai's own money as Mr Maladina's personal *"commission"*.

An elaborate scheme was put in place, including the fabrication of false documents, so that Kumagai's return payments to Mr Maladina could be laundered through the personal account of Mr Ken Yapane and the account of his company, Ken Yapane and Associates. The pretext for these payments was to be a spurious sub-contract between Kumagai and Ken Yapane and Associates whereby Mr Yapane would pretend to provide extra labour and to do fictitious on-site work.

Kumagai duly received the *"padded"* K2.5 million as settlement of its Kina devaluation / second acceleration claim and in return, made 6 progress payments for Mr Maladina's benefit. The first four payments were to Mr Yapane or his firm. The last two payments went directly to Mr Maladina's law firm, Carter Newell (After Mr Yapane refused to allow his bank account to be used to launder these payments).

15.11.2.7 The *"cover-up"*

After the Commission of Inquiry was established in April 2000, there was an attempt to *"cover-up"* what had occurred by fabricating false documents and correspondence between Kumagai and Ken Yapane and concealing Mr Maladina's involvement.

Ms Perks and Mr David Lightfoot of Carter Newell were involved in providing false documents to the Commission and they have been referred to the Commissioner of Police to investigate whether their involvement was criminal. Mr Lightfoot has also been referred to the PNG Law Society.

Mr Yapane initially gave false evidence to the Commission in support of these false arrangements. When confronted with the consequences of his statements, and after receiving good legal advice, Mr Yapane changed his testimony and disclosed what had really happened. The Commission has recommended that he be referred to the Commissioner for Police to investigate his part in the fraud committed against the NPF.

15.11.2.8 The money trail

The Commission embarked upon an intensely detailed exercise to trace the money paid by Kumagai's six progress *"payments"*, totalling K2,649,999.70 to the ultimate recipients. The tracing is described in **paragraphs 7.1 to 7.6.2** in **Schedule 6** and is also depicted diagrammatically by charts, which are attached to both **Schedule 6** and its **Executive Summary**.

In essence, the Commission has found that the money was *"laundered"* through the books of account of Carter Newell Lawyers and PMFNRE. The investigations showed that PMFNRE is actually beneficially owned by Mr Peter O'Neill and that he and Mr Maladina obtained substantial benefits from the proceeds of the NPF Tower frauds, either personally or through their companies and families.

Other beneficiaries of the NPF Tower fraud money can be ascertained by following the money trail on the NPF Tower charts, which are attached to **Schedule 6** and its **Executive Summary**.

15.11.2.9 Referrals regarding NPF Tower fraud

The Commission has recommended that the following persons should be referred to the stated authorities in connection with the NPF Tower and related activities:-

SECTION A

Referrals recommended by the Commission to the Constituting Authority

Name	Authority	Matter to investigate	Paragraph
Jimmy Maladina	**Commissioner for Police**	(a) Demanding money (K150,000) from Kumagai with threats to stop work on the Tower and reject payment claims if the demand was not met (Criminal Code Act, Section 389). (b) Conspiring with Mr. Taniguchi and Mr. Kobayashi and probably with Mr. Herman Leahy to defraud the National Provident Fund Board of Trustees of K2.505 million (Criminal Code Act, Section 407).	**5.7 & 5.8 of Schedule 6**

Name	Authority	Matter to investigate	Paragraph
		(c) Forging or causing to be forged a writing (being the signature of Ken Yapane & Associates) on the subcontract (Criminal Code Act, Section 462(1)). (d) Knowingly and fraudulently uttering a false writing (being the signature of Ken Yapane & Associates on the Subcontract) to Kumagai (Criminal Code Act, Section 463(2)). (e) Fabricating evidence with intent to mislead a tribunal in judicial proceedings (the two false retyped letters produced to this Commission by Mr. Ken Yapane) (Criminal Code Act, Section 122). (f) Attempting to induce a person called as a witness in judicial proceedings (Mr. Ken Yapane as called before this Commission) to give false testimony or withhold true testimony (Criminal Code Act, Section 123). (g) Possibly attempting in his telephone conversation with Mr. Taniguchi (**Transcript p.2977**) to induce a person to be called as a witness in judicial proceedings (Mr. Taniguchi before this Commission) to withhold true testimony (Criminal Code Act, Section 123).	

	Ombudsman Commission	To consider breaches of the Leadership Code in relation to his activities concerning the fraud against the NPF and related activities.	5.8.2
	PNG Law Society	Professional misconduct.	5.8.3

Henry Fabila	**Commissioner for Police**	(**Transcript pp. 3280-3332**) Mr Henry Fabila: for being party to all or some of the above mentioned offences and/or of criminal conspiracy with Mr Jimmy Maladina in relation to any or all of such offences.	5.8.1

	Ombudsman Commission	To consider breaches of the Leadership Code in relation to his activities concerning the fraud against the NPF and related activities.	5.8.2

Herman Leahy	**Commissioner for Police**	for being party to all or some of the above mentioned offences and/or of criminal conspiracy with Mr Jimmy Maladina in relation to any or all of such offences.	5.8.1(b)
	PNG Law Society	Professional misconduct.	

Name	Authority	Matter to investigate	Paragraph
Mr. Taniguchi	**Commissioner for Police**	for being party to all or some of the above mentioned offences and/or of criminal conspiracy with Mr Jimmy Maladina in relation to any or all of such offences.	5.8.1
Kazu Kobayashi	**Commissioner for Police**	for being party to all or some of the above mentioned offences and/or of criminal conspiracy with Mr Jimmy Maladina in relation to any or all of such offences.	5.8.1
Ken Yapane	**Commissioner for Police**	(a) for being party to all or some of the above mentioned offences and/or of criminal conspiracy with Mr Jimmy Maladina in relation to any or all of such offences. (b) Fabricating documents	5.8.1 8.5
Rex Pake	**Commissioner for Police**	Aiding the office of fraud or receiving	11.3.1.3
	PNG Institute of Accountants	Professional misconduct	11.3.1.3
Ango Wangatau	**Commissioner for Police**	Aiding the office of fraud	11.3.1.3
	PNG Institute of Accountants	Professional misconduct	11.3.1.3
David Lightfoot	**Commissioner for Police**	to consider whether there is criminal culpability in relation to the fraud against the NPF such as to warrant charging him with an offence against the Criminal Code.	5.8.1
	PNG Law Society	Professional misconduct	
Barbara Perks	**Commissioner for Police**	to consider whether there is criminal culpability in relation to the fraud against the NPF such as to warrant charging her with an offence against the Criminal Code.	5.8.1
Peter O'Neill	**Ombudsman Commission**	(a) The concealment of his interest in Bluehaven No. 67 which purchased RIFL from ICPNG. (b) The receipt of K100,000 fraud money by his company Mecca No. 36/ (c) The concealment of his interest in Nama Coffee Exports Pty Ltd.	12.4.19.7 12.3.2.10(g) 12.5.2.6(b)
Kenneth Barker	**Commissioner for Police**	(a) To be referred for perjury if he returns to PNG (b) Aiding the offence of fraud	12.4.4.8(b) 12.3.4.1(b)
Maurice Sullivan	**Commissioner for Police**	Aiding the office of fraud	12.3.4.1(b)

The Commission has already directed that the following persons be referred to the Commissioner for Police.

SECTION B

Direct referrals by the Commission

Name	Authority	Matter to investigate	Paragraph
Peter O'Neill	**Commissioner for Police**	Possible perjury regarding source of funds to purchase Manamatana apartments.	12.4.19.7

A detailed description of the conduct to be investigated is listed in the **Executive Summary 6, paragraph 12**.

15.12 Term of Reference 1(k)

> ***"The Waigani land proposal, and the role of any Trustee or officer or employee of the Fund or of any other person or entity taking account of the Department of Finance & Treasury inspectors' recent investigation report"***

By *Term of Reference 1(k)*, the Commission was specifically directed to investigate the attempted sale of land at Allotment 2 Section 429 Hohola, referred to here as the Waigani Land.

It was a long and difficult investigation, which was made more difficult by the *"cover-up"* activities of the parties involved and lawyers acting on their behalf.

15.12.1 Allocation of Waigani Land lease to Waim No. 92 Pty Ltd

At **Schedule 5**, the Commission reports how Mr Jimmy Maladina before and during the time he was chairman of NPF, was the secret owner of Waim No. 92 Pty Ltd the shares of which he initially owned through his wife, Ms Janet Karl, and an accountant, Mr Phillip Eludeme. Ms Karl's share was later transferred to Mr Phillip Mamando who resided at the Maladina's residence. Mr Maladina was responsible for bribing Land Board chairman, Mr Ralph Guise and Lands Minister, Mr Viviso Seravo, to ensure Waim No. 92 was granted the lease of the Waigani Land on very favourable terms. Part of the bribe was the performance by Mr Eludeme of free professional services for Minister Viviso Seravo prior to the allocation of the lease in order to obtain the Minister's support.

15.12.2 Inflated land valuations and valuation fees

Mr Maladina then organised two inflated valuations of the land from valuers Messrs Mariano Lakae and Iori Veraga. He arranged for NPF to pay the valuers a *"double fee"* which he then shared with them.

Mr Maladina's secret commission on the valuation fees, amounting to K60,000 was paid into the account of Carter Newell and subsequently paid for his own benefit and to pay off Messrs Guise and Seravo and for the benefit of Mr Herman Leahy, his co-conspirator.

At approximately the same time, Mr Maladina was also using the same two valuers to obtain inflated valuations of the NPF Tower as part of a scheme to sell off 50% of the Tower (**Schedule 6**). He organised for NPF to pay them double fees for the Tower valuations and took half of it for himself, amounting to K175,000.00. Mr Maladina's was laundered the accounts of Carter Newell and PMFNRE. The Tower valuation fees are reported in **Schedule 5**, along with the Waigani Land valuation fees.

15.12.3 Failed attempt to sell Waigani land shares to NPF

Messrs Maladina and Leahy then attempted to sell the shares in Waim No. 92 to NPF and other PNG institutions. To reverse an unfavourable decision by NPF, he brought about or took advantage of changes made in the membership of the NPF Board to re-submit the proposal to buy the Waigani land. He was assisted in this scheme by Mr Herman Leahy and Mr Henry Fabila who arranged the meeting so that two Trustees, Messrs Paska and Nana who had previously opposed the purchase, were unable to attend.

The NPF Board approved the purchase of the Waigani land at an exorbitant price but before it progressed much further, the news of the purchase broke in the press and it was called off at the direction of the Prime Minister, Mr Bill Skate.

15.12.4 Sale of Waigani land share to Trinco No. 6 Pty Ltd

Having failed to sell the Waigani land to the NPF or any other PNG institution the shares of the land holding company (now known as Waigani City Centre Ltd).

Mr Maladina utilised the services of Mr Simon Ketan of Ketan Lawyers to sell to Trinco No. 6 Pty Ltd (a company owned by the Rimbunan Hijau group). The sale was agreed, subject to certain conditions attached to the lease document being modified. To organise this, Mr Maladina arranged for Land Board chairman, Mr Guise, to be bribed as well as the new Lands Minister, Dr Fabian Pok. By this means, he arranged for minutes of a former Land Board hearing to be altered to achieve the desired alterations to the lease conditions, which the Lands Minister, Dr Pok, duly approved (Dr Pok subsequently received the benefit of a motor vehicle and the sums of K10,000 (**paragraph 32.8.4.2**) for his part in this fraudulent scheme (**Schedule 5**, **paragraph 32.8.9**)). Dr Pok also appears to have received the sum of K220,000 to his company, Biga Holdings, which was received from Mr Maladina's Niugini Aviation Consultants company in Hong Kong (which payment should be referred to the Ombudsman Commission for investigation).

15.12.4.1 Referrals regarding Waigani Land fraud

As a result of its inquiries, the Commission recommended that the following persons be referred to the stated authorities in relation to Waigani land fraud:-

SECTION A
Referrals recommended by the Commission to the Constituting Authority

Name	Authority		Matter to investigate	Paragraph
Jimmy Maladina	Commissioner for Police	(a)	Conspiracy to cheat and defraud the NPF by means of excessive valuation fees and sale of Waigani land at exorbitant costs.	**Schedule 5**
		(b)	Cheating and defrauding the NPF - in relation to money acquired through the valuation fees for Waigani land and the NPF Tower.	
		(c)	Perjury in relation to his statement.	
		(d)	Falsifying documents	
		(e)	Suborning witnesses Eludeme, Ketan and Patterson	
		(f)	Conspiring to cheat and defraud the State by corruptly obtaining a reduction in the Waigani land purchase price and payment of annual rent instalments etc.	
		(g)	Conspiring to cheat and defraud the State over the variation of the Waigani land conditions	
		(h)	Bribing Ministers Seravo and Pok	
	Internal Revenue Commissioner	(a)	To assess tax payable on the share of valuation fees paid to him in cash.	
		(b)	To assess tax liability in respect of cash and other suspicious payments dispensed out of Carter Newell accounts from money received from valuation fees and WCC Ltd share sale proceeds whether for the benefit of Mr Maladina or other recipients.	
	Ombudsman Commission	(a)	For repeated breaches of the Leadership Code	
	PNG Law Society		Unprofessional conduct	

Herman Leahy	**Commissioner for Police**	(a)	Conspiracy to cheat and defraud the NPF by means of excessive valuation fees and sale of Waigani land at exorbitant costs.	
		(b)	Cheating and defrauding the NPF - in relation to money acquired through the valuation fees for Waigani land and the NPF Tower.	

Name	Authority		Matter to investigate	Paragraph
		(c)	Falsifying documents with intent to facilitate a crime	
	PNG Law Society	(a)	Unprofessional conduct	
Henry Fabila (now deceased)	**Commissioner for Police**		(**Transcript pp. 3280-3332**) Mr Henry Fabila: for being party to all or some of the above mentioned offences and/or of criminal conspiracy with Mr Jimmy Maladina in relation to any or all of such offences.	
Angelina Sariman	**Commissioner for Police**	(a) (b) (c) (d)	Conspiracy to cheat and defraud the NPF by means of excessive valuation fees and sale of Waigani land at exorbitant costs. Cheating and defrauding the NPF - in relation to money acquired through the valuation fees for Waigani land and the NPF Tower. Falsifying documents with intent to facilitate a crime Accessory after the fact	
	PNG Law Society		Unprofessional conduct	
Phillip Eludeme	**Commissioner for Police**	(a) (b) (c)	Bribing Minister Viviso Seravo Conspiring to cheat and defraud the NPF Conspiring to cheat and defraud the State over land price cost etc.	
	IRC	(a)	To assess tax payable on the sum of K1.3 million received by Carter Newell on his behalf on the 12th and 15th May 2000	
	PNG Institute of Accountants Inc.	(a)	Unprofessional conduct	
Viviso Seravo	**Commissioner for Police**	(a) (b) (c)	Accepting bribe from Phillip Eludeme Accepting bribe from Jimmy Maladina Conspiring to cheat and defraud the State over the purchase price and rent of the State Lease	
	Ombudsman Commission	(a)	Breach of the Leadership Code when he was Minister for Lands	

Name	Authority		Matter to investigate	Paragraph
Ralph Guise	**Commissioner for Police**	(a)	To do with fabricating minutes, accepting bribes, official corruption, aiding criminal offence	
		(b)	Conspiring to cheat and defraud the State over the land price and rent.	
		(c)	Conspiring to cheat and defraud the State over variations of the Waigani land conditions.	
	Ombudsman Commission		Breaching the Leadership Code	

Dr. Fabian Pok	**Commissioner for Police**	(a) (b)	Conspiring to cheat and defraud the State over the variation of the Waigani land conditions Accepting bribes from Jimmy Maladina to vary conditions.	
	Ombudsman Commission	(a)	Breaching the Leadership Code	

Iori Veraga	**Commissioner for Police**	(a)	Conspiring to cheat and defraud the NPF by falsifying the valuation and claiming an exorbitant fee.	
	PNG Valuers Registration Board		Unprofessional conduct.	

Mariano Lakae	**Commissioner for Police**	(a)	Conspiring to cheat and defraud the NPF by falsifying the valuation and claiming an exorbitant fee.	
	PNG Valuers Registration Board		Unprofessional conduct.	

Nathaniel Poiya	**Commissioner for Police**	(a)	Accepting a bribe and conspiracy to cheat and defraud the NPF.	
	Ombudsman Commission	(a)	Breach of the Leadership Code	

The full details of these recommended referrals are set out at **Executive Summary 5, paragraph 2.7**, Section A.

15.12.5 *"Cover-up"* activities

When the Commission commenced investigating these matters, Mr Maladina and Mr Eludeme both left PNG to reside in Australia (Mr Eludeme returned much later and gave evidence under summons on 19th and 20th February 2002 **(Transcript pp. 10346-10404 & 10407-10444)**. Mr Maladina has not returned and has given no evidence).

At Mr Maladina's instruction, lawyers Jack Patterson and Simon Ketan both concealed and fabricated documents on Mr Maladina's instruction in order to protect Mr Maladina. They have been referred to the Commissioner for Police to consider prosecution for fabricating documents contrary to Section 122 of the Criminal Code. Mr Eludeme and Mr Lightfoot and Ms Perks of Carter Newell (now Pacific Legal Group) have also been referred to the Commissioner for Police to consider their part in the cover-up. The full details of these direct referrals directed by the Commission are set out at **Executive Summary 5, paragraph 2.7**, Section B.

The Waigani land fraud deprived the NPF of only K120,000 for the valuations and legal costs because the sale of the WCC Ltd shares to the NPF was stopped before money changed hands. It is significant though because it clearly revealed the criminal intentions and conduct of Mr Maladina and Mr Leahy and the depth of corruption in the Lands Ministry.

15.13 Term of Reference 1(l) and 1(m)

Term of Reference 1(l)

> ***"The purchase of Crocodile Catering and the role of any Trustee or manager of the Fund or of any other person or entity"***

These two terms of reference are reported upon as one item as there is so much overlap between them.

Crocodile was a fully owned subsidiary of Crocodile (Australia) Pty Ltd. Its business was to provide catering services to the canteens of mining and exploration companies in remote areas of the PNG mainland. When NPF acquired the shares in Crocodile, it was operating pursuant to several catering contracts, such as the Porgera Joint Venture in the Enga Province and Tolukuma Gold Mine in the Goilala region of the Central Province.

15.13.1 Crocodile

The purchase of Crocodile Catering is reported upon fully in **Schedule 4L**. Easy access to the Commission's deliberations and findings is accessible through the Executive Summary to **Schedule 4L**, which summarises the main points, with references to paragraphs in the Schedule for a more detailed report.

The Executive Summary also reproduces the main findings of the Commission concerning Crocodile Catering.

The main feature of the purchase of Crocodile was its folly. It was never going to be a good idea for NPF to buy 100% of the shares in a remote catering business and then seek to run it. NPF management had absolutely no experience or skill in the difficult task of catering for a series of mining camp messes in remote areas.

The idea seems to have been strongly supported by Trustee Copland and Messrs Wright and Kaul. It was not a flourishing and profitable business when NPF acquired the company from its near bankrupt Australian parent company. There was a serious failure of due diligence by NPF management into the profitability of Crocodile's existing contracts or how Crocodile was to be funded. NPF was aware that Crocodile had an obligation to build a warehouse at Paiam in the Enga Province as an incident of its catering contract with the Porgera Joint Venture. They assumed that the cost of construction would be funded by the former owners and failed to ascertain the scale of the project. Consequently, Crocodile was unexpectedly obliged to itself fund the construction of a warehouse at a cost of K4 million which had not been allowed for in the budget. No consideration was given to how Crocodile's future funding would be organised or from whence it would come.

Without assessing Mr Jewiss' qualifications or managerial skills or his previous performance as a manager of Crocodile in PNG, the Crocodile Board simply appointed Mr Jewiss as managing director of Crocodile. He was a very unsuitable appointment as he was a very poor manager who failed to establish and maintain even a proper system for recording Crocodile's accounts or for planning its business and financial future. His reporting to the Crocodile Board and the NPF Board was seriously over optimistic, misleading and dishonest.

Within two months of his appointment, he relocated himself and family to live on Bali Island so he could seek business for Crocodile in Indonesia. He unsuccessfully tried to manage Crocodile's PNG mainland projects from Bali. He soon became distracted by the dream of constructing a large resort complex at Maluk Bay on nearby Sumbawa Island.

At paragraph 2.1, of **Executive Summary 4L** and at paragraph 4.2 of **Schedule 4L**, the Commission sets out its findings condemning Mr Wright for his failure to perform due diligence and all the Trustees for breaching their fiduciary duty to the members of the NPF by not critically assessing this proposal, not seeking expert advice, not checking out the Crocodile management team and for not determining where future funds were to come from.

Allowing Mr Jewiss to remain in Bali as his headquarters was a major failing of the NPF and Crocodile Boards.

At **Executive Summary 4L**, paragraph 4, the Commission criticises NPF management particularly Messrs Kaul and Wright for secretly organising transfer of capital and loan funds from NPF to Crocodile without NPF Board approval. The Trustees were in breach of duty to the members by meekly ratifying these unauthorised transfers or funds without reprimanding management or bringing them under Board control (See formal findings at **Executive Summary** paragraph 5.1; **Schedule 4L**).

When Mr Wright provided US$2 million bridging finance to Crocodile without Board knowledge or approval it was a serious breach of duty and it was an illegal exercise of power, of which Mr Copland must have been aware, as he was the very actively involved chairman of both NPF and Crocodile Boards **(See Schedule 4L, paragraph 4.7.3)**.

15.13.2 Mr Maladina makes unauthorised appointments

As chairman of NPF from January 1999 Mr Maladina abused and exceeded his power by appointing Ram Business Consultants as investigators and internal auditors of Crocodile in early 1999 **(Executive Summary, paragraphs 9 and 9.1 and Schedule 4L, paragraph 4.9.6)**. He also exceeded and abused his authority as chairman in April 1999 by appointing his friend, Mr Peter Petroulas of Precise Strategies to perform an internal review of Crocodile in Indonesia and by appointing another friend, Mr Ray Barredo, as managing director of Crocodile in April 1999 and personally approving and illegally sealing his contract conditions, which included annual transfers of 150,000 Crocodile shares in an attempt to give Mr Barredo ownership of Crocodile within a few years.

NPF suffered a loss of K7.4 million as a result of poor management decisions and breaches by all Trustees of their fiduciary duties. They may be personally liable for some of these losses.

Term of Reference 1(m)

> ***"The participation in the resort complex in Indonesia, and the role of any Trustee or officer or employee of the Fund or of any other person or entity"***

15.13.3 Maluk Bay Resort

Prompted by friends employed by PT Cikoba Konseptama Bangunmutra on Sumbawa Island near Bali, Mr Jewiss somehow persuaded the Crocodile Board of the merits of constructing a small bar and grill complex, with simple cabin type accommodation at Maluk Bay on Sumbawa Island to service the rest and recreation needs of the employees of the nearby mining company. The germ of this idea spread in Mr Jewiss's imagination until it became a plan to build a major 70-room resort complex at Maluk Bay with his friends, Messrs Patrick Goodfellow and Keith Wilson, in charge of construction and the training of local staff.

Mr Jewiss' accounting records, his estimates of cost and time of construction, of future occupancy rates and profitability were so flawed that they may well have been figments of his imagination. They were sufficient however to persuade the Crocodile Board and the interlinked NPF Board to go along with the idea.

Pursuing this dream of constructing, owning and managing a major resort on a tropical island in Indonesia was a serious distraction of Crocodile management's focus away from its catering contracts in PNG. Crocodile did not even have title to the land at Maluk Bay when construction started, it had no source of funds for the venture except NPF and it had no Indonesian bank account or legitimate means of transferring funds to Indonesia to finance this unregistered venture, which was illegal under Indonesian law. How *"informal"* and illegal methods of funding the Indonesian venture were arranged on an ad hoc basis, through travellers cheques, personal bank accounts and transfers from NPF's overseas account with its stockbrokers, Wilson HTM, are described in detail in **Schedule 4L, paragraphs 8 and Executive Summary, paragraphs 11 and 12**. The story is set out in broad outline in the **Executive Summary 4L**.

Both the Schedule and its Executive Summary are presented in two parts: the first dealing with Crocodile's PNG operations and the administrative and financial relationship between the Boards of NPF and Crocodile and the second part dealing specifically with the financial and managerial morass of the Maluk Bay project.

The two aspects are however, inextricably related. The failure to define clear legal and financial boundaries between NPF (the legal entity which was established to invest and safeguard members' funds) and Crocodile (a trading enterprise acquired to make profit from PNG catering contracts, which was now wafting into an Indonesian island resort dream) would seriously endanger the assets of NPF which NPF management and Trustees were obliged to protect.

15.14 Term of Reference 1(n)

> ***"Whether there was any non disclosure of a conflict of interest by a Trustee or officer or employee of the Fund in respect of any investment or transaction to which the Fund or the any of the subsidiary companies was a party"***

Many instances of non-disclosure of a conflict of interest can be discovered by studying this term of reference in the *"Findings in the Context of the Terms of Reference"* paragraph at the end of each Schedule.

The most serious examples of such non-disclosure included:-

- Mr Maladina's failure to disclose his interest in Waim No. 92 Pty Ltd when the company was trying to sell the Waigani Land to the NPF.
- The failure by NPF's purchasing officer, Mr Simon Wanji, to disclose the interest of himself and his wife in the stationery companies that were selling stationery to NPF **(Schedule 9, paragraph 13.5 and Executive Summary paragraph 10)**;
- The failure by Mr Copland to disclose that he was sitting as an independent member of the Board of Cue **(Schedule 4C, paragraph 11)**;

- The failure by Messrs Copland, Kaul and Wright to disclose that they held personal interests in Cue Energy N.L. and Vengold **(Schedule 4C, paragraph 13.8)**;
- The failure by Trustees Vele Iamo and other public service representative Trustees to disclose the extent of their conflict of interest when continuing to participate in NPF Board deliberations on transactions with DoF, with which they were intricately involved, as part of their service as DoF officers. In some instances, their undisclosed conflict of interest was acute **(Executive Summary 7B, paragraph 4.1)**. The employee representative Trustees voted against lending to the State for the Freeway - Messrs Aopi and Iamo, who were intimately involved as DoF officers in securing the loan for the State, did not disclose their conflict of interest and voted as NPF Trustees for NPF to agree to the loan. Without their vote, the motion would have been lost.
- Mr David Copland's failure to always disclose his conflict of interest as Managing Director of Steamships and his failure to withdraw from NPF Board deliberations on the purchase of motor vehicles from Toba Motors - a STC company. At one stage, virtually all new vehicles were being purchased from Toba Motors with no proper system of open tenders in place **(Schedule 9, paragraph 4.7 and Executive Summary paragraph 2.7)**.

15.15 Term of Reference 1(o)

"The failure to comply with prescribed tendering processes, and whether such failure benefited any person and if so who, and the role of any Trustee or officer or employee of the Fund or of any other person or entity"

As pointed out in **Schedule 9**, NPF was not subject to the Tenders Procedures applied to the public service and most other public bodies under the *Public Finances (Management) Act ("PF(M) Act")*. The NPF Board of Trustees did, however, have a duty to ensure that management was applying appropriate procedures to control the purchase of goods and services and the disposal of assets. In order to be even-handed, fair and cost effective and to avoid nepotism, it was necessary therefore, to administer a well run tenders system.

As late as 1993-94, NPF had a Tenders Committee and NPF managers (incorrectly) believed they were subject to the public service tenders regime.

By 1995, however, the Tenders Committee had ceased to function and there was no coherent and consistent system of tenders in place.

The Commission examined the situation in the following fields of activity, reported in **Schedule 9**:-

- Acquisition and disposal of motor vehicles **(Schedule 9, paragraph 2)**;
- Property and management services **(Schedule 9, paragraph 3)**;

- Legal services **(Schedule 9, paragraph 4)**;
- Security services **(Schedule 9, paragraph 5)**;
- Accounting services **(Schedule 9, paragraph 6)**;
- Other professional services **(Schedule 9, paragraph 7)**;
- Disposal of assets **(Schedule 9, paragraph 8)**;
- Computer hardware and software **(Schedule 9, paragraph 9)**;
- Stationery and office supplies **(Schedule 9, paragraph 10)**;

Schedule 9 reports in detail on these matters and the Executive Summary gives a full outline and sets out the Commission's findings.

At **paragraph 14** of **Schedule 9**, the Commission sets out some general conclusions as follows:-

> *"The Commission's investigations have shown that at the beginning of the period under review, there was some attention given to calling for tenders and seeking competitive quotations for procurement of some of the goods and services examined in this report.*
>
> *As time went on, these frail attempts to comply with proper procedures lapsed and management increasingly ignored the concept of obtaining competitive quotations. Management also ignored the need to keep the NPF Board informed or seek its approval.*
>
> *This gross laxity allowed the development of nepotism and criminal acts to steal from the NPF. It is a very sad story for which NPF senior management is primarily to blame.*
>
> *The NPF Trustees, however, had a fiduciary duty to ensure the Fund was well managed and its finances were protected. They failed this duty totally. The abuses were so noticeable that the Trustees' failure to notice and address it, constitutes a breach of their fiduciary duty to the members of the Fund and may constitute a breach of the Leadership Code by all Trustees who held office during the period under review. This matter should be referred for consideration by the Ombudsman."*

15.16 Term of Reference 2

> ***"Whether there was any inappropriate intervention by persons or entities in relation to illegal or unsuitable borrowings and investments, or other improper actions".***

The Commission has reported upon a number of inappropriate interventions in relation to illegal or unsuitable borrowings and investments and other improper actions. Some of these interventions occurred when a Chairman or officer of NPF intervened by some unauthorised activity which was the legal function of the NPF Board. Some of the interventions were by people outside of NPF – such as a Minister.

15.16.1 Borrowings

All the borrowings were illegal and unsuitable because NPF had no power to borrow. When Mr Noel Wright or the Managing Director of NPF exceeded their delegated authority to obtain a loan for NPF or to draw down on an existing facility, this amounted to an inappropriate intervention, as these actions were the function of the NPF Board. Examples were:-

- The agreements with PNGBC to utilise an overdraft facility **(Schedule 2A, paragraph 4.3 and Executive Summary paragraph 4)**;
- The agreement between NPF management and the ANZ to grant an additional K20 million facility without the knowledge or approval of the NPF Board **(Schedule 2E, paragraph 4.3 and Executive Summary, paragraph 7.1)**;
- Many examples when NPF management exceeded their authority by making drawdowns or transferring securities on the loan facilities without NPF Board approvals.

15.16.2 Investments

The Schedules dealing with NPF's equity investments contain many, many examples when NPF management (Messrs Wright and Kaul mostly) acquired shares on-market, way beyond their delegated powers. These were inappropriate interventions in the functions of the NPF Board. Examples include:-

STC and CXL	-	**Executive Summary 4D, paragraph 6.1**
Cue	-	**Executive Summary 4C, paragraphs 6 & 7**
Macmin	-	**Executive Summary 4E, paragraph 5 & 6**

Sometimes these inappropriate interventions by management to acquire shares were subsequently ratified by specific resolutions of the NPF Board. Many times there was no such ratification. For example, Mr Kaul's unauthorised action in sealing an irrevocable offer to sub-underwrite a Cue share placement to the extent of A$25 million (**Executive Summary 4C, paragraph 2.5**).

15.16.3 Directions by Ministers

15.16.3.1 Intervention by Prime Minister Mr Bill Skate

The intervention by Prime Minister, Mr Bill Skate, to direct DoF Secretary, Mr Brown Bai, to stand down as Chairman of NPF and to appoint Mr Maladina in his place **(Schedule 1, paragraphs 4.3.6.1 & 4.3.6.2)**.

The intervention by Prime Minister Skate and Minister Lasaro to arrange for the termination of Mr Robert Kaul's appointment as Managing Director and to secure the appointment of Mr Henry Fabila in his place **(Schedule 1, paragraphs 4.4.13 & 4.4.1.4)**.

The intervention by Prime Minister Skate by directing NPF Managing Director not to travel overseas.

15.16.3.2 Intervention regarding the purchase of Government stock

It seems that almost annually the NPF was asked to take up Government stock or Treasury Bills for the purposes of the National budget by the Minister responsible for NPF.

Such requests are, in the Commission's view, improper and an interference with the investment powers of the NPF Board.

15.16.3.3 Intervention by Mr Maladina

Before his appointment as a Trustee of the NPF, Mr Jimmy Maladina intervened in December 1998 to force Mr Taniguchi of Kumagai to agree to participate in the NPF Tower fraud, threatening him that he would otherwise deny Kumagai payment of its existing claims when he became Chairman of NPF in the near future.

15.16.3.4 Intervention by Mr Herman Leahy

When preparing to implement the NPF Tower fraud, Mr Leahy intervened in existing contractual arrangements by directing PAC to withdraw from the negotiations process it was conducting with Kumagai on NPF's behalf. This enabled Mr Leahy to take over the negotiations and arrive at a settlement price which was inflated by K2,505,000.

15.16.3.5 Intervention by Mr Noel Wright

There were many instances when Mr Wright intervened in the lawful functions of the NPF Board by taking actions way beyond his delegated authority. Examples include:-

- Dealing in Lihir options, despite a Board resolution to desist from the practise (**Schedule 4I, paragraph 4.4.2**);
- Directing Wilson HTM to transfer funds to Crocodile in Indonesia (**Schedule 4I, paragraph 7.5.7(g)**).
- Securing an additional K20 million facility from ANZ;
- Pledging and transferring huge volume of NPF share scrip as security for ANZ loans

15.16.3.6 Intervention by Mr Henry Fabila

Mr Fabila and Mr Leahy intervened in the lawful tender process for awarding contracts for managing NPF properties, which included awarding the lucrative contract to manage the NPF Tower to PMFNRE (**Schedule 9, paragraph 5.6.1(c)**).

Agreeing to appoint PMFNRE as NPF's agent to sell 50% of the NPF Tower to the Papua New Guinea Harbours Board (*"PNGHB"*) and to pay a 5% commission worth K2 million to Mr Sullivan - without the knowledge or approval of the NPF Board **(Schedule 6, paragraphs 13 to 13.1.4)**.

15.17 Term of Reference 3

"Whether in connection with action or failure to act of any Trustee, officer or employee of the Fund or any other person should be referred to the relevant authorities for investigation with a view to criminal prosecution or other action"

15.17.1.1 To the Ombudsman Commission

Throughout its investigation, the Commission has made many findings about the conduct of Trustees and other leaders, which it considers constitutes a breach of the Leadership Code, which has been promulgated pursuant to the *Organic Law on the Duties and Responsibilities of Leadership*.

In many cases, this has led the Commission to recommend to the Prime Minister that those leaders be referred to the Ombudsman Commission. In some cases, the leader is referred to by name for a particular failure by that leader personally. In some cases, the referral has been in respect of all Trustees in office at the time because the failure has been a collective failure of such magnitude that it constitutes a breach of the Leadership Code, not merely a breach of fiduciary duties to the members of the Fund. Examples of individual referrals to the Ombudsman Commission include:-

- Minister Haiveta's repeated failure to obtain expert independent advice from DoF or elsewhere before granting approvals for transactions having a significant impact on the affairs of NPF. For example general approval for NPF to invest in companies registered on stock exchanges up to K1 million per transaction (**Schedule 1, paragraphs 14.4.3 and 14.4.4.1(a)**). Approval for NPF to invest in STC & CXL up to K40 million as part of a take over strategy (**Schedule 4D, paragraph 4.4.1**).
- Trustee Nathaniel Poiya's acceptance of K150,000 paid to him personally (**Schedule 6 paragraph 12**) and another payment of K100,000 to the company Mecca No 36 Ltd (**Schedule 6 paragraph 12.4.9.2.7(v)**), which was jointly owned by himself and Mr Peter O'Neill, was from proceeds of the NPF fraud.

Examples of the Trustees being referred to the Ombudsman Commission as a group include their repeated failure to supervise reprimand and control NPF management's unauthorised activities.

15.17.1.2 To the professional regulatory bodies

When people have been guilty of professional misconduct as a lawyer, accountant, valuer, etc the Commission has recommended that they be referred to the body responsible for investigating professional misconduct - such as the PNG Law Society and the PNG Institute of Accountants.

15.17.1.3 To the Commissioner for Police

If the Commission finds that there is substantial evidence that a person has committed a crime it has recommended that the Prime Minister refer that person to the Commissioner for Police for investigation and to determine whether the person should be charged with a criminal offence.

15.17.1.4 Direct referrals

In cases where a person has committed an offence, in effect, against the Commission itself - such as fabricating documents committing perjury and generally interfering with the investigation, contrary to the *Commission's of Inquiry Act* or the Criminal Code, the Commission itself, through Counsel Assisting, has referred the matter directly to the Commissioner for Police or other relevant authority.

15.17.1.5 Method of reporting referrals

Each of the referrals is reported in the Schedule, which deals with the topic under investigation. The referrals are therefore listed in the body of the Schedule as a *"finding"*. They are also mentioned in the paragraph at the rear of the Schedule, which brings together all findings in the context of the Commission's Terms of Reference. These referrals are listed in those paragraphs under the heading of Term of Reference 3.

An attempt has been made to list all people who have been referred from the Schedules in the following Table of Referrals. Part 1 lists referrals recommended to the Prime Minster by the Commission. Part 2 lists referrals made by the Commission itself to the relevant authority.

15.18 Table of Referrals

PART 1

PERSONS RECOMMENDED TO THE PRIME MINISTER TO BE REFERRED TO ANOTHER AUTHORITY FOR INVESTIGATION

ALL TRUSTEES
(except recent appointee Mr John Jeffery)

REFERRED TO THE OMBUDSMAN COMMISSION

REFERRAL MADE AT	PARAGRAPH NO'S	DETAILS
1	14.5.1	For breaches of the Leadership Code regarding repeated and sometimes deliberate disregard of the Investment Guidelines.
Executive Summary 2C	p.12 2nd last para	To investigate whether breaches of the Leadership Code occurred
2E	18.9; 18.10	To consider whether they were in breach of the Leadership Code for breach of their fiduciary duties.
4A	10.10	All Trustees on the Board during the relevant period for misconduct in office due to their breach of fiduciary duties to the members.
4B	8.9.3	Breach of fiduciary duties;
4C	23.8; 23.10	Whether Trustees in office between January 1995 and December 1999 breached the Leadership Code
4E	10.10	To consider whether their various failures to carry out their fiduciary duties to the members of the Fund, in failing to carry out a proper commercial analysis of the investment in Macmin N.L., constitutes a breach of the Leadership Code.
4H	8 & 9.1.6	The Trustees repeated failures to perform their fiduciary duty to the members of the Fund, when considered as a protracted course of conduct, amounted to improper conduct. The Commission has recommended they be referred to the Ombudsman Commission for further investigation into potential breaches of the Leadership Code.
9	15.10 (refer 4.2.4(d))	All NPF Trustees who held office between 1st January 1995 and 31st December 1999 should be referred to the Ombudsman Commission to consider whether their failure to ensure NPF implemented proper tendering procedures for the acquisition of motor vehicles, constituted a breach of the Leadership Code.
9	14	The NPF Trustees, however, had a fiduciary duty to ensure the Fund was well managed and its finances were protected. They failed this duty totally. The abuses were so noticeable that the Trustees' failure to notice and address it, constitutes a breach of their fiduciary duty to the members of the Fund and may constitute a breach of the Leadership Code by all Trustees who held office during the period under review.

REFERRAL TO THE AUSTRALIAN INVESTMENT AND SECURITIES COMMISSION

REFERRAL MADE AT	PARAGRAPH NO'S	DETAILS
4B	5.12; 8.1.4	Share ramping

MORRIS ALALUKU

REFERRAL TO THE OMBUDSMAN COMMISSION

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
5	7.8(b)	Breaching the Leadership Code by signing Waigani land documents.

JOE ALOPEA

REFERRAL TO THE COMMISSIONER OF POLICE

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
9	13.6.1.5(c)	The relationship between Messrs Alopea and Wanji was criminal in nature. Mr. Wanji received more than K11,280 from which he personally benefited. Messrs Alopea and Wanji should be referred to the Commissioner for Police for investigation.

PERE ANERE

REFERRAL TO THE COMMISSIONER OF POLICE

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
9	13.8.5(d)	The Commission considers that there is sufficient evidence of criminal conduct and recommends his referral to the Commissioner for Police for further investigation as to whether the offence of obtaining money by false pretence or by fraud or conspiracy to defraud has been committed.

KANARO AVA

REFERRAL TO THE COMMISSIONER OF POLICE

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
9	13.8.5(d)	The Commission considers that there is sufficient evidence of criminal conduct and recommends his referral to the Commissioner for Police for further investigation as to whether the offence of obtaining money by false pretence or by fraud or conspiracy to defraud has been committed.

BROWN BAI

REFERRAL TO THE OMBUDSMAN COMMISSION

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
4B	8.9.3(b)(i) & (ii)	(i) as Chairman, failing to reject Mr Skate's improper direction to stand down as Chairman in favour of Mr Maladina. (ii) as a Trustee, after stepping down as Chairman, for failing to attend any meeting of the Board. By deliberately absenting himself from Board meetings, he failed to perform his fiduciary duty as a Trustee to members of the Fund who were entitled to rely on his experience and honest attitude being available at Board meetings during a time when important decisions needed to be made to protect their funds. This amounted to a serious failure of his fiduciary duty to the members of the Fund. He should have either attended meetings to protect their interests or resigned so that another Public Service representative could be appointed to take on this role.

KENNETH BARKER

REFERRED TO THE COMMISSIONER FOR POLICE

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
6	12.3.4.1(c)	To consider charging him with perjury under the Commissions of Inquiry Act in that he:-
		lied on oath regarding the refund of K99,000 to Mr. Jimmy Maladina;
		falsely denied knowledge of payments of K102,300 and K300,000 made by Mr. Jimmy Maladina to PMFNRE Number 1 Trust Account; and
		falsely stated that K60,000 and K690,000 were used to purchase Treasury Bills (see 12.3.4).
6	12.3.4.1(b)	To consider charges for aiding the offence of fraud and any of their offences.

RAY BARREDO

REFERRED TO THE INTERNAL REVENUE COMMISSION

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
4L	5.1	IRC to investigate the tax affairs of Mr Barredo and his management company, Ryansworth Management Limited.

CARTER NEWELL LAWYERS

REFERRED TO THE COMMISSIONER OF POLICE

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
5	32.8.5	Whether this was a payment of K50,000 made as part of the criminal conspiracy to defraud the NPF by means of the Waigani land scam.

DAVID COPLAND

REFERRED TO THE OMBUDSMAN COMMISSION

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
2E	18.1.5; 4.2; 5.10	To investigate possible breaches of the Leadership Code for accepting additional K20 million facility from ANZ without authority of the NPF Board.
4C	22.4; 23.10	Failing to advise of his share holding in Cue when involved in decision-making about NPF's investment in Cue.
9	15.10 (**refer** 4.2.4(d))	Mr. Copland's failure to declare his conflict of interest position during the time the NPF Board was considering purchasing vehicles from Toba Motors and where the only quote was obtained from that company is considered to be improper conduct.

PHILLIP ELUDEME

REFERRED TO THE COMMISSIONER OF POLICE

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
5	4.3.2(c)	Perjury
5	7.2.1.2; 7.2.4	Bribing Minister Viviso Seravo
5		Conspiring to cheat and defraud the NPF
5		Conspiring to cheat and defraud the State over land price cost etc.
5	7.8(a)	Criminal prosecution regarding bribery of Minister Seravo.
5	7.8(e)	Perjury
5	32.2	to investigate possible offences against sections 420 and 413(4) of the *Companies Act 1997*.
5	32.3.2(a)	Perjury

REFERRED TO THE PNG INSTITUTE OF ACCOUNTANTS

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
5	7.8(d)	Unprofessional conduct
5	32.3.2(b)(i)	Unprofessional conduct

REFERRED TO THE INTERNAL REVENUE COMMISSION

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
5	32.3.2(b)(ii)	Possible liability for unpaid taxes
5	**Not stated**	To assess tax payable on the sum of K1.3 million received by Carter Newell on his behalf on the 12th and the 15th May 2000.

HENRY FABILA (deceased)

REFERRAL TO THE POLICE COMMISSIONER

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
2B	13.1	To consider whether charges of criminal conspiracy, attempted fraud or other offences should be brought against him.
2B	13.16(i)	Criminal charges in relation to criminal conspiracy regarding NPF Tower fraud.

5	11.4(j)	Conspiracy in relation to valuation fees.
5	10 - 11.4	Conspiracy to cheat and defraud the NPF by means of excessive valuation fees and sale of Waigani land at exorbitant costs.
6	5.3.6.7(c)	The Commission finds on all the evidence that Mr Fabila was not part of the initial conspiracy which conceived and implemented the fraud however, he had sufficient knowledge of what was going on, including knowledge of a suspicious second acceleration claim and of a suspicious additional payment to Kumagai being recommended to and resolved by the Board. He also knowingly signed at least one false letter, which facilitated the fraud. As managing director he had a duty to strenuously inquire into and seek information on these matters. He failed to do this.
6	5.8.1(c)	(**Transcript pp. 3280-3332**) for being party to all or some of the offences and /or of criminal conspiracy with Mr Jimmy Maladina in relation to any or all of such offences regarding NPF Tower fraud.

REFERRAL TO THE OMBUDSMAN COMMISSION

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
4A	10.10	Misconduct in office due to breach of his fiduciary duty.
5	11.4(k)	Breaching the Leadership Code.

MICHAEL GENE

REFERRAL TO THE OMBUDSMAN COMMISSION

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
4L	9.2	Possible breach of the Leadership Code for requesting funds to investigate Maluk Bay.

RALPH GUISE

REFERRED TO THE COMMISSIONER OF POLICE

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
5	7.8(a)	Criminal prosecution regarding the Waigani land fraud.
5	7.6.1 - 7.6.7	To do with fabricating minutes accepting bribes official corruption, aiding criminal offence.
5	7.6.1 - 7.6.7	Conspiring to cheat and defraud the State over the land price and rent etc.
5	31 - 31.4	Conspiring to cheat and defraud the State over variations of the Waigani land conditions.

REFERRED TO OMBUDSMAN COMMISSION

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
5	7.8(b)	Breaching the Leadership Code

CHRISTOPHER HAIVETA

REFERRED TO THE OMBUDSMAN COMMISSION

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
1	14.4.4.1	In relation to failing to obtain DoF or other expert advice before approving the K1 million trade in equities.
3B	2.1.4.1	Mr. Haiveta's request for K1,600 was improper and he should be referred to the Ombudsman Commission to consider taking action for a breach of the Leadership Code.
4D	4.6	Approving NPF purchase of STC and CXL shares from POSF and DFRBF without expert advice in breach of the Leadership Code.

GARY JEWISS

REFERRED TO THE COMMISSIONER FOR POLICE

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
4L	7.5.7(h) & 7.6.1	Perjury - also see **Transcript pp. 5550-75**.

REFERRED TO THE BANK OF PNG

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
4L	11.1	To investigate possible breaches of the Central Bank and Taxation regulations (eg foreign contractors withholding tax and foreign exchange control).

REFERRED TO THE INTERNAL REVENUE COMMISSION

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
4L	11.1	To investigate possible breaches of the Central Bank and Taxation regulations (eg foreign contractors withholding tax and foreign exchange control) by Mr Jewiss and Garry Jewiss Ltd.

ROBERT KAUL

REFERRED TO THE OMBUDSMAN COMMISSION

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
2E	18.1.5; 4.2; 5.10	To investigate possible breaches of the Leadership Code for obtaining additional K20 million facility from ANZ without the Board's authority.
4C	22.4; 23.10	Failing to advise of his share holding in Cue when involved in decision-making about NPF's investment in Cue.
3B	2.1.4.1; 3.1; 3.9	Breaching fiduciary duty by granting Mr Haiveta's request for a payment of K1,600
4A	10.10	As a Managing Director during the relevant period Mr Kaul is referred for misconduct in office due to his breach of fiduciary duty to the members.
4E	10.10	For misconduct in office due to his breach of fiduciary duty to the members in his lack of proper management of the purchase and sale of shares.

9	9.7.1(b) & (c)	Agreeing to the payment of K1,600 requested by Minister Haiveta amounted to improper conduct and was a breach of the Leadership Code.

REFERRED TO THE AUSTRALIAN SECURITIES AND INVESTMENT COMMISSION

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
4B	8.9.1	To consider whether he breached Australian Corporate Law regarding the possible manipulation of share prices

REFERRED TO THE CONTROLLER OF FOREIGN EXCHANGE BPNG

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
4E	10.10	To consider whether he should be prosecuted for breaching the Foreign Exchange Regulations regarding the use of NPF's account with Wilson HTM to purchase shares in Macmin.

SIRI KOAE

REFERRED TO THE COMMISSIONER FOR POLICE

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
9	13.8.5(e)	Further investigations by Police. Mr. Koae's dealings with Bubia.

KAZU KOBAYASHI

REFERRED TO THE COMMISSIONER FOR POLICE

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
6	5.8.1(e)	For being party to all or some of Mr Maladina's offences and/or of criminal conspiracy with Mr. Jimmy Maladina in relation to any or all of such offences relating to the NPF Tower fraud.

MARIANO LAKAE

REFERRED TO COMMISSIONER FOR POLICE

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
5	10 - 11.4; 19.9.2	Conspiring to cheat and defraud the NPF by falsifying the valuation and claiming an exorbitant fee.
5	11.4(j)	Conspiracy in relation to valuation fees
5	19.6.5(c)	Offences against the Criminal Code of PNG
5	19.9.2(c)(i)	Criminal prosecution

REFERRED TO THE PNG VALUERS REGISTRATION BOARD

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
5	19.9.2(c)(iii)	To examine whether his conduct was unprofessional

IAIRO LASARO

REFERRED TO THE OMBUDSMAN COMMISSION

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
1	4.4.3.1	In relation to the termination of Mr Kaul's appointment and the appointment of Mr Fabila as Managing Director.
1	4.7.6.2(g)	In relation to the appointment of Mr Maladina as a Trustee and then as Chairman of the NPF Board.
3B	5.1; 5.9	His role in NPF advertising in The Independent / The World Report fiasco.
10	11.1.7(d)	To determine whether he has committed an offence against the Leadership Code.

HERMAN LEAHY

REFERRED TO THE PNG LAW SOCIETY

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
2C	4.2.14(f); 6.2.3; 6.10;	Unprofessional conduct.
2B	13.16(j)	Unprofessional conduct.
2C	4.2.13.4; 4.2.14; & 6.10	Signing false minutes of 9 October 1997.
5	19.9.2(c)(ii)	Unprofessional conduct
6	5.8.3	For participating in the NPF Tower fraud.
9	5.14.5(f)	The approval by a new Board resolution on 22nd August 1997, which created a substitute minute of the meeting of 23rd February 1996, was intended to mislead the Ombudsman Commission. Mr. Herman Leahy should be referred to the Law Society of PNG to consider whether disciplinary measures should be imposed.

REFERRED TO THE COMMISSIONER FOR POLICE

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
2B	9.4.1	Criminal prosecution for falsely certifying 2 resolutions passed at 5/5/98 meeting.
2B	13.1	Police to consider whether charges of criminal conspiracy, attempted fraud or other offences should be brought against them.
2B	13.16(i)	Criminal charges
5	11.4(j)	Conspiracy in relation to valuation fees
5	19.9.2(c)(i)	Criminal prosecution regarding the Waigani land fraud.
5	10-11.4; 17; 19	Conspiracy to cheat and defraud the NPF by means of excessive valuation fees and sale of Waigani land at exorbitant costs.

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
5	10-11.4; 17; 19	Cheating and defrauding the NPF – in relation to money acquired through the valuation fees for Waigani land and the NPF Tower.
5	21 - 21.3.6	Falsifying documents (Board minutes) with intent to facilitate a crime.
6	5.3.6.7 (a) & (b)	Should be referred to the Commissioner for Police to determine whether criminal charges of fraud, criminal conspiracy and or other charges should be brought against them.
9	9.3.5(f) & (g)	The evidence of criminal interest and association coupled with the evidence of similar conduct in the NPF Tower fraud involving the same persons strongly suggests that there was a criminal conspiracy to cheat and defraud the NPF involving Messrs Maladina, Leahy and Yapane which was successfully implemented. They should be referred to the Commissioner for Police to consider whether criminal charges should be laid against them.
9	**15.1 (refer paragraph 9.3-9.3.5 - Criminal Conspiracy)**	Messrs Maladina, Leahy and Yapane committed the crime of conspiracy as well as the actual offence of cheating and defrauding the NPF in relation to the contract with Yapane and Associates for office refurbishment and should be referred to the Commissioner for Police for investigation.
6	5.8.1(b)	For being party to all or some of the mentioned offences and/or of criminal conspiracy with Mr. Jimmy Maladina in relation to any or all of such offences.
9	**15.1 (refer paragraph 5.10 - Criminal Conspiracy)**	Mr Leahy's interference in the tendering process for NPF's property management contracts in order to ensure PMFNRE was granted the management rights over the NPF Tower, without competing tenders, was grossly improper and was possibly part of the NPF Tower criminal conspiracy entered into by Messrs Maladina, O'Neill, Barker, O'Sullivan and himself, to defraud the NPF. This matter should be referred to the Commissioner for Police to consider whether criminal charges should be laid.
9	**15.1 (refer paragraphs 8.8.1.1 & 8.8.2)**	Mr Leahy falsified the minutes of an NPF Board meeting in February 1999 which increased his financial delegation to K50,000. He then authorised payments to Ram of just below K50,000. This conduct may be criminal and should be referred to the Commissioner for Police for investigation.

DAVID LIGHTFOOT

REFERRED TO THE COMMISSIONER FOR POLICE

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
5	32.5.9(g)	Whether an offence against Section 122 of the *Criminal Code Act* has been committed
6	5.8.1(g)	To consider whether there is criminal culpability in relation to the fraud against the NPF such as to warrant charging him with an offence against the Criminal Code.

JIMMY MALADINA

REFERRED TO THE COMMISSIONER OF POLICE

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
2B	13.16(i)	Criminal charges
5	7.8(a)	Criminal prosecution
5	11.4(j)	Conspiracy in relation to valuation fees
5	19.6.5(c)	Offences against the Criminal Code of PNG
5	19.9.2(c)(i)	Criminal prosecution
5	31.4	Whether criminal charges should be laid in respect of issuing the title for Waim 92.
5	32.5.9(g)	Whether an offence against Section 122 of the *Criminal Code Act* has been committed
5	10 - 11.4	Conspiracy to cheat and defraud the NPF by means of excessive valuation fees and sale of Waigani land at exorbitant costs.
5	10 - 11.4	Cheating and defrauding the NPF - in relation to money acquired through the valuation fees for Waigani land and the NPF Tower.
5	7.2.4	Fabricating documents
5	4.3; 25.4	Suborning witnesses Eludeme, Ketan and Patterson
5	7.2.4; 7.6 - 7.6.7	Conspiring to cheat and defraud the State by corruptly obtaining a reduction in the Waigani land purchase price and payment of annual rent instalments etc.
5	29	Conspiring to cheat and defraud the State over the variation of the Waigani land conditions
5	7.6.7; 32.8.6.3; 32.8.12.1	Bribing Minister's Seravo and Pok
9	9.3.5(g)	The evidence of criminal interest and association coupled with the evidence of similar conduct in the NPF Tower fraud involving the same persons strongly suggests that there was a criminal conspiracy to cheat and defraud the NPF involving Messrs Maladina, Leahy and Yapane which was successfully implemented. They should be referred to the Commissioner for Police to consider whether criminal charges should be laid against them.
9	15.1 **(refer** paragraph 9.3-9.3.5 **- Criminal Conspiracy)**	Messrs Maladina, Leahy and Yapane committed the crime of conspiracy as well as the actual offence of cheating and defrauding the NPF in relation to the contract with Yapane and Associates for office refurbishment and should be referred to the Commissioner for Police for investigation.
4A	8.2(a-d)	The Commission finds that Mr. Jimmy Maladina's conduct is, prima facie, criminal in nature. Mr. Jimmy Maladina was grossly negligent in his role as a Trustee and on the evidence available to this Commission, it could not seriously be argued that Mr. Jimmy Maladina's actions were in *"good faith"*. He is then, personally liable to the NPF for losses caused by his breach of trust.
6	5.8.1(a)	For investigation whether he should be charged with criminal offences.

REFERRED TO THE PNG LAW SOCIETY

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
2B	13.16(j)	Disciplinary measures
5	7.8(c)	Unprofessional conduct
5	19.9.2(c)(ii)	Unprofessional conduct
6	5.8.3	For their participation in the NPF Tower fraud.

REFERRED TO THE OMBUDSMAN COMMISSION

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
4A	10.10 (**refer to paragraphs** 8.2(a-d))	For retaining the benefit of share options and directors fees for himself.
5	7.8(b)	Breaching the Leadership Code
5	7.8(b)	Breaching the Leadership Code
5	19.9.2(c)(iv)	Breaches against the Leadership Code
5	**Not stated**	For repeated breaches of the Leadership Code
6	5.8.2(a)	To consider breaches of the Leadership Code in relation to their activities concerning the fraud against the NPF and related activities.
9	15.1 **(refer paragraphs** 9.3.5)	The fact that Mr. Jimmy Maladina demanded and received at least K20,000 of the fees advanced to Mr. Yapane for work, which was not yet done in the NPF office, is considered to be grossly improper. He should be referred to the Ombudsman Commission.

REFERRED TO THE INTERNAL REVENUE COMMISSION

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
5	Not stated	To assess tax payable on the share of valuation fees paid to him in cash
5	Not stated	To assess tax liability in respect of cash and other suspicious payments dispersed out of Carter Newell accounts from money received from valuation fees and WCC Ltd share sale proceeds whether for the benefit of Mr Maladina or other recipients.

MAX NOAH

REFERRED TO THE COMMISSIONER OF POLICE

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
9	13.8.5(d)	Whether the offence of obtaining money by false pretence or by fraud or conspiracy to defraud has been committed.

REX PAKI

REFERRED TO THE COMMISSIONER OF POLICE

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
6	11.5.4.1(a) & (b)	To investigate the possible criminal offence of K87,397.30 that was paid to Ram Business Consultants on 4th August 1999 from Carter Newell Trust which was sourced from the NPF Tower fraud money.
6	11.6.3.5(b)	To investigate whether he committed perjury by denying his trip to Cairns was paid for by Mr. Jimmy Maladina.

PAPUA NEW GUINEA INSTITUTE OF ACCOUNTANTS

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
6	10.3.8.3(c)	Should be referred to the Papua New Guinea Institute of Accountants for investigation as to whether the fees obtained were excessive for the work said to be done and whether their conduct as members of the Institute of Accountants in these regards has been unprofessional.
6	11.3.1.3	Ram Business Consultants received a benefit of K87,397.30 from the Tower fraud. Its principals Mr. Rex Pake and Mr. Ango Wangatau be referred to the Commissioner of Police to consider whether criminal charges should be laid and to the Institute of Accountants to consider disciplinary action for professional misconduct.

RIMBINK PATO

REFERRED TO THE OMBUDSMAN COMMISSION

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
2B	**17.19(d); 20.8 and 20.9**	Consider his liability for breaching the Leadership Code and his attempt, as head of Finance Pacific, to gain control of NPF's assets.

BARBARA PERKS

REFERRED TO THE COMMISSIONER FOR POLICE

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
5	32.5.9(g)	Whether an offence against Section 122 of the *Criminal Code Act* has been committed
6	5.8.1(h)	To consider whether there is criminal culpability in relation to the fraud against the NPF such as to warrant charging her with an offence against the Criminal Code.

FABIAN POK

REFERRED TO THE OMBUDSMAN COMMISSION

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
3B	2.4; 3.1; 3.9	Whether he breached the Leadership Code by requesting NPF contribute to the Aitape Disaster Appeal.

REFERRED TO THE COMMISSIONER OF POLICE

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
5	31.4	Whether criminal charges should be laid in respect of issuing the title for Waim 92.
5	31 - 31.4	Conspiring to cheat and defraud the State over the variation of the Waigani land conditions
5	32.8.4	Accepting bribes from Jimmy Maladina to vary conditions.

NATHANIEL POIYA

REFERRED TO COMMISSIONER FOR POLICE

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
6		Accepting a bribe and conspiracy to cheat and defraud the NPF.

REFERRED TO THE OMBUDSMAN COMMISSION

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
6	12.3.2.10(f)	The benefit received by Trustee Poiya was improper and the Commission recommends that he be referred to the Ombudsman to consider whether there had been a breach of the Leadership Code.

ANGELINA SARIMAN

REFERRED TO THE COMMISSIONER FOR POLICE

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
2B	13.16(i)	Criminal charges regarding the sale of the NPF Tower to PNGHB.
5	10 - 11.4; 17; 19	Conspiracy to cheat and defraud the NPF by means of excessive valuation fees and sale of Waigani land at exorbitant costs.
5	10 - 11.4; 17; 19	Cheating and defrauding the NPF - in relation to money acquired through the valuation fees for Waigani land and the NPF Tower.

REFERRED TO THE PNG LAW SOCIETY

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
2B	13.16(j)	Unprofessional conduct
5	19.9.2(c)(ii)	Unprofessional conduct

BEN SEMOS

REFERRED TO THE AUSTRALIAN SECURITIES AND INVESTMENT COMMISSION

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
4B	8.9.2	Breaching Australian Corporate Law and failing to advise client not to invest in HPL.
4D	8.3.2	*'Fixing'* share price

VIVISO SERAVO

REFERRED TO THE COMMISSIONER OF POLICE

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
5	7.8(a)	Criminal prosecution
5	7.1; 7.2 – 7.2.4	Accepting bribe from Philip Eludeme
5	32.8.6.3	Accepting bribe from Jimmy Maladina
5	7.1; 7.6 - 7.6.7	Conspiring to cheat and defraud the State over the Waigani land price and rent

REFERRED TO THE OMBUDSMAN COMMISSION

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
5	7.8(b)	Breaching the Leadership Code in his capacity as Minister for Lands.

WILLIAM SKATE

REFERRED TO THE COMMISSIONER OF POLICE

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
9	15.9 **(refer** 7.7.12(e) **&** 7.7.9	There is evidence that the security contract awarded to Mt Tapi Brothers was because of outside pressures possibly involving Mr Skate. This matter should be referred to the Commissioner for Police and the Ombudsman Commission for further investigation.

REFERRED TO THE OMBUDSMAN COMMISSION

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
1	4.4.3.1	In relation to the termination of Mr Kaul's appointment and the appointment of Mr Fabila as Managing Director.
1	4.7.6.2(g)	In relation to the appointment of Mr Maladina as a Trustee and then as Chairman of the NPF Board.
3B	2.4(d); 3.1; 3.9	Whether he breached the Leadership Code by requesting NPF contribute to the Prime Minister's Celebrity walk and banquet.
9	15.9 **(refer** 7.7.12(e) **&** 7.7.9	There is evidence that the security contract awarded to Mt Tapi Brothers was because of outside pressures possibly involving Mr Skate. This matter should be referred to the Commissioner for Police and the Ombudsman Commission for further investigation.
9	7.7.12(e)	The action by Prime Minister Skate in telephoning Mrs Marjen on behalf of MTB was improper conduct. The Commission recommends that the constituting authority refer this matter to the Ombudsman Commission to investigate Mr. Skate's conduct and his possible links to MTB security to consider possible breaches of the Leadership Code.

MAURICE SULLIVAN

REFERRED TO THE COMMISSIONER OF POLICE

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
6	12.3.4.1(b)	To consider charges for aiding the offence of fraud and any other offences.
2B	13.1	Police to consider whether charges of criminal conspiracy, attempted fraud or other offences should be brought against him.
2B	13.16(i)	Criminal charges.

SHUICHI TANAGUCHI

REFERRED TO THE COMMISSIONER OF POLICE

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
6	5.8.1(d)	For being party to all or some of the mentioned offences and/or of criminal conspiracy with Mr. Jimmy Maladina in relation to any or all of such offences.

IORI VERAGA

REFERRED TO THE COMMISSIONER OF POLICE

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
5	10 - 11.4; 19.9.2	Conspiring to cheat and defraud the NPF by falsifying the valuation and claiming an exorbitant fee.
5	11.4(j)	Conspiracy in relation to valuation fees
5	19.6.5(c)	Offences against the Criminal Code of PNG
5	19.9.2(c)(i)	Criminal prosecution

REFERRED TO THE PNG VALUERS REGISTRATION BOARD

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
5	19.9.2(c)(iii)	To examine whether his conduct was unprofessional

ANGO WANGATAU

REFERRED TO THE OMBUDSMAN COMMISSION

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
4L	9.2	Possible breach of the Leadership Code for requesting funds to investigate Maluk Bay.

REFERRED TO THE COMMISSIONER OF POLICE

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
6	11.5.4.1(a)& (b)	The sum of K87,397.30 paid to Ram Business Consultants on 4th August 1999 from Carter Newell Trust was sourced from NPF Tower fraud money.

REFERRED TO THE PNG INSTITUTE OF ACCOUNTANTS

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
6	10.3.8.3(c)	Should be referred to the Papua New Guinea Institute of Accountants for investigation as to whether the fees obtained were excessive for the work said to be done and whether their conduct as members of the Institute of Accountants in these regards has been unprofessional.

SIMON WANJI

REFERRED TO THE COMMISSIONER OF POLICE

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
9	13.6.1.5(c)	The relationship between Messrs Alopea and Wanji was criminal in nature. Mr. Wanji received more than K11,280 from which he personally benefited. Messrs Alopea and Wanji should be referred to the Commissioner for Police for investigation.
9	13.8.5(d)	The Commission considers that there is sufficient evidence of criminal conduct and recommends referral of the following persons to the Commissioner for Police for further investigation as to whether the offence of obtaining money by false pretence or by fraud or conspiracy to defraud has been committed.
9	13.6.2.1(a-c)	The Commission considers that there is sufficient evidence of criminal offences of the nature of conspiracy to defraud. The benefits Mr. Wanji received from the suppliers were in fact *"bribes"* or *"commissions"* and not loans. Further investigations by Police. Suspicious payments made by suppliers to Mr. Wanji and Mr. Wanji's dealings with Laiks Printing and Bubia.
9	15.1 **(refer paragraph 13)**	Mr Simon Wanji committed offences of conspiracy to cheat and defraud the NPF in association with the suppliers of office stationery and supplied.
9	13.6.1.2	Mr. Wanji's conduct in his dealings with Laiks Printing, a company in which he was a shareholder, director and a cheque signatory, was improper. He benefited from NPF when he obtained quotes from Laiks Printing and recommended Laiks Printing to supply stationery and office supplies to NPF. His interest in Laiks Printing was not disclosed to NPF. This Commission considers Mr. Wanji's action's as criminal. He should be referred to the Commissioner for Police for further investigation.

WILSON HTM

REFERRED TO THE FOREIGN EXCHANGE CONTROLLER - BPNG

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
4E	10.10	To consider whether it should be prosecuted for breaching the Foreign Exchange Regulations over the use of NPF's account with Wilson HTM to purchase shares in Macmin through its agent Mr Ben Semos.

REFERRED TO THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
4B	8.9.2	Breaching Australian Corporate Law and failing to advise client not to invest in HPL.
4D	8.3.2	*'Fixing'* share price

NOEL WRIGHT

REFERRED TO THE CONTROLLER OF FOREIGN EXCHANGE

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
4N	11.2.4 (refer 5.5 & 5.6)	Payment of AUD$40,282.65 from Wilson HTM share Trading account in Australia without BPNG and NPF Board approval. This transaction was authorised by Mr. Noel Wright and in breach of the Bank of Papua New Guinea regulations. This payment was in breach of Mr. Noel Wright's duty to NPF and is an offence.
4E	10.10	To consider whether he should be prosecuted for breaching the Foreign Exchange Regulations in relation to the use of NPF's account with Wilson HTM - used to purchase shares in Macmin.

REFERRED TO THE AUSTRALIAN SECURITIES AND INVESTMENT COMMISSION

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
4B	6.10(b)	Possible share ramping
4B	6.1	Possible share ramping
4B	8.9.1	To consider whether he has breached Australian Corporate Law regarding possible manipulation of share prices

KEN YAPANE

REFERRED TO THE COMMISSIONER OF POLICE

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
9	**9.3.5 (e) & (f)**	The evidence of criminal interest and association coupled with the evidence of similar conduct in the NPF Tower fraud involving the same persons, strongly suggests that there was a criminal conspiracy to cheat and defraud the NPF, regarding office refurbishment, involving Messrs Maladina, Leahy and Yapane, which was successfully implemented. They should be referred to the Commissioner for Police to consider whether criminal charges should be laid against them.
6	5.8.1(f)	For being party to all or some of Mr Maladina's offences and/or of criminal conspiracy with Mr. Jimmy Maladina in relation to any or all of such offences regarding the NPF Tower fraud.
6	8.5(d)	To consider whether he should be charged with a criminal offence in relation to personally receiving K77,792.13.
6	8.5(e)	For being party to the manufacturing and production of false documents intended to interfere with the work of the Commission of Inquiry.

PART II

DIRECT REFERRALS BY THE COMMISSION

CARTER NEWELL LAWYERS FILE NO 970625

REFERRED TO THE COMMISSIONER OF POLICE

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
5	**Transcript pp.** 10476-10498 (20/08/02)	Fabricating evidence - Section 122 of the Criminal Code.

REFERRED TO THE PNG LAW SOCIETY

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
5	**Transcript pp.** 10476-10498 (20/08/02)	Whether to instigate a full audit of Carter Newell Lawyers accounts of records.

PHILIP ELUDEME

REFERRED TO THE COMMISSIONER OF POLICE

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
5	4.3; 32.3 - 32.3.2 **Transcript pp.** 10496-8 **(20/08/02)**	Perjury

REFERRED TO THE PNG INSTITUTE OF ACCOUNTANTS

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
5	7.8(d)	Unprofessional conduct
5	32.3.2(b)(i)	Unprofessional conduct

SIMON KETAN

REFERRED TO THE COMMISSIONER OF POLICE

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
5	**Transcript pp.** 6440-2 (15/08/01)	Fabricating and or using fabricated documents to mislead the Commission of Inquiry.

REFERRED TO THE PNG LAW SOCIETY

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
5		Unprofessional conduct

DAVID LIGHTFOOT

REFERRED TO THE COMMISSIONER OF POLICE

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
5	**Transcript pp.** **10476-10498** (29/08/2002)	Fabricating and or using fabricated documents to mislead the Commission of Inquiry.

REFERRED TO THE PNG LAW SOCIETY

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
5	**Transcript pp.** **10476-10498** (29/08/2002)	Unprofessional conduct.

JIMMY MALADINA

REFERRED TO THE COMMISSIONER OF POLICE

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
5	**Transcript pp.** **10475-10498**	Suborning witnesses
		Fabricating documents

REFERRED TO THE LAWYERS STATUTORY COMMITTEE

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
5		Unprofessional conduct.

JACK PATTERSON

REFERRED TO THE COMMISSIONER OF POLICE

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
5	**Transcript pp.** **4876-4881** (29/01/01)	Fabricating and or using fabricated documents to mislead the Commission of Inquiry.

REFERRED TO THE PNG LAW SOCIETY

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
5		Unprofessional conduct.

BARBARA PERKS

REFERRED TO THE COMMISSIONER OF POLICE

REFERRAL MADE AT	PARAGRAPH #'S	DETAILS
5	**Transcript pp.10492** **(20/08/02)**	Perjury.
5	**Transcript pp.10492** **(20/08/02)**	Fabricating and or using fabricated documents to mislead the Commission of Inquiry.

15.19 Term of Reference 4

> ***"Whether in connection with any failure to act in good faith, any Trustee or officer or employee of the Fund or any other person should be held personally responsible for decisions and outcomes"***

If a Trustee fails in a fiduciary duty or an officer fails a Common Law duty to the NPF Board, that person may face personal liability for any loss caused by that failure of duty depending upon the circumstances. It may be a defence to an action claiming personal liability brought by the NPF Board or members of the Fund, if the Trustee or officer can establish that he or she acted in good faith.

Throughout the Schedules, the Commission has found many, many instances where management as a whole, individual officers, the Trustees as a whole and individual Trustees, were in breach of fiduciary or Common Law duty. The Commission has noted that fact. In instances where the failure of duty has led to loss suffered by the Fund and by its members, this is pointed out by the Commission in the text and in the findings.

The Commission has not however proceeded to determine whether or not there is personal liability or whether a defence of *"acting in good faith"* would succeed. This matter is left for the current NPF Board, individual members and the membership as a *"class"* to consider.

There may be circumstances where it would be appropriate to institute court proceedings but it is not the Commission's role to make findings about personal liability.

15.20 Term of Reference 5

> ***"Whether, under the Constitution or any Act, the responsible Government agencies, including the Department of Finance & Treasury and the Auditor General and failed in their regulatory, supervisory or reporting responsibilities, and what was the extent of this failure"***

This matter has been fully reported in **Schedule 1**, **paragraph 15** and it is outlined in **Executive Summary 1, paragraphs 9 and 15.**

By legislation, the NPF was obliged to invest only in accordance with the investment guidelines and had strict obligations to make quarterly and annual reports and to maintain and work to a 5 year plan updated annually. It failed to perform on all these obligations throughout the 5 year period under review. The fact that these failures persisted unrectified for 5 years enabled the NPF to pursue its reckless investment policies to the brink of financial ruin and somewhat over the brink, in that it suffered losses in excess of K150 million.

No agency of Government accepted the clear responsibility to supervise, report on and enforce NPF's compliance with its planning, investing and reporting obligations.

15.20.1 Department of Finance

Under the *PF(M) Act*, the DoF was not obliged to perform this role in relation to the NPF (because it was not a *"public body"* for the purpose) unless so directed by the Minister, and no such direction was given.

The DoF did, however, have an obligation to make recommendations to the Minister when required by the Minister to do so. This included the duty to give the Minister sound, analytical, expert advice on applications for approval by NPF. In most cases it conspicuously failed its duty in this regard. Mostly, its advice to the Minister consisted of parrot-like summaries of NPF's submissions, lacking any critical analysis. Evidence from senior DoF officers showed that DoF lacked the professional expertise to provide expert advice on investments and it failed to brief this role out to independent expert consultants.

Under Section 64 of the *PF(M) Act*, the Secretary of the DoF was empowered to oblige the NPF (and other public bodies) to report to him on the state of their finances. Under Section 64, the Secretary could instigate an investigation into its affairs. Mr Brown Bai utilised this section with great effect in 1999 by commissioning the Finance Inspectors' inquiry and report. Prior to this, however, this effective tool, which could have been the salvation of NPF, was left unused.

15.20.2 The Minister

The Minister for Finance was the Minister responsible for NPF and under the *PF(M) Act*, was Minister responsible for monitoring all public bodies which for some (but not all) purposes, included the NPF. The Minister was also empowered to issue guidelines on investments and to give broad policy directions. Sir Julius Chan promulgated carefully considered and appropriate guidelines in 1993.

After that, the power was unused except for one hasty and ill-advised variation by Minister Haiveta in 1996, which allowed NPF to acquire equities in companies listed on registered stock exchanges up to K1 million per transaction, without the need to seek his approval. This opened the door to a massive increase in investments in equities in a series of less than one million Kina transactions. Mr Haiveta sought no expert advice before making this decision (**Schedule 1, paragraphs** **22.3.9.1**, **22.3.10.1**, **Executive Summary, paragraph 15.12**).

15.20.3 Accounts and audit obligations

The obligations and the breakdown in their performance are briefly described in **Executive Summary 1** at **paragraph 1** and fully reported in **Schedule 1** **paragraph 15**. Because NPF failed to present its annual reports from 1997 onwards, the Auditor General was unable to perform the annual audit for presentation to the Minister and tabling in the National Parliament. This was a complete systemic breakdown from 1997 onwards. The Commission's finding at **Schedule 1, paragraph 15.4.3** are repeated in **Executive Summary, paragraph 9.8**.

15.21 Term of Reference 6 – Structural Reforms

> ***"Whether the present reporting, monitoring and supervisory regime is adequate and whether any, and if so what, structural reforms should be implemented"***

The Commission was asked to report upon the adequacy of NPF's reporting, monitoring and supervisory regime under the *NPF Act* and has done so at **paragraphs** **21** **and** **22** **of Schedule 1**, which are summarised at **Executive Summary 1, paragraph 15**. After the completion of the Commission's inquiries and public hearings into structural matters were completed, the *Superannuation Act 2000*, was brought into force. The NPF has registered under the new *Act* as Nasfund and the *NPF Act* has been repealed.

The Commission has nevertheless, published its report about structural weaknesses and problems under the *NPF Act* and its recommendations for reform, which had been worked up prior to the coming into force of the new Act. This approach has validity, partly because some of the previous weaknesses and problems may still persist and our findings may therefore have direct relevance. Also, in many ways, the NPF's problems were not caused by weaknesses in the formal structure established under the legislation and directions made under it.

The problems were mainly caused by the way the NPF was able to ignore and disobey the clear structural requirements - regarding such things as its investment policies and reporting obligations and there was no agency to monitor its non-compliance. The effectiveness of the *Superannuation Act 2000*, will to a large extent depend upon whether an effective monitoring and enforcement agency is put in place.

Throughout the Schedules to this report, the Commission has pointed to weaknesses caused by the power of the Minister over some of NPF's affairs and occasional inappropriate intervention. Other weaknesses described include the inadequacies of the NPF Board of Trustees and the lack of an effective supervision and monitoring body.

The Commission's recommendations are discussed and recorded fully in **paragraphs 21 and 22 of Schedule 1.** In **Executive Summary 1, paragraphs 15.5 to 15.34** is a full list of the Commission's recommendations for structural reform.

In general terms, the major recommendations are, in essence, to:-

(a) Remove the NPF from the detailed control and influence of the Minister and the DoF, as it is a private superannuation fund;

(b) Reduce the degree of external control over the management of NPF's affairs and investments but increase the capacity of management;

(c) Vest the control in a better-qualified Board of Trustees;

(d) Establish the BPNG as the external Regulator of NPF and give it the staff and powers to regulate effectively;

(e) For matters still requiring imposition of external controls or guidelines the necessary powers to monitor and control should be transferred from the Minister and DoF to the Regulator (the BPNG).

(f) In order to ensure better qualified Trustees:--

(i) remove all political interference from the selection and appointments process and vest power of appointment in specified organisations of employers and employees with all appointments to the Board and senior management to be approved as fit and proper persons by the Regulator.

(ii) Take active measures to help Trustees understand and perform their roles and to understand the nature of their fiduciary duty to members of the Fund. These measures should include detailed orientation or new appointees, a hand book or manual and seminars on essential aspects of trustees' functions.

(g) Strengthen the accounting and reporting requirements and require the Regulator to accept responsibility to monitor and enforce compliance.

Trustees need such help in order to understand such things as the principles of investment, the relationship between trustees and management, the nature of fiduciary duty, personal liability, the structure of NPF, benefits for members.

(h) Provide for prudential investment guidelines to be promulgated and enforced by the Regulator.

(i) Enable NPF to appoint professional fund managers onto the Board of NPF or, preferably, to brief investment management to a firm of professional fund managers, which would be obliged to act within the prudential guidelines promulgated by the Regulator and within policy directions of the Board.

(j) Strengthen and facilitate two-way communication between members and management so that an active and informed membership can find ways to monitor the conduct and performance of management and to monitor the Fund's investment policies and strategies.

16. CONCLUDING COMMENTS

To a very large extent the crisis which befell the NPF was caused by a dramatic departure from the normal prudential guidelines applicable to superannuation funds, which had been spelled out explicitly in the 1993 Investment Guidelines. The reasons why this occurred lay in the personalities of the Fund's chairmen, trustees and managers in 1996 to 1999, the reckless high risk investment strategy they pursued and the fact that they financed the investments with borrowed funds. When the inevitable down turn in economic conditions occurred in 1997-1998 NPF was trapped.

The rapid fall in the value of its equities meant more and more scrip needed to be pledged to the banks as security for the loans. As interest rates rose and the value of the Kina fell NPF's interest rate burden, of over K1 million per month became unbearable. Inevitably NPF began to default on its loan agreements with the banks and the banks then required the loans to be reduced. This in turn required NPF's equity assets to be sold off at a time when they had very little value – leading to massive realised losses in the members' assets. Well over K150 million of NPF's funds were lost in this way.

This recipe for financial disaster continued un-remedied for so long because NPF management totally failed to meet its reporting obligations and the Board of Trustees failed their fiduciary duties to monitor and control management.

On top of this, when NPF was at its lowest point, those charged with its management, namely its Chairman Mr. Jimmy Maladina its Corporate Secretary/Legal Officer Herman Leahy and to a lesser extent its Managing Director the late Mr. Henry Fabila, were involved in a criminal conspiracy and other criminal conduct. They succeeded in defrauding the NPF of millions of Kina by means of excessive valuation fees, a fraudulent second acceleration claim on the NPF Tower, payment of a currency fluctuation claim on the NPF Tower, which was not legally payable and Mr. Maladina's retention of the proceeds of sale of shares in Vengold.

DoF Secretary Brown Bai started the investigation and clean-up process in early 1999 and the new manager Mr. Rod Mitchell started to impose appropriate financial and managerial controls by mid-year. NPF then quickly began to address its problems. With good advice from PwC and KPMG a rescue package was worked out. This involved government assistance and increased employer contributions. It also involved members foregoing entitlements. NPF then commenced the climb back to profitability, which it appears now to have been achieved as *"Nasfund"* under the regime created by the *Superannuation Act 2000*.

APPENDIX : DATES OF APPOINTMENT GRAPH

Click here to view the graph.