

Ombudsman Commission of Papua New Guinea

STATUS REPORT

**on implementation of
recommendations made in**

**THE FINAL REPORT OF AN INVESTIGATION INTO
THE PURCHASE OF
THE CONSERVATORY, CAIRNS**

**by the Public Officers
Superannuation Fund Board**

DECEMBER 2000

STATUS REPORT

**ON IMPLEMENTATION OF
RECOMMENDATIONS IN**

**THE FINAL REPORT OF AN INVESTIGATION INTO
THE PURCHASE OF**

THE CONSERVATORY, CAIRNS

**BY THE PUBLIC OFFICERS SUPERANNUATION
FUND BOARD**

**AND ASSOCIATED TRANSACTIONS
AND ARRANGEMENTS**

DECEMBER 2000

TABLE OF CONTENTS

1. INTRODUCTION

| | |
|--|---|
| 1.1 PURPOSE OF THIS REPORT | 1 |
| 1.2 RECAP: EXECUTIVE SUMMARY OF THE 1999 REPORT | 1 |
| 1.3 RECOMMENDATIONS FROM THE 1999 REPORT | 3 |
| 1.4 CONSTITUTIONAL FRAMEWORK FOR MAKING RECOMMENDATIONS | 4 |
| 1.5 DUTIES OF RECIPIENTS OF RECOMMENDATIONS | 5 |

2. RECOMMENDATIONS

| | |
|---|----|
| 2.1 TABLE OF RECIPIENTS | 7 |
| 2.2 RESPONSES TO RECOMMENDATIONS | 8 |
| 2.3 TABLE OF RESPONSES TO RECOMMENDATIONS . | 44 |

3. CONCLUSION

| | |
|---|----|
| 3.1 OBSERVATIONS | 47 |
| 3.2 ASSESSMENT OF INDIVIDUAL RECIPIENTS | 48 |
| 3.3 NEXT STEPS | 51 |

1. INTRODUCTION

[1.1] PURPOSE OF THIS REPORT

On 24 November 1999, the Ombudsman Commission finalised its report into the purchase of The Conservatory building in Cairns by the Public Officers Superannuation Fund Board (the POSFB). That report was the result of a four year investigation into the purchase and associated transactions and arrangements. The report was tabled in the Parliament on 1 December 1999.

This present report is a status report on the implementation of the twenty recommendations contained in the 1999 report.

PNG's governmental bodies do not generally have a good track record in implementing recommendations arising from Ombudsman Commission investigations. Too often in the past, the Commission's recommendations have simply been ignored. This has resulted in many of the same sorts of mistakes being made again and again.

The purpose of this status report is to assess how the recipients of the recommendations in the 1999 report have performed. Who has done the right thing and taken the recommendations seriously? Who has put words into action? Who has ignored the recommendations?

[1.2] RECAP: EXECUTIVE SUMMARY OF THE 1999 REPORT

Following are the 1999 report's principal findings, principal recommendations and conclusion.

Principal findings

- **In November 1994, the POSFB purchased The Conservatory for AUD\$18.72 million (then equal to K16.7 million).**
- **Just a week before that, The Conservatory had changed hands for \$9.75 million.**
- **The market value of the property in November 1994 was approximately \$7 million. The POSFB paid a price more than two and a half times the market value.**

- When the POSFB made the decision to purchase The Conservatory, the company that they were negotiating with - controlled by Mr Warren Anderson and Mr Solly Benin of Western Australia - did not own the property.
- The then Managing Director of the POSFB, Mr Ereman Ragi, kept no records of the discussions he had regarding the purchase of The Conservatory.
- No serious consideration was given to the purchase of any property other than The Conservatory. No professional advice was sought regarding the property market in Cairns.
- The POSFB did not obtain an independent valuation of the property. Mr Ragi left it to the vendor to arrange for two "market appraisals". These concluded that The Conservatory was worth \$18 million to \$21 million. Neither appraisal was independent, objective or carried out by a qualified valuer.
- The POSFB made no attempt to negotiate the asking price, even though it increased by K3.7 million in less than four months.
- The members of the Board of the POSF failed, individually and collectively, to subject the proposed purchase to proper scrutiny and assessment. Each Board member had an opportunity to stop the fast passage of the proposal. Each failed to act.
- Mr Ragi and Mr Tau Peruka (who was then Secretary of the Department of Personnel Management, Chairman of the Office Allocation Committee and a member of the Board of the POSF) were subject to political pressure to push through the purchase of the Conservatory.
- Statutory approval for the purchase was given by Sir Julius Chan as Acting Minister for Finance.
- In the opinion of the Ombudsman Commission, the conduct of Sir Julius, the Prime Minister at the time of the purchase, was wrong in that he had a conflict of interests in relation to the purchase of The Conservatory and a concurrent proposal for a major redevelopment in Port Moresby.
- While Sir Julius was involving himself in the decision to purchase The Conservatory, the same people who were selling the property to the POSFB - Mr Anderson and Mr Benn - were involved in negotiations to build a large office complex in Port Moresby on land at Waigani owned by a company in which Sir Julius held 75% of the shares. Sir Julius held the shares in trust for his political party, the People's Progress Party.
- Sir Julius carried out his official duties without declaring his conflict of interests, creating an environment where corruption could easily occur.
- In the opinion of the Ombudsman Commission, Pato Lawyers were also in a conflict of interests. They failed to pass on vital information about the price at which The Conservatory had recently changed hands.
- Eighteen months after signing the contract to purchase The Conservatory, the POSFB entered into a "head lease" with the National Government, whereby the State agreed to lease the entire building for ten years.

- This lease is a contrived arrangement. The State has agreed to pay the POSFB more than three times the market rental; there are no PNG governmental agencies occupying the building; and the building is still less than half tenanted. Even if the building is fully tenanted, the lease will continue to be a significant drain on the National Budget.

Principal recommendations

- The POSFB should immediately make a decision on the viability of commencing civil proceedings to recover money lost as a result of The Conservatory purchase.
- The head lease should be terminated.
- The Minister for Finance and Treasury should issue "show cause" notices to the members of the Board of the POSF responsible for the purchase of The Conservatory.
- Other public officials, including Ereman Ragi who is now the CEO of the Cocoa Board and senior officers of the POSFB, who failed to discharge their professional duties, should have their continuing public employment immediately reviewed; and, if necessary, terminated.
- Pato Lawyers should not be allowed to act for the State or any governmental body in any legal capacity for the next five years.
- The Independent State of Papua New Guinea should not conduct any further business with Mr Anderson or Mr Benn or any company wholly or partly owned by them, separately or together.

Conclusion

The \$11 million premium paid by the POSFB went straight into the hands of foreign property developers. The attempt to claw back some of this money from the State by way of exorbitant rentals under the head lease means that not only POSF contributors, but also the National Government and all the People of Papua New Guinea, continue to pay the price for gross administrative incompetence.

The vast majority of public officials whose job it was to assess, analyse, criticise and above all apply common sense to these kind of proposals, failed miserably.

The findings and recommendations of this report must be addressed and acted upon, to ensure the waste of public funds and the breach of public trust that occurred in this case are not repeated.

[13] RECOMMENDATIONS FROM THE 1999 REPORT

Chapter 14 of the 1999 report made thirty findings of wrong conduct by people involved in the transactions. Chapter 15 of the report then made twenty recommendations based on those findings. The recommendations are intended to ensure that the errors and bad practices, which resulted in the poor investment decision to purchase The Conservatory, do not recur. The

recommendations are targeted at the statutory office-holders and Members of Parliament who have responsibility for the relevant areas of government.

In the week following the finalisation of the report, the Ombudsman Commission wrote to the recipients of the recommendations. We asked all the recipients to give close consideration to the recommendations directed at them. We also requested each recipient to notify the Ombudsman Commission by 31 January 2000 of the steps they proposed to take to give effect to the recommendations. On 3 August 2000 we wrote again to the recipients, reminding them of their obligations. Where we had not received enough information from the recipient, we also requested further details on how our recommendations were being implemented.

The Ombudsman Commission also placed public notices in *The National* and *Post-Courier* newspapers over several days in early August 2000. These notices listed our recommendations and the recipients of those recommendations. The notices advised that we would be preparing a status report.

We have received a variety of responses from the recipients of the recommendations.

[1.4] CONSTITUTIONAL FRAMEWORK FOR MAKING RECOMMENDATIONS

In accordance with Section 219(1)(a) of the *Constitution*, the general purpose of Our investigation was to determine whether any of the conduct under investigation was wrong, or whether any laws or administrative practices were defective. The Commission's opinions on those matters were set out in the findings at Chapter 15 of the report.

If, after making its investigation, the Commission comes to the conclusion that some of the conduct was wrong or that any law or administrative practice was defective, it is authorised to make recommendations. Such recommendations are made under Section 22(2) of the *Organic Law on the Ombudsman Commission*.

Section 22(2) states:

If in any case to which this section applies the Commission is of the opinion that any service, body, person or other appropriate authority should -

- (a) consider the matter further; or
- (b) take certain specific action; or
- (c) modify or cancel any administrative act; or
- (d) alter any regulation or ruling; or
- (e) explain more fully any administrative act; or
- (f) do any other thing,

the Commission shall report its opinion, and the reasons for its opinion, to the Minister responsible for the relevant service, body or person and to the Permanent Head or statutory head responsible for the service, body or person, and may refer the matter to the Public Prosecutor if action by him is warranted and may make such recommendations as it thinks fit.

[15] DUTIES OF RECIPIENTS OF RECOMMENDATIONS

As we pointed out at page 353 of the final report, although our opinions on things that should be done are expressed in the form of "recommendations", recipients have a general obligation to seriously consider and implement them. Section 22(3) of the *Organic Law on the Ombudsman Commission* states:

If the Commission so requests, the responsible Minister, Permanent Head or statutory head, as the case may be, shall, within such period as is specified by the Commission, notify the Commission as to the steps (if any) that he proposes to take to give effect to its recommendations.

We requested the responsible Minister, permanent head or statutory head to notify the Commission in writing of the steps proposed to be taken to give effect to our recommendations. We made this request in the report itself (page 354), in our letter immediately after the report was tabled in Parliament and again in a further letter at the beginning of August.

Accordingly, there was a *duty* imposed on each recipient of a recommendation to notify the Commission of the steps proposed to be taken to give effect to the recommendation. If a recipient proposed not to implement any recommendation, there was a further duty to give cogent and convincing reasons why the recommendation cannot or should not be implemented. This status report evaluates the level of compliance with those duties.

The constitutional duty may be enforced under Section 23 of the *Constitution*. Section 23 states:

23. Sanctions.

(1)Where any provision of a Constitutional Law prohibits or restricts an act, or imposes a duty, then unless a Constitutional Law or an Act of the Parliament provides for the enforcement of that provision the National Court may-

- (a) impose a sentence of imprisonment for a period not exceeding 10 years or a fine not exceeding K10 000.00; or**
- (b) in the absence of any other equally effective remedy under the laws of Papua New Guinea, order *the* making of compensation by a person (including a governmental body) who is in default,**

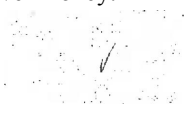
or both, for a breach of the prohibition, restriction or duty, and may make such further order in the circumstances as it thinks proper.

- (2) Where a provision of a Constitutional Law prohibits or restricts an act or imposes a duty, the National Court may, if it thinks it proper to do so, make any order that it thinks proper for preventing or remedying a breach of the prohibition, restriction or duty, and Subsection (1) applies to a failure to comply with the order as if it were a breach of a provision of this Constitution.
- (3) Where the National Court considers it proper to do so, it may include in an order under Subsection (2) an anticipatory order under Subsection (1).

2. RECOMMENDATIONS

[2.1] TABLE OF RECIPIENTS

The following table sets out each recommendation in brief and the recipients of that recommendation.

| Nº. Recommendation | Recipient |
|---|--|
| The POSFB consider civil proceedings to recover money. - | Members of Board of POSF. Attorney-General. |
|  | Minister for Finance and Treasury. Managing Director of POSFB. |
| The head lease for The Conservatory be terminated. | Members of Board of POSF. Attorney-General. Minister for Finance and Treasury. Minister for Justice. Secretary, Dept. of Attorney-General. Managing Director of POSFB. Members of Board of POSF. |
| The POSFB engage a specialist consultant to advise on The Conservatory. | Minister for Finance and Treasury. Managing Director of POSFB. |
| The POSFB urgently introduce due diligence and investment analysis procedures. | Members of Board of POSF. Minister for Finance and Treasury. Managing Director of POSFB. |
| The NEC make a policy decision regarding all future Waigani precinct development | Prhne Minister. |
| The current or future employment of certain public officials be reviewed. | Secretaries of all Departments, or heads of governmental bodies. Ministers responsible for those Departments, or governmental bodies |
| The Cocoa Board review the employment of Ereman Ragi. | Members of the Cocoa Board. Minister for Agriculture & Livestock. |
| The Minister for Finance and Treasury notify Michael Malabag of the intention to terminate his appointment to the POSFB. | Minister for Finance and Treasury. |
| The Minister for Finance and Treasury notify Aloysius Eviaisa of the intention to terminate his appointment to the POSFB. | Minister for Finance and Treasury. |

| | | |
|----|--|--|
| 10 | The Secretary of the Dept. of Finance and Treasury review the employment of Vele Iamo. | Secretary, Dept. of Finance and Treasury. Minister for Finance and Treasury. |
| 11 | The Managing Director of the POSFB review the employment of Pe Cho. | Managing Director of POSFB. Minister for Finance and Treasury. |
| 12 | The Managing Director of the POSFB review the employment of Joseph Wingia. | Managing Director of POSFB Minister for Finance and Treasury. |
| 13 | The POSFB engage a consultant to conduct a management review of the POSFB. | Members of Board, of POSF. Minister for Finance and Treasury. |
| 14 | Chris Haiveta make a public retraction and apology. | Mr Chris Haiveta MP. Prime Minister. |
| 15 | Rupa Mulina make a public retraction and apology. | Mr Rupa Mulina. |
| 16 | The Attorney-General:issue guidelines advising that Pato Lawyers should no longer act for the State or any governmental. | Attorney-General. Minister for Justice. Secretary, Dept. of Attorney-General. Prime Minister. |
| 17 | The NEC make a policy decision not to conduct business with Warren Anderson an Solly Benn. | Prime Minister. |
| 18 | The Prime Minister make all future determinations of changes of portfolio of Ministers in writing. | Minister for Public Service. Secretary, Dept. of Personnel Management. |
| 19 | The Minister for Public Service initiate legislation to clarify the status of the Office Allocation Committee. | Secretary, Dept. of Finance and Treasury. Minister for Finance and Treasury. Secretary, Dept. of Finance and Treasury. |
| 20 | The Minister for Finance and Treasury initiate amendments to the <i>POSF Act</i> to alter the composition of the Board of the POSFB. | Attorney-General. Secretary, Dept. of Attorney-General. |

[2.2] RESPONSES TO RECOMMENDATIONS

This section sets out, for each recommendation:

- the text of the recommendation;
- each recipient of that recommendation;
- for each recipient, the information received from that recipient relating to that recommendation;
- an assessment of each recipient's responses;

- an overview of the implementation of the recommendation.

Recommendation N° 1

That .the POSFB, in consultation with the Attorney-General, promptly consider the viability of instituting civil proceedings in Australia or Papua New Guinea with a view to recovering money lost as a result of the purchase of The Conservatory.

The Minister for Finance and Treasury (Sir Mekere Morauta)

As the Minister responsible for the POSFB, the Minister for Finance and Treasury had a role to play in overseeing the implementation of this recommendation. On 29 February 2000, Sir Mekere Morauta, the Prime Minister and Minister for Finance and Treasury, advised that a National Executive Council (NEC) decision had been made, resolving to commence recovery proceedings. The Prime Minister further advised that resolution on the funding of the legal action was required prior to the commencement of proceedings.

On 18 August 2000 the Prime Minister made a further reply regarding this recommendation. The Prime Minister advised that he supports these proceedings and that a meeting would be held shortly with Melbourne-based law firm, Holding Redlich, to further this matter. The Prime Minister has also requested the Attorney-General to advise the Ombudsman Commission when proceedings are formally issued.

The Commission is satisfied with the Prime Minister's response to this recommendation.

The Attorney-General (Mr Michael Gene to July 2000; Mr Sao Gabi since July 2000)

On 27 January 2000, then Attorney-General, Mr Michael Gene, wrote to us in response to the report. He advised that the POSFB and the State had retained the Australian law firm, Holding Redlich. He had instructed this firm to make all the necessary arrangements required to commence civil recovery proceedings in the Courts against the appropriate defendants. The State and the POSFB were to be joint plaintiffs. The Attorney-General advised that these proceedings should be formally issued by mid-2000.

On 18 August 2000, the current Attorney-General, Mr Sao Gabi, made a further response on this recommendation. He advised that meetings would be held

shortly with Holding Redlich to discuss the proposed statement of claim, the forum and the defendants in the proceedings.

On 6 October 2000, the *Australian Financial Review* reported that a statement of claim was filed on 5 October 2000 on behalf of the Papua New Guinea government and the POSFB. The statement of claim alleged that the named Papua New Guinean defendants had committed misfeasance in public office, breaches of fiduciary duty, negligence and breaches of the *Constitution*. The newspaper reported Mr Howard Rapke, a partner with the law firm acting for the plaintiffs, as saying the case would be ready for trial early next year. The *Australian Financial Review* report was picked up by *The National* and the *Post-Courier* newspapers on 9 October 2000.

However, on 10 October 2000, Mr Gabi was reported in *The National* as being "outraged" at Mr Rapke's comments, saying they were "unauthorised" and "pre-empted Cabinet deliberations". Mr Gabi said the National Executive Council had yet to decide whether to serve a writ in The Conservatory case. Mr Gabi was quoted as saying:

Cabinet has instructed me to seek a second legal opinion on the merits of the case before it makes a final decision.

On 12 October 2000 the former Attorney-General, Mr Michael Gene, was reported in *The National* as being surprised at Mr Gabi's comments. Mr Gene said that Cabinet had approved the decision to serve the writ and he did not understand why Mr Gabi needed to seek a second opinion.

We wrote to Mr Gabi on 3 November 2000, to ascertain what was really going on.

Mr Gabi wrote back on 12 December 2000 with the following response:

I advise that the proceedings have been instituted in Australia and Papua New Guinea. However, the writs have not been served of the Defendants until such time a second opinion on the sufficiency of the evidence to succeed on the case is obtain. (sic)

I have received a second opinion from Senior Counsel in Australia who have advised that the chances of recovery are less than 40 per cent.

We have therefore received very mixed messages from the Office of the Attorney-General on the implementation of this recommendation.

It appears that legal proceedings have commenced. However, Mr Gabi's recent statements do not show the commitment to these proceedings that we expect. His comments suggest that he has lost the will to continue with this important court action. The information that Mr Gabi has been seeking a second opinion on the chances of success in the case does not fill the Ombudsman Commission with confidence that this recommendation continues to be seriously considered.

There are many questions to be asked following the Attorney-General's apparent change of heart:

- When and why did the National Executive Council decide to instruct Mr Gabi to seek a second opinion?
- Who is the lawyer Mr Gabi received the second opinion from?
- Did that lawyer have any involvement in The Conservatory matter?
- Was Mr Zacchary Gelu (the State Solicitor who certified the head lease for The Conservatory and who is the subject of a wrong conduct finding in the 1999 report) involved in the decision to seek a second opinion?
- Has Mr Gabi, in his capacity as principal legal adviser to the National Executive Council, fully and properly advised the NEC on what it should do?
- If not, when will Mr Gabi give that advice?

The Commission's recommendation called for *prompt* consideration of the viability of instituting civil proceedings. The Commission considers that ample time has elapsed since The Conservatory report was tabled in the Parliament.

In order to fulfil his duty under this recommendation, the Ombudsman Commission considers that Mr Gabi must be much more decisive and diligent in addressing the question of court proceedings.

The Managing Director of the POSFB (Mr John Ban (Acting) to September 2000; Mr Ces Jewago since September 2000)

On 28 January 2000 Mr John Ban, then Acting Managing Director of the POSF, responded to our report by saying that the Board intended to deliberate on the Commission's recommendations and would respond in due course. On 20 June 2000 Mr Ban responded further. In relation to the court proceedings, Mr Ban stated that a budget had been approved for the purpose of pursuing the legal action.

Mr Ban made a further response on 7 August 2000. Mr Ban advised that the Attorney-General had taken charge of the recovery action. Mr Ban also provided a list of twenty witnesses who had, or would shortly be, flown to Melbourne to provide witness statements.

Although Mr Ban's initial response was not timely, we have received sufficient information from the new Managing Director of the POSF, Mr Ces Iewago, and from other sources, to be satisfied that the POSI⁴¹³ has seriously considered this recommendation.

The members of the Board of the POSF

The members did not reply individually to this recommendation. The Managing Director responded, apparently on behalf of the entire Board. His response is discussed above.

We would have preferred the Board members to have responded personally or to have advised the Commission that the Managing Director would be responding on their behalf.

Overview

The groundwork for legal proceedings has been done in accordance with our recommendation and in October 2000 the statement of claim was filed. This is pleasing.

However the Ombudsman Commission is very concerned and perplexed about Attorney-General Sao Gabi's handling of this matter. The cost of the legal proceedings should not be the sole factor in determining whether the proceedings go ahead. It is important that the State be seen to pursue people who mis-use public money and money which is held in trust for the public. This litigation would have important non-financial benefits.

If there has been a change of heart within the NEC on this matter, as Mr Gabi's recent comments may suggest, then the *public need to know* the basis for this change of mind.

It would be a disgrace if these legal proceedings were shelved because the Cabinet did not have the courage to see them through or because the composition of the current NEC contained Ministers who involved themselves in the Conservatory purchase. These are not appropriate reasons for a change of mind on the commencement of civil proceedings by the State.

The Ombudsman Commission expects the Attorney-General to give clear, justifiable and transparent advice on the continuation of proceedings without any further delay.

Recommendation N° 2

That the Board of the POSF and the Attorney-General (representing the State) meet and agree to terminate the head lease for The Conservatory; and that the head lease be terminated as soon as is practicable without penalty or reward to either the POSFB or the State; and that all litigation concerning the head lease be discontinued immediately.

The Minister for Finance and Treasury (Sir Mekere Morauta)

On 29 February 2000, Sir Mekere Morauta, the Prime Minister and Minister for Finance and Treasury, advised that he was in agreement with this recommendation and had sought advice from the Attorney-General. According to the Prime Minister, the Attorney-General had advised at the time that termination of the head lease may affect the nature and extent of the damages to be recovered from the legal proceedings.

The Prime Minister responded further to this recommendation on 18 August 2000, simply stating that the Attorney-General is reviewing the head lease.

The Prime Minister has made a useful response, advising that further action is being taken. However, the Ombudsman Commission requires more detailed information on the exact steps the Prime Minister is taking to implement this recommendation. We understand that the Prime Minister is in the process of addressing this issue, but we are concerned about the delay in fully considering this recommendation.

The Minister for Justice (Mr Kilroy Genia to November 2000; Mr Andrew Baing from November to December 2000; Mr Puri Ruing since December 2000)

Then Minister for Justice, Kilroy Genia, responded to our report on 14 February 2000. He advised that he had been briefed by the Attorney-General on this recommendation. The Minister stated that he was satisfied that the Attorney-General has taken the appropriate course of action. He stated that the Attorney-General would brief him again after further consideration.

Mr Genia made a further response to this recommendation on 18 August 2000, advising that the Attorney-General and the Board of the POSF are currently reviewing the head lease.

The Minister for Justice's response addresses our recommendation, but does not give a satisfactory explanation as to what specific steps are being taken. We are also concerned that a legal review of the lease has not yet been finalised.

The Attorney-General (Mr Michael Gene to July 2000; Mr Sao Gabi since July 2000)

On 27 January 2000, then Attorney-General Michael Gene, wrote to us in response to the report. He advised that he was currently reviewing the State's position on the matter, with particular regard to the implications of such an action on the proposed legal proceedings.

On 18 August 2000 the current Attorney-General, Mr Gabi, advised that he was reviewing the head lease.

Following a request from the Ombudsman Commission for more information about progress on this matter, Mr Gabi wrote to the Commission on 12 December 2000. In his response, Mr Gabi gave the distinct impression that he had gone cold on the idea. Mr Gabi stated:

The Board of POSF and my office (representing the State) are not been able to agree to terminate the head lease for the Conservatory.

The position of the Board is that it was the head lease between the State and the POSFB which prompted it to purchase the property. The head lease guarantees a steady income for the investment. I have been advised that the termination of the head lease by the State would result in litigation or would attract legal proceedings against the State.

The Attorney-General's implementation of this recommendation is neither complete nor adequate.

The Managing Director of the POSF (Mr John Ban (Acting) to September 2000; Mr Ces Iewago since September 2000)

On 28 January 2000 Mr John Ban, then Acting Managing Director of the POSFB, responded to our report by saying that the Board intended to deliberate on the Commission's recommendations, and respond in due course.

On 20 June 2000 Mr Ban responded further, advising that he had sought legal advice on the head lease arrangement with the State. Mr Ban did not provide us with a copy of that advice. However he did say that the advice indicated that the State could not unilaterally terminate the head lease without any penalty.

On 7 August 2000 Mr Ban provided a further response to this recommendation. He advised that the POSFB had considered the matter of the head lease and did not agree with the recommendation to terminate the head lease for the following reasons:

- i) **From the point of the view of the membership of the POSF, this has been a profitable investment and has yielded an acceptable return on the capital outlay.**
- ii) **The decision to sign the original lease had depended on the consent of at least two Ministers of the National Government, and if anyone is to be criticised by the Ombudsman Commission for waste of "tax payers money" it should not be the POSF Board which was merely making the best possible Investment it could for its members, but the party who willingly signed a lease on terms which were clearly far more favourable to the Landlord than to the tenant, when other options were available.**

We are extremely disappointed with the Board's decision and the shallow consideration given to the matters raised in our report. The head lease is a grossly inequitable arrangement which effectively uses public money to protect the POSFB. If The Conservatory is to be a financial burden, then we consider that burden should rest on the POSFB and not the public of PNG as a whole. Regardless of legal liability, the POSFB is under a moral obligation to agree to terminate the lease.

We do not consider that the former Managing Director has given adequate reasons for failing to implement this recommendation. The reasons given are typical of the fuzzy thinking that characterised the Conservatory purchase.

The members of the Board of the POSF

The members did not reply individually to this recommendation. The Managing Director responded, apparently on behalf of the entire Board. **His** response is discussed above.

As stated earlier, the Board members should have responded personally, or advised the Commission that the Managing Director would be responding on their behalf.

Overview

As we stated in the 1999 report, the rentals the State is paying under the head lease for The Conservatory are more than three times the market rental. In effect, the

people of Papua New Guinea are heavily subsidising the poor decision of the POSFB to purchase The Conservatory. The lease is an artificial creation designed to protect the POSFB with the government's money.

The decision of the Board not to terminate this lease is both short-sighted and ill-judged. Some individual members of the Board have seen fit to make public statements supporting the purchase and the head lease. However, they have not found themselves able to respond individually to our recommendation. The Ombudsman Commission is concerned that the Board, both individually and collectively, fails to appreciate the concerns we have about the head lease.

The Attorney-General's lukewarm response has done nothing to protect the interests of the State or, by extension, the people of Papua New Guinea.

Recommendation N°3

That the POSFB engage an independent and reputable specialist consultant to advise it on how to deal with The Conservatory in order to maximise the return on the investment.

The Minister for Finance and Treasury (Sir Mekere Morauta)

On 29 February 2000, Sir Mekere Morauta, the Prime Minister and Minister for Finance and Treasury, stated to us that he had been advised by the Secretary of the Department of Finance and Treasury that the POSF had engaged a professional to advise on how to best use the premises. On 18 August 2000 the Prime Minister further advised that the Managing Director would forward to us a copy of the Management Agreement with Raine & Home.

This reflects the Managing Director's statement below.

The Managing Director of the POSFB (Mr John Ban (Acting) to September 2000; Mr Ces Iewago since September 2000)

On 28 January 2000 Mr John Ban responded to our report by saying that the Board intended to deliberate on the Commission's recommendations, and respond in due course. On 20 June 2000 Mr Ban responded further, advising that the real estate firm Raine & Home had been engaged to manage The Conservatory. This firm had been given the specific task of carrying out the required refurbishment and securing full tenancy.

Mr Ban provided further information in his letter of 7 August 2000 and enclosed a copy of the Management Agreement. Raine & Home had taken over from Omega Management, the company previously engaged to manage the Conservatory. The

Management Agreement with Raine & Horne appears to be a standard commercial management agreement, with Raine & Horne receiving 3.75% of the gross rental receipts per month plus a standard commission for initial leasing and renegotiating leases.

This action goes some way towards implementing our recommendation. We note that Raine & Horne are actively seeking new lessees for The Conservatory.

The members of the Board of the POSF

The members did not reply individually to this recommendation. The Managing Director responded, apparently on behalf of the entire Board. His response is discussed above.

Overview

The engagement of Raine & Horne is a positive step for the future of The Conservatory. It may be possible to achieve full occupancy of The Conservatory and subsequently lessen the burden on the State.

Recommendation N° 4

That the POSFB urgently introduce due diligence and investment analysis procedures, and an investment policy, to accurately assess all investments, especially offshore investments, against certain fixed criteria.

The Minister for Finance and Treasury (Sir Mekere Morauta)

The Minister for Finance and Treasury, Prime Minister Sir Mekere Morauta, responded on 29 February 2000. He stated that he understood, from the Secretary of the Department of Finance and Treasury, that an independent financial and performance audit of the POSFB had already commenced, under terms of reference agreed with the International Monetary Fund and the World Bank. The Prime Minister also advised that an investment policy for the POSFB had been produced. On 18 August 2000 the Prime Minister advised that the POSFB was forwarding more information to us.

As discussed below, we are generally satisfied with the implementation of this recommendation.

The Managing Director of the POSFB (Mr John Ban (Acting) to September 2000; Mr Ces Iewago since September 2000)

On 28 January 2000 Mr John Ban, then Acting Managing Director of the POSF, responded to our report by saying that the Board intended to deliberate on the Commission's recommendations and respond in due course. On 20 June 2000 Mr Ban responded further, advising that an Investment Committee and an investment policy had been put in place. The Investment Committee comprises three general managers, an accountant from an external firm and an actuary. The investment policy sets out the guidelines on how new investments are to be appraised and screened.

On 7 August 2000 Mr Ban gave us more details on the Investment Advisory Committee, which was established in January 2000. The management directive for the Committee states:

The role of the Investment Advisory Committee is to ensure that new investment proposals and screened and tested to comply with:

- i) investment guidelines issued by the Minister for Finance;**
- ii) the Board's Investment Policy**
- iii) The investment shall yield a satisfactory rate of return**
- iv) For transparency, all new investment proposals and process of its respective evaluation are properly documented.**

The management directive also gives procedures for reviewing investments, including the requirement for proper documentation. Mr Ban said the Committee had already been quite effective since its implementation.

Mr Ban also provided a copy of the POSFB's "Investment Policy Statement" of March 2000. It is not clear whether this document has been adopted by the Board or whether it is only a draft document. This Investment Policy Statement sets out guidelines for investments by the POSFB and re-states the requirement for investments to comply with both legislation and investment guidelines.

We consider that the establishment of the Investment Advisory Committee is a satisfactory response by the POSFB to our recommendation. The Investment Policy Statement and the management directive will be useful tools to measure the future performance of the POSFB.

The members of the Board of the POSF

The members did not reply individually to this recommendation. The Managing Director responded, apparently on behalf of the entire Board. His response is discussed above.

Overview

We are encouraged by the new investment policy and the establishment of the Investment Advisory Committee. If adhered to strictly, these initiatives will enhance the prospect of future investments by the POSFB advancing the interests of the contributors. We make the point however that these policies and procedures can only be as good as the people who are putting them in action.

Recommendation N° 5

That the National Executive Council make a policy decision that all future proposals to redevelop the Waigani precinct for government office buildings must be thoroughly screened in a manner which ensures full compliance with the Land Act, the Public Finances (Management) Act and the Public Services (Management) Act; and that the policy decision be conveyed formally to the following:

- **Secretary, Department of Personnel Management**
- **Secretary, Department of Lands and Physical Planning**
- **Secretary, Department of Treasury and Planning**
- **Chairman Office Allocation Committee**

The Chairman of the National Executive Council, the Prime Minister (Sir Mekere Morauta)

Prime Minister Sir Mekere Morauta, responded on 29 February 2000. The Prime Minister stated that all further proposals will be required to comply with all relevant legislation. The Prime Minister said that he would ensure, through the Prime Minister's Department, that the Secretaries of the Departments of Personnel Management, Lands and Physical Planning, and Finance and Treasury were advised to that effect.

The Prime Minister made a further response on 18 August 2000. Sir Mekere advised that he has directed the Central Agencies Coordinating Committee (CACC) to advise if any further action is required. In addition, the Prime Minister advised that NEC Decision 10/2000 has strengthened the process of decision making within the public sector.

Overview

We note that the Prime Minister has adopted this recommendation in principle. However we are of the opinion that an NEC decision that *requires* screening will greatly assist in ensuring compliance with the legislation. It has always been a requirement to comply with the legislation. However, our report shows that unless there is a clear direction to uphold the proper procedures, short cuts and defective administration can occur.

Recommendation N° 6

That the on-going public employment, or re-employment, of: the following public officials whose conduct was wrong, be carefully and critically reviewed:

**Kila Ai;
John Ban;
Mark Basausau;
Pe Cho*;
Gabriel Dusava;
Aloysius Eviaisa*;
Zacchary Gelu;
Vele Iamo*;
Jacob Lerneki;
Michael Malabag*;
Ugyvalubu Mewana;
Rupa Mulina;
Tau Peruka;
Ereman Ragi*, and
Joseph Wingia*.**

The people marked (*) are the subject of their own separate recommendations, and are discussed at the appropriate recommendation below.

Kila Ai

On 24 August 2000 the Secretary of the Department of Personnel Management, Mr Soiat Williams, responded to this recommendation regarding Mr Ai Mr Williams enclosed a letter he had written to Dr Sibona Kopi, the Acting Provincial Administrator of Central Province, requesting Dr Kopi to serve an attached "Notice Requiring Explanation" to Mr Ai.

The Notice Requiring Explanation requested Mr Ai to provide an explanation of the "specific allegations" made by the Ombudsman Commission regarding Mr

Ai's role in The Conservatory purchase. According to the notice, Mr Williams would then determine whether the matter should be dealt with under the disciplinary provisions of Mr Ai's contract of employment.

We do not know whether this notice was served on Mr Ai as requested by Mr Williams. We are disappointed that only very preliminary steps have been taken to date. We do not consider that this recommendation has been adequately implemented.

John Ban

Until the appointment of Mr Ces Iewago on 11 September 2000, Mr John Ban was the Acting Managing Director of the POSF. In April 2000 the Ombudsman Commission heard that the POSFB was proposing to make a recommendation regarding the substantive appointment of a Managing Director. We then wrote to the Secretary of the Department of Treasury and Planning, Mr Koiari Tarata, in his capacity as Chairman of the POSFB, advising that he should consider very carefully the findings of our report in relation to Mr Ban. We also wrote in similar terms to the Prime Minister, as the Minister responsible for the POSFB.

Mr Tarata responded on 20 June 2000, requesting clarification from the Ombudsman Commission on whether Mr Ban had been "cleared" from the allegations in The Conservatory report. We responded on 22 June 2000, explaining to Mr Tarata that our report had made *findings* against Mr Ban. These findings are not allegations which could be later cleared. We re-stated to Mr Tarata that he was obliged to carefully and critically review the employment of Mr Ban in light of the findings in our report. We wrote to the Prime Minister in similar terms.

On 20 June 2000 Mr Ban wrote to us, both as Acting Managing Director of the POSFB and on his own behalf in relation to this recommendation. He sought "clearance" of his name. He advised that he was one of the contenders for the position of Managing Director.

The Prime Minister advised us on 14 August 2000 that he had directed the Board to prepare a brief on the status of Mr Ban and to recommend someone for either an acting or substantive appointment to the position. On 18 August 2000, Mr Tarata also responded to this recommendation, stating that the Prime Minister had requested a brief on Mr Ban's status.

Mr Ban wrote to us again on 1 September 2000, saying that although we had responded to his letter of 20 June 2000, we had not covered the issue of

"clearing" his name. Mr Ban requested a response from the Ombudsman Commission on this issue.

We responded on 8 September 2000, advising Mr Ban that because we had given our final opinion in our report, the issue of "clearance" did not arise. We also re-stated our opinion that until all our recommendations relating to the Board members and officers of the POSF are dealt with, it would be inappropriate for a substantive appointment to be made to the office of Managing Director.

On 11 September 2000 the Prime Minister, acting in his capacity as Minister for Finance and Treasury, appointed Mr Ces Iewago as Managing Director of the POSFB. On 22 September 2000 Mr Aloysius Eviaisa put a public notice in *The National* newspaper. The notice stated that Mr Eviaisa was taking the Prime Minister to court over the appointment of Mr Iewago. Mr Eviaisa claimed that the Board's recommendation to appoint Mr Iewago was made under duress. Mr Eviaisa also stated that Mr Ban had the required credentials for the position of Managing Director and Mr Iewago did not.

Overview

The appointment of **Mr Iewago** removes the proposal to appoint Mr Ban as the Managing Director of the POSFB. Although there has been no review of Mr Ban's on-going employment with the POSF in the light of the findings in our report, we note that Mr Ban did not play a major part in the decision to purchase The Conservatory. We are satisfied that there has been adequate consideration given to this recommendation.

Mark Basausau

Mr Basausau's current employment status is unknown. We are not aware of any government department or body that is currently employing Mr Basausau. There are therefore no recipients of this recommendation in relation to him.

Gabriel. Dusava

At the time of our final report, Mr Dusava was not, to our knowledge, employed by any department or other governmental body. On 22 December 1999, the Acting Managing Director of the Investment Promotion Authority (IPA), Ivan Pomaleu, advised the Ombudsman Commission that Mr Dusava had been recommended as a candidate for the office of Managing Director of the IPA. Mr Pomaleu requested our advice on how the potential appointment would be affected by Mr Dusava's dismissal from office by a leadership tribunal on 17 October 1997.

We responded to Mr Pomaleu's letter on 13 January 2000, alerting Mr Pomaleu to our recommendation in the report. We sent a copy of this letter to then Minister for Trade and Industry, Michael Nall. Mr Dusava was subsequently appointed Managing Director of the IPA by the Minister on 14 January 2000. The Minister also released a rather misleading and out-of-context press statement stating that he had consulted with the Ombudsman Commission before making the appointment.

The Ombudsman Commission then made a public statement, expressing disappointment at the decision and stating that the appointment of Mr Dusava was "an affront to the constitutional processes we have in place to instil good governance and good leadership in Papua New Guinea." After some public discussion, the Prime Minister ordered an investigation into Mr Dusava's appointment. On 19 January 2000, the Minister revoked the appointment of Mr Dusava as Managing Director of the IPA.

We are not aware of any government department or body that is currently employing Mr Dusava. At the time of this status report, there are therefore no recipients of this recommendation in relation to him.

Zacchary Geld'

On 22 August 2000, the Secretary of the Department of Justice & Attorney-General, Sao Gabi, responded to this recommendation. Mr Gabi advised that Mr Gelu's legal advice was based on the circumstances and facts of the case as they were presented to Mr Gelu. In the report we had criticised Mr Gelu for his legal advice regarding the execution of the lease of The Conservatory to the State. The matters raised by Mr Gabi in his letter do not affect the reasoning behind our finding and recommendation.

Mr Gabi said that he was waiting for the response of the Secretary of the Department of Personnel Management before deciding on an appropriate course of action.

On 24 August 2000 the then Secretary of the Department of Personnel Management, Mr Soiat Williams, responded to this recommendation regarding Mr Gelu. Mr Williams enclosed a letter he had written to Mr Gabi, requesting that he serve an attached "Notice Requiring Explanation" on Mr Gelu.

The Notice Requiring Explanation requested Mr Gelu to provide an explanation of the "specific allegations" made by the Ombudsman Commission regarding Mr Gelu's role in The Conservatory purchase. According to the notice, Mr

Williams would then determine whether the matter should be dealt with under the disciplinary provisions of Mr Gelu's contract of employment.

We do not know whether this notice was served on Mr Gelu as requested by Mr Williams. We are disappointed that only very preliminary steps have been taken to date. We do not consider that this recommendation has been adequately implemented.

On 16 November 2000, the Attorney-General announced the appointment of Mr Gelu as Acting Solicitor General. The *Post Courier* quoted Mr Gabi as saying:

He (Mr Gelu) is a very experienced and competent officer and I am confident that he will discharge his duties diligently.

No mention was made of the Ombudsman Commission's recommendation regarding Mr Gelu. The appointment was made without any consultation with the Ombudsman Commission.

Mr Gabi appears to have acted recklessly and without regard to his constitutional responsibilities.

Jacob Lemeki

Mr Lemeki is currently a Village Councillor at Alhoga village on Misima Island, Milne Bay Province. As Mr Lemeki was elected to this position, and not appointed by the government, this recommendation does not apply. There are therefore no recipients of this recommendation in relation to him.

Ugwalubu Mowana

Mr Mowana's current employment status is unknown. We are not aware of any government department or body that is currently employing Mr Mowana. There are therefore no recipients of this recommendation in relation to him.

Rupa Mulina

Mr Mulina's current employment status is unknown. We are not aware of any government department or body that is currently employing Mr Mulina. There are therefore no recipients of this recommendation in relation to him.

Tau Peruka

Mr Peruka's current employment status is unknown. We are not aware of any government department or body that is currently employing Mr Peruka. There are therefore no recipients of this recommendation in relation to him.

Further comment Secretary of Department of Personnel Management

On 18 August 2000, the then Secretary of the Department of Personnel Management, Mr Soiat Williams, provided further information on the implementation of this recommendation. Mr Williams said that he had delegated an officer of his Department to research the "specific allegations" made in our public notice of 2 August 2000.

The Secretary also enclosed a copy of his letter of 18 August 2000 to the Secretary of the Department of Finance and Treasury, concerning those public servants we named in our report. In this letter the Secretary advised that he would be seeking further details from the Ombudsman Commission to enable him to ensure that disciplinary action was taken against the named public servants.

Mr Williams' appointment as Secretary of the Department of Personnel Management was revoked in November 2000. He was replaced by Mr Peter Tsiamalili. We will be pursuing Recommendation N° 6 further with Mr Tsiamalili.

Recommendation N° 7

That the Cocoa Board meet and, using its power in Section 15 of the Cocoa Act (Chapter 388) to appoint or terminate employees, decide to review the employment of Ereman Ragi as Chief Executive Officer of the Cocoa Board; and ask him to show cause as to why he should continue to hold that position.

The Minister for Agriculture and Livestock (Mr Ted Diro to May 2000; Mr Mao Zeming from May to November 2000; Mr Muki Taranupi since November 2000)

At the time of the report, Mr Ted Diro was the Minister for Agriculture and Livestock. Since then the position has been held by Mr Mao Zeroing, who was also Deputy Prime Minister at the time, and from November 2000 by Mr Muki Taranupi. None of the Ministers have responded to the report or subsequent letters.

The members of the Cocoa Board

On 2 March 2000, the Chairman of the Cocoa Board, Mr Sam Tulo, wrote to the Ombudsman Commission in response to this recommendation. Mr Tulo advised that he had written to Mr Ragi on 7 February 2000, asking him to show cause as to why he should continue to hold the position of Chief Executive Officer.

Mr Tulo said that Mr Ragi responded on 14 February 2000 and the members of the Board held a formal meeting on 23 February 2000. At that meeting, the members unanimously resolved to retain Mr Ragi's services.

On 3 August 2000 we requested additional details, including copies of the documents that were the subject of the Board's deliberations, in order to satisfy ourselves that the Board fully considered all the matters raised in our report regarding Mr Ragi's conduct.

On 22 August 2000 the Board responded to our letter, providing a copy of Mr Ragi's response to the Board's request for him to show cause why he should continue holding the position of Chief Executive Officer. The Board also provided a copy of the minutes of its meeting at which this matter was discussed. The minutes show that the Board decided to retain Mr Ragi for two reasons:

The purchase of the Cairns Conservatory has no direct bearing of the affairs of the Cocoa Board.

Mr Ragi was not terminated by the POSF Board for his action, nor was he charged and convicted with a criminal offence, but rather was replaced by the Minister and the new Government when it took office.

Overview

We are concerned that the Cocoa Board has engaged in whitewashing Mr Ragi. Ereman Ragi was a major instigator of the purchase of The Conservatory. His poor decisions and administrative incompetence have cost the contributors to the POSF, and the public in general, some tens of millions of kina in lost revenue and wasted rents.

It is difficult to see how the Cocoa Board could have thoroughly considered the matters in our report and then produced the two paragraphs noted in the minutes above. Mr Ragi's response to his show cause letter continues to advance the discredited notion that The Conservatory was a good investment for the POSFB. He also uses the two worthless valuations of the property obtained during 1994 to

argue that the building was worth what the POSFB, under Mr Ragi, decided to pay for it.

Most worryingly, Mr Ragi claims that the Ombudsman Commission's report contains "allegation" against him, the truth of which cannot be relied on until tested in a court of law. This betrays a deplorable ignorance of the Ombudsman Commission's role under the *Constitution*.

The Cocoa Board's consideration of this matter has not been thorough or conscientious.

The failure by various Ministers to respond at all to this recommendation is extremely disappointing.

Recommendation N° 8

That the Minister for Finance and Treasury give written notice to Michael Malabag under Section 7 of the POSF Act, advising that he intends to terminate his appointment as a member of the Board of the POSF on the grounds of inability and inefficiency; and that the Minister, after receiving Mr Malabag's reply, gives due consideration to terminating his appointment.

The Minister for Finance and Treasury (Sir Mekere Morauta)

The Minister for Finance and Treasury, Prime Minister Sir Mekere Morauta, responded on 29 February 2000. The Prime Minister stated that he would forward a letter to Mr Malabag, requiring him to show cause why his appointment to the POSFB should not be terminated.

On 14 August 2000 the Prime Minister further advised us that he had written to Mr Malabag on 1 May 2000, requesting him to show cause. The Prime Minister advised that Mr Malabag would not be re-appointed when his term as Board member representing the Public Employees Association expires.

Mr Malabag's term expired in November 2000. He has not been reappointed.

Events have overtaken the implementation of this recommendation. We are satisfied that the Prime Minister has properly considered this matter.

Other comment

On 21 August 2000, Mr Napoleon Liosi, the National President of the Public Employees Association, took out a full-page advertisement in the *Post Courier*

in support of Mr Malabag. Mr Liosi, on behalf of the PEA, expressed the view that the purchase of The Conservatory was a viable investment, that Mr Malabag has the complete confidence of the PEA and that Mr Malabag would have had no knowledge of any "devious motives" held by any other parties to this transaction.

While we acknowledge the right of Mr Liosi to express his support in this way, we are concerned that he has unquestioningly adopted the POSFB line on the viability of the Conservatory purchase. The Conservatory was not a good investment. The building was purchased for more than double what it was worth. According to information received from the POSFB in November 2000, the building is only 35% occupied. Mr Malabag, and the other Board members, should have assessed the investment properly. They did not do so.

If Mr Liosi's advertisement was paid for from PEA funds, we hope Mr Liosi is confident that his sentiments reflect the views of the PEA membership.

Recommendation N° 9

That the Minister for Finance and Treasury give written notice to Moysius Eviaisa under Section 7 of the POSF Act, advising that he intends to terminate his appointment as a member of the Board of the POSF on the grounds of inability and inefficiency; and that the Minister, after receiving Mr Eviaisa's reply, gives due consideration to terminating his appointment.

The Minister for Finance and Treasury (Sir Mekere Morauta)

The Minister for Finance and Treasury, Prime Minister Sir Mekere Morauta, responded on 29 February 2000. The Prime Minister stated that he would forward a letter to Mr Eviaisa, requiring him to show cause why his appointment to the POSFB should not be terminated.

On 14 August 2000 the Prime Minister further advised us that the term of Mr Eviaisa had expired, and the Prime Minister would be appointing another nominee of the Police Association to fill the position.

Events have overtaken the implementation of this recommendation. We are satisfied that the Prime Minister has properly considered this matter.

Other comment

On Friday 25 August 2000, Mr Eviaisa published a notice in the *Post Courier* newspaper. This notice was in similar terms to the notice published by Napoleon Liosi on 21 August regarding Mr Malabag. In his notice, Mr Eviaisa

continued to assert that the purchase of The Conservatory was a sound investment. Mr Eviaisa also stated that no action had been taken against himself and Mr Malabag because they had done nothing wrong.

On 22 September 2000, Mr Eviaisa placed another public notice in the newspaper giving his public support for Mr Ban and criticising the appointment of Mr Iewago as the Managing Director of the POSFB. This was an ill-conceived gesture which added nothing to the effective functioning of the POSFB. If the advertisement was paid for from Police Association funds, we hope Mr Eviaisa is completely certain that his sentiments reflect those of the Police Association membership.

In his notices, Mr Eviaisa declared himself to be a member of the POSF Board. However Mr Eviaisa's term had expired before the newspaper advertisements were placed. The current Managing Director of the POSF, Mr Iewago, in a letter to the Ombudsman Commission on 21 October 2000, confirmed that Mr Eviaisa's three-year term as a Board member expired on 27 May 2000.

Section 4(2)(b) of the *POSF Act* specifically states that Board members "shall be appointed for a term of three years". There is no provision for automatic extensions to this term of office. Section 4(2)(c) states that Board members "are eligible for reappointment." Mr Eviaisa has not been reappointed to the Board. Mr Eviaisa should not declare himself to be a member of the POSF Board or take part in the meetings and decisions of the Board.

Recommendation N° 10

That the Secretary of the Department of Finance and Treasury take immediate steps to review the employment of. Vele Iamo on the grounds of incompetence and inability; and, in particular, lays disciplinary charges against him.

The Minister for Finance and Treasury (Sir Mekere Morauta)

The Minister for Finance and Treasury, Prime Minister Sir Mekere Morauta, responded on 29 February 2000. The Prime Minister advised that he had discussed this matter with the Secretary, who was requesting Mr Iamo to show cause. On 18 August 2000 the Prime Minister further advised that the Secretary would provide us with further details.

The Secretary of the Department of Finance and Treasury (Mr Koiari Tarata)

The Secretary of the Department of Finance and Treasury, Mr Koiari Tarata, responded to our original report on 1 June 2000. This letter enclosed an earlier

letter, dated "31 February 2000", which Mr Tarata advised had been misplaced in his files and was not sent to us. In this letter Mr Tarata said that he formed the view that Mr Iamo should show cause as to why his employment should not be reviewed. Mr Tarata also said he would take advice from the Attorney-General and the Department of Personnel Management on disciplinary charges.

Mr Tarata made a further response to our report on 18 August 2000. He advised that Mr Iamo had not responded to the letter sent to him earlier in the year, asking him to show cause. Mr Tarata enclosed a follow-up letter sent to Mr Iamo, asking him to show cause and advising Mr Iamo that he intended to seek advice on appropriate disciplinary action.

Mr Tarata also enclosed letters dated 18 August 2000 to the Attorney-General and the Secretary of the Department of Personnel Management, Mr Soiat Williams. These letters requested legal advice on any potential disciplinary action.

Secretary of the Department of Personnel Management (Mr Bill Kua to March 2000; Mr Isaac Lupari from March to June 2000; Mr Soiat Williams from June to November 2000; Mr Peter Tsiamalili since November 2000)

On 24 August 2000 the Secretary of the Department of Personnel Management, Mr Soiat Williams, responded to this recommendation regarding Mr Iamo. The Secretary was not a direct recipient of the recommendation of our original report. Mr Williams enclosed a letter he had written to Mr Koiari Tarata, Secretary of the Department of Finance and Treasury, requesting Mr Tarata to serve an attached "Notice Requiring Explanation" to Mr Vele Iamo.

The Notice Requiring Explanation requested Mr Iamo to provide an explanation of the "specific allegations" made by the Ombudsman Commission regarding his role in the Conservatory purchase. According to the notice, Mr Williams would then determine whether the matter should be dealt with under the disciplinary provisions of Mr Iamo's contract of employment.

We do not know whether this notice was served on Mr Iamo as requested by Mr Williams.

Overview

We are concerned that the implementation of this recommendation has taken many months to get to this preliminary stage. It is a very simple recommendation which for no good reason seems to have found its way into the "too hard basket". We will be closely monitoring the consideration given by the Secretary and the Minister to Mr Iamo's continued employment. We expect the process to be swiftly completed and a decision made.

Recommendation N° 11

That the Managing Director of the POSFB take immediate steps to review the employment of Pe Cho on the grounds of incompetence and inability; and, in particular, lays disciplinary charges against him.

Recommendation N° 12

That the Managing Director of the POSFB take immediate steps to review the employment of Joseph Wingia on the grounds of incompetence and inability; and, in particular, lays disciplinary charges against him.

Recommendations 11 and 12 were treated identically by all the recipients. We therefore deal with these recommendations together.

The Minister for Finance and Treasury (Sir Mekere Morauta)

The Minister for Finance and Treasury and Prime Minister, Sir Mekere Morauta, responded on 29 February 2000. The Prime Minister advised that the Managing Director of the POSFB was seeking legal advice on these recommendations. On 18 August 2000 the Prime Minister further advised us that the Managing Director would provide us with further details.

The Managing Director of the POSFB (Mr John Ban (Acting) to September 2000; Mr Ces Iewago since September 2000)

Mr Ban, then Acting Managing Director of the POSFB, responded to these recommendations on 20 June 2000. In that letter Mr Ban advised that steps had been taken for disciplinary action against Mr Cho and Mr Wingia. Formal action had been deferred until the normal board meeting to be held in July 2000.

Mr Ban responded further on 7 August 2000. He said that the POSFB had deliberated on this recommendation at its July meeting. According to Mr Ban, the Board made the following observations:

- i) **It would be inequitable and open to serious challenge if the Board were to terminate employees for their part in this transaction which had occurred four (4) years ago.**
- ii) **These employees have an excellent record during their employment with the Board (12 years in the case of Mr Wingia and 6 years in the case of Mr Cho). There is no evidence that any employees behaved corruptly or in bad faith — rather that their actions betrayed deplorable lack of commercial acumen.**
- iii) **The employees concerned did not try to conceal their involvement in the transaction, and since 1994, each employee has had his contract of employment renewed by the POSFB in full knowledge of this involvement.**

- iv) The matter is worthy of serious treatment on an industrial basis, that is to terminate employment at this stage would be harsh and oppressive — especially as, during the four years since the Commission commenced its investigation, each man has had his contract of employment renewed by the Board in full knowledge of his part in the matters the subject of the Ombudsman's report.**
- v) Therefore it would be in such gross breach of procedural fairness if the Board terminated the employment now, in the light of the foregoing that, in addition to laying itself open to the justifiable assertion that its actions were harsh and inequitable, it would lay itself open to prospects of expensive litigation.**

Mr Ban went on to say that the Board had agreed to ask the Department of Personnel Management for advice on a fair punishment for each officer. After receiving such advice, the Board would then take suitable action at the September board meeting.

The Ombudsman Commission considers that the view taken by the Board is misconceived and indefensible. The Board has misunderstood both the Commission's recommendation and its own responsibilities regarding its staff.

Our recommendation was to review the employment of both officers in light of the Commission's findings in the report. This should have involved a weighing exercise, where each officer's employment history was weighed against his poor decisions regarding The Conservatory. If such a balancing exercise had been undertaken in full consideration of all the facts, including giving the officers a chance to make a submission, a decision to terminate resulting from that exercise could not have been harsh or oppressive. Such a termination could certainly not be a breach of procedural fairness, nor should it give rise to litigation. All the Board's arguments on these grounds are baseless.

We are also disappointed by the Board's seeming vindication of their officers' actions. Mr Ban states that there is no evidence that they behaved corruptly, "rather that their actions betrayed deplorable lack of commercial acumen".

The Ombudsman Commission considers that a deplorable lack of commercial acumen is not a desirable quality for a senior POSFB officer, especially an officer with responsibility for investments. POSFB staff should be selected and retained on merit. Failure to live up to the duties of their positions should be dealt with promptly and decisively.

Fortunately the new Managing Director of the POSFB, Mr Iewago, seems to concur with this view. In a letter to the Commission on 21 October 2000 he stated that Mr Cho's employment had been terminated, as of 6 November 2000. Mr

Iewago stated that he is seeking legal advice on the matter of Mr Wingia's future employment at the POSF.

Overview

The Commission considers that this recommendation was badly addressed by the former Acting Managing Director, Mr Ban. However, the indications we have received from the new Managing Director, Mr Iewago, are that he is serious about addressing and implementing the Commission's recommendations concerning the on-going employment of senior officers of the POSFB who were found to have acted wrongly.

We note, however, that Mr Iewago has still to notify the Ombudsman Commission of the action taken on the recommendation concerning Mr Wingia.

Recommendation No 13

That the Board of the POSF engage an independent and reputable consultant (or firm) to conduct a management review of the POSFB; in particular to review, assess and make recommendations for changes, if necessary, to all senior management positions in the organisation and, if necessary, to the occupants of those positions.

The Minister for Finance and Treasury (Sir Mekere Morauta)

The Minister for Finance and Treasury, Prime Minister Sir Mekere Morauta, responded on 29 February 2000. The Prime Minister advised that he accepted the recommendation, and that a financial and performance audit of the POSFB had already commenced. On 18 August 2000 the Prime Minister further advised us that the performance audit of POSF was completed in February 2000 and that the Managing Director of the POSFB would be providing us with a copy of that report.

Members of the Board of the POSF

On 28 January 2000 Mr John Ban, then Acting Managing Director of the POSF, responded to our report by saying that the Board intended to deliberate on the Commission's recommendations and would respond in due course. On 20 June 2000 Mr Ban responded further, advising that an audit committee had been put in place, to ensure the "corporate governance" of the Board.

On 7 August 2000 Mr Ban gave us more details on the implementation of this recommendation. Mr Ban advised that the Auditor-General appointed Deloitte Touche Tohmatsu early in 2000 to carry out a special review at the POSF. The

thrust of the review was to look at the "fundamental controls which contribute towards ensuring a good governance framework at POSF". This review was completed in February 2000 and its findings were reported to the Prime Minister.

Deloitte Touche Tohmatsu report

We have examined the report by Deloitte Touche Tohmatsu, entitled *Public Officers' Superannuation Fund Corporate Governance Review* ("the Deloitte report"). Mr Ban provided us with a draft of the Deloitte report dated 29 February 2000. The quotes below are from that draft report.

The Deloitte report resulted from a review performed in accordance with terms of reference issued by the Office of the Auditor-General. The report made seven key findings:

- 1. Many of the fundamental controls which contribute to ensuring a robust governance framework are deficient.**
- 2. The Internal Audit Division is ineffective because it is not positioned appropriately within POSF or given appropriate status to ensure it can function effectively.**
- 3. Review of Board minutes and other documentation indicates that the decision making process employed by the Board, specifically in relation to making investments, has Intermittently lacked control, accountability and transparency.**
- 4. The existing POSF Act results in a close association between the State and the Fund. Based on normal commercial considerations, this relationship is not in the best interest of the individual members of the Fund.**
- 5. The inadequate provision of a sound control framework by executive management is ultimately responsible for shortcomings in the operational management of the Fund.**
- 6. The performance of the Investment Division cannot be directly linked to the performance of the Fund as the Board has collectively ignored or refused the advice from the Division on a number of occasions.**
- 7. Review of the performance of portfolio managers indicated significant concerns within the Information Services Department.**

The Deloitte report also reviewed the role of senior management positions. It made several recommendations regarding both the nature of the positions and the conduct of their occupants. The following recommendations are numbered in accordance with Appendix 1 of the Deloitte report "List of recommendations to Improve Governance at POSF":

- 15. Each member of the Board and the Investment Committee should sign a conflict of interest statement for every investment opportunity evaluated.**
- 17. The Board should ensure they are kept abreast of modern governance concepts by registering on courses designed to help them discharge their responsibilities effectively.**
- 18. All members of the Board should undergo periodic training to ensure**

- that they maintain an appropriate and current knowledge of techniques of investment appraisal, risk assessment, fraud control and awareness and other modern governance principles.
- 32** Members of both the Investment Committee and the Board should undergo training to ensure that they have a sound and current understanding of investment analysis.
- 34** A strategy should be established to communicate the intention to fill or abolish currently vacant positions and/or to confirm the substantive appointment of people who have acted for long periods.

We note that the Deloitte report focussed primarily on the need to establish new systems and procedures to guarantee proper corporate governance. The Deloitte report also emphasised the need to ensure that the systems and procedures currently in place were consistently followed. To this end, the Deloitte report made numerous recommendations regarding the strengthening of the Internal Audit Division of the POSF. We strongly support those recommendations.

Overview

The Deloitte report appears to be a thorough investigation into the corporate governance of the POSFB. It makes many constructive recommendations regarding the Board and senior management. However this is only the first step in ensuring that the management of the POSFB is both efficient and accountable. We will be following the implementation of the Deloitte report's proposals with interest. Overall, we are satisfied with the implementation of our recommendation.

Recommendation N°14

That Hon Chris Haiveta MP make a public retraction and apology, at his own expense, for his misleading statements to the public and the Parliament in November 1995 regarding the purchase of The Conservatory.

The Prime Minister (Sir Mekere Morauta)

At the time the 1999 report was finalised, Mr Haiveta was a Minister. As such, we considered that the Prime Minister had responsibility for ensuring that Mr Haiveta properly considered making a retraction and apology.

Mr Haiveta subsequently fell out of favour and was not a member of the National Executive Council for most of 2000. However, Mr Haiveta was recently reinstated to the Ministry after a Cabinet reshuffle in November 2000.

As Mr Haiveta is again a Minister, we consider that the Prime Minister has a role to play in relation to this recommendation.

Mr Haiveta

On 4 February 2000, Mr Haiveta's First Secretary, Mr Peter Eka, responded to this recommendation on Mr Haiveta's behalf. He advised that Mr Haiveta was perusing the issues raised and would respond directly. No further response has been received from Mr Haiveta, despite a reminder letter sent to him by the Commission on 3 August 2000.

Overview

This recommendation has not been considered at all. We have received no response from Mr Haiveta personally. We made this recommendation on the basis of Mr Haiveta's press release of 3 November 1995 and his statements in the Parliament during November 1995. Both the press release and the statements contained obvious errors and inaccurate comments about The Conservatory.

Misleading and deceptive comments made in Parliament are an affront to the Parliament as an institution.

We remain of the opinion that Mr Haiveta should publicly retract his comments and apologise for misleading both the public and the Parliament.

Recommendation N°15

That Rupa Mulina make a public retraction and apology, at his own expense, for his misleading statements to the public in November 1995 regarding the purchase of The Conservatory.

Mr Mulina has not responded to this recommendation. We made this recommendation on the basis of several statements made by Mr Mulina, as the Secretary of the Department of Finance, regarding The Conservatory. In November 1995, Mr Mulina gave a briefing to the Minister for Finance and issued an open letter to the contributors to the POSF regarding The Conservatory. Both the briefing and the open letter contained many statements that were either misleading or completely wrong.

Mr Mulina was in a key government position at the time he gave this advice. He had serious responsibilities and failed to live up to them. He then failed to respond to this recommendation.

The Commission remains of the opinion that Mr Mulina should apologise for misleading the public. This recommendation has not been implemented.

Recommendation N° 16

That the Attorney-General issue guidelines to all government departments and governmental bodies, advising that Pato Lawyers should not act for the State, 'any government department or other governmental body, for a period of five years from the date of this report.

Minister for Justice (Mr Kilroy Genia to November 2000; Mr Andrew Baing from November to December 2000; Mr Puri Ruing since December 2000)

On 14 February 2000 the then Minister for Justice, Kilroy Genia, responded to this recommendation. The Minister advised that he had been briefed by the then Attorney-General, Mr Gene, on this matter and was satisfied that the appropriate course of action was being taken.

The Minister made a further response on 18 August 2000, advising that Mr Gene had submitted a set of guidelines to the Central Agencies Coordinating Committee. The Minister also advised that expressions of interest had been called for from legal firms to provide legal services to the State. The Minister said that a number of legal firms would be pre-selected to outsource the State's legal work.

The Attorney-General (Mr Michael Gene to July 2000; Mr Sao Gabi since July 2000)

On 27 January 2000, the then Attorney-General, Michael Gene, advised that he was further considering the State's position on this matter. But he did not anticipate that further steps would be taken, for two reasons. The first was preliminary advice which indicated that the recommended action may be unconstitutional. The second reason was that the Commission's investigation did not appear to provide sufficient support for such action against Pato Lawyers.

On 19 May 2000, the Attorney-General wrote again in response to the Commission's letter to the Prime Minister. In this letter, he advised that his previous concerns about this recommendation had lessened. Accordingly, he intended to issue guidelines for government departments and governmental bodies in line with our recommendation. He enclosed draft guidelines for comment.

We responded to this letter on 8 June 2000. We suggested some amendments to the draft guidelines. On 3 August 2000 we wrote again to the Attorney-General, requesting further advice on implementation of this recommendation.

On 18 August and 21 August 2000, the current Attorney-General, Sao Gabi, made further responses on this recommendation. He advised that Mr Gene had submitted a set of guidelines to the Central Agencies Coordinating Committee. Mr

Gabi enclosed a copy of the guidelines and a letter from Mr Gene to the Chief Secretary to Government, Mr Robert Igara. In the enclosed letter, the Attorney-General sought Mr Igara's advice and facilitation for the Central Agencies Coordinating Committee's deliberation and general endorsement before settling on the final text.

On 12 December 2000, the Attorney-General wrote to the Ombudsman Commission, advising the guidelines "have been approved and distributed to all Government Departments and Agencies".

Other comment involvement of the Privatisation Commission

On 22 February 2000, Mr Charlie Turi, the Acting Secretary of the Privatisation Commission, wrote to the Chief Ombudsman requesting advice:

... whether the Minister for Corporatisation and Privatisation or entities which are under his Ministerial determination and responsibilities from time to time, the Executive Chairman, Privatisation Commission or the Privatisation Commission itself will render themselves open to conduct which may raise implications for the persons/offices if they engaged Pato Lawyers in a client/lawyer relationship.

Mr Turi enclosed a letter from Pato Lawyers to the Minister for Privatisation and Corporatisation which repeated the Attorney-General's initial view that action against Pato Lawyers may be unconstitutional and/or unwarranted. On 11 May 2000 the Ombudsman Commission wrote to the Prime Minister stating its concerns about the proposed employment of Pato Lawyers by the Privatisation Commission.

The Attorney-General responded on 19 May 2000, as discussed above. Executive Chairman of the Privatisation Commission Ben Micah responded on 9 June 2000. Mr Micah stated that the Privatisation Commission was not considering awarding a retainer to Pato Lawyers and further had never considered a retainer or otherwise engaging Pato Lawyers in any capacity. Mr Micah assured the Ombudsman Commission that the Privatisation Commission was committed to a high degree of transparency and was aware of the recommendations contained in The Conservatory report.

We responded to this letter on the same day, 9 June 2000, expressing our support of the Privatisation Commission's awareness of its duty to maintain transparency.

Litigation by Pato Lawyers

On Thursday 27 July 2000 the *Post-Courier's* front-page headline read "Pato to sue Ombudsman". The accompanying story said Pato Lawyers had sought legal advice from an Australian-based Queen's Counsel. Pato Lawyers were quoted as saying they believed the Ombudsman Commission's recommendation was "harsh and oppressive" and "illegal and unconstitutional".

At the time of the newspaper report there was a great deal of media and public interest in the alleged K300,000 per month Mr Rimbink Pato was receiving as Executive Director of the State-owned Finance Pacific group of companies. Mr Pato was principal of Pato Lawyers at the time the law firm was acting for the POSFB on the purchase of The Conservatory.

On 21 November 2000, the Ombudsman Commission was served with court documents filed by "Alfred Manase trading as Pato Lawyers" as plaintiff. the Ombudsman Commission is named as the first defendant; the Attorney-General is the second defendant; the State is the third defendant. The plaintiff is seeking, amongst other things, a declaration that Recommendation N° 16 is unconstitutional and damages for misfeasance in public office and breach of public duty.

The Ombudsman Commission intends to defend these court proceedings vigorously.

Overview

This recommendation has faced more opposition than any of the other recommendations to come out of the Cairns Conservatory report.

While the Commission is pleased that the Attorney-General appears to have issued the guidelines, we are well aware that further action may be required before this recommendation can be considered fully implemented.

Recommendation N° 17

That the National Executive Council make a policy decision that neither the State nor any government department or other governmental body should conduct any further business with Warren Anderson or Solly Benn or any company or business wholly or partly owned or controlled by them, separately or together; and that the policy decision be conveyed formally to all departmental heads and all heads of governmental bodies.

The Chairman of the National Executive Council, the Prime Minister (Sir Mekere Morauta)

The Prime Minister, Sir Mekere Morauta, responded on 29 February 2000. The Prime Minister advised that he accepted the recommendation and that any such policy decision would be conveyed to all departmental heads and all heads of other government bodies.

On 18 August 2000 the Prime Minister further advised us that he had discussed this matter with the Chief Secretary and had requested him to advise on the recommendation and on any implications to the State.

We made this recommendation because we considered that Mr Anderson and Mr Benn had acted below normal ethical standards during the sale of The Conservatory. The effect of an NEC decision would be twofold. Firstly, as a direction to protect the State against two men who had showed a marked propensity to involve the Government in grand schemes resulting in large profits for themselves and little in return for the Government. Secondly, the decision would be an authoritative statement that unethical behaviour would not be tolerated by the State and would carry consequences. We consider a decision under this recommendation would be an important public declaration.

We are pleased that the Prime Minister accepts this recommendation. However we would like to see some more substantive action on this matter. We see this as a chance for the Prime Minister to do the right thing publicly and unequivocally.

Recommendation N°18

That the Prime Minister make all future determinations of Ministerial portfolios, under Section 148 of the Constitution, in writing, and that such determinations be published in the National Gazette as soon as possible after being made.

The Prime Minister (Sir Mekere Morauta)

On 29 February 2000 Sir Mekere Morauta advised that this recommendation was a non-issue, as it reflected current practice.

The Commission is satisfied with the implementation of this recommendation.

Recommendation N° 19

That the Minister for Public Service, with the advice and assistance of the Secretary of the Department of Personnel Management and the Secretary of the Department of Finance and Treasury, initiate legislation to ensure that the powers, authority and procedures of the Office Allocation Committee be more clearly defined; in particular so that

- **the jurisdiction of the Committee is clearly stated;**
- **the power of the Committee to give final approval is clearly differentiated from the power of the Secretary for Personnel Management to "consider" all requests for office space; and**
- **the powers of the Chairman of the Committee, in particular his authority to act on behalf of the Committee, is defined and restricted.**

The Minister for Public Service (Mr Philemon Embel to May 2000; Mr Iairo Lasaro from May to November 2000; Mr Philemon Embel again since November 2000)

Neither Mr Embel or Mr Lasaro responded to this recommendation.

Secretary of the Department of Personnel Management (Mr Bill Kua to March 2000; Mr Isaac Lupari from March to June 2000; Mr Soiat Williams from June to November 2000; Mr Peter Tsiamalili since November 2000)

The then Secretary of the Department of Personnel Management, Mr Soiat Williams, responded to this recommendation on 18 August 2000. The Secretary advised that he had already obtained advice on drafting legislation on office allocation. The Secretary did not provide any further information on this legislation.

Secretary of the Department of Finance and Treasury (Mr Koiari Tarata)

The Secretary of the Department of Finance and Treasury, Mr Koiari Tarata, responded to our original report on 1 June 2000. This letter enclosed an earlier letter, dated "31 February 2000", which Mr Tarata advised had been misplaced in his files and was not sent to us. In this letter Mr Tarata did not address this recommendation.

Mr Tarata made a further response to our report on 18 August 2000. The Secretary agreed that the status and role of the Office Allocation Committee needed to be reviewed and advised that he would consult with the Secretary of the Department of Personnel Management on proposed legislative changes.

Overview

There has been no real attempt to implement this recommendation. Although the Secretary of the Department of Personnel Management has advised us that legislation is being considered, we have received no information on the details of such legislation and when it is expected to take effect.

The Commission considers that the ill-defined status and role of the Office Allocation Committee was a major contributing factor to the difficulties surrounding the lease of The Conservatory to the State. Because the Office Allocation Committee does not have a clear basis for its authority, it is susceptible to behind-the-scenes dealing and improper influences.

The Commission considers this is an important recommendation and is disappointed with the lack of consideration given to it.

That the Minister for Finance and Treasury, with the advice and assistance of the Secretary of Department of the Finance and Treasury and the Attorney-General, initiate amendments to the POSF Act 1990 to alter the composition of the Board of the POSF;

In particular*by amending Section 4 of the Act by removing from the Board both the Secretary of the Department of Finance and Treasury and the Secretary of the Department of Personnel Management.

Minister for Finance and Treasury (Sir Mekere Morauta)

On 29 February 2000, the Minister for Finance and Treasury, Prime Minister Sir Mekere Morauta, advised that he had discussed this recommendation with Mr Tarata, the Secretary of the Department of Finance and Treasury. The Prime Minister agreed that it was necessary to have skilled, diligent and independent persons appointed to the POSFB, and further that he was satisfied that the Secretary of the Department of Finance and Treasury possessed those qualities.

The Prime Minister also pointed out that the State guarantees the POSF. Therefore, the Prime Minister argued, it is essential that the State is represented on the Board in order to prevent a "moral hazard problem" and to protect the interests of the State.

The Prime Minister further addressed this issue in his letter to the Ombudsman Commission of 18 August 2000. The Prime Minister advised that the composition of the POSFB was being addressed as part of a broader review of the

superannuation industry being supported by the World Bank. In addition, the Prime Minister considered that there are serious structural issues affecting the governance and management of public resources, which require in depth review, evaluation and structural reform. The Prime Minister requested that the Ombudsman Commission recognise the major reforms in this area the government had announced as part of the 2000 budget.

We urge the Prime Minister to carefully consider this matter as part of the proposed general structural reform. The Commission still considers it is essential to remove the conflict of interests inherent in the system of appointment of the Chairman of the POSFB.

Secretary of the Department of Finance and Treasury (Mr Koiari Tarata)

The Secretary of the Department of Finance and Treasury, Mr Koiari Tarata, responded to our original report on 1 June 2000. This letter enclosed an earlier letter, dated 31 February 2000, which Mr Tarata advised had been misplaced in his files and was not sent to us. In this letter Mr Tarata said that it was important that the Secretary for Finance was a member of the Board because the State guarantees **the POSF**. Mr Tarata stated that although representation was important, it was not necessary for the Secretary to be the Chairman of the POSFB.

Mr Tarata made a further response to our report on 18 August 2000. Mr Tarata made some general comments on the proposed review of the superannuation industry. However Mr Tarata did not specify how this review was to deal with the composition of the Board of the POSF.

The Commission does not consider that this recommendation has been adequately implemented by the Secretary.

The Attorney-General (Mr Michael Gene to July 2000; Mr Sao Gabi since July 2000)

On 27 January 2000, the then Attorney-General, Michael Gene, wrote to us in response to the report. He did not address this recommendation. On 18 August 2000, the current Attorney-General, Sao Gabi, made a response on this recommendation. The Attorney-General advised that he had consulted with the Secretary of the Department of Finance and Treasury, who advised him that government is implementing a comprehensive reform of the superannuation industry.

The role of the Attorney-General in this recommendation is essentially to provide assistance in any reform. We consider that the Attorney-General has considered the issues. The failure to implement this recommendation is not the responsibility of the Attorney-General.

Overview

The Commission made Recommendation N° 20 because it was apparent that the Chairman of the Board of the POSF had an unavoidable conflict of interests during the purchase and lease of The Conservatory. He was both Chairman of the Board which had made a decision in favour of purchasing The Conservatory and the person responsible for advising the Minister for Finance on whether the contract for the purchase should be approved under the *Public Finances (Management) Act*.

The Deloitte report also recommended that this conflict be removed. It found that the State owed the POSFB a substantial debt through non-payment of employer contribution benefits. There was therefore the following conflict:

On the one hand the Chairman should play a key role in developing strategies for POSF to recover substantial debt from the State. On the other hand he holds a key position in the State department which owes the debt. In order to rectify this situation the POSF Act will have to be amended.

It is clear that the dual role played by the Secretary of the Department of Finance and Treasury is hampering the efficient operation of the POSFB. Our recommendation must be given much more serious and urgent attention. The implementation of this recommendation has not been adequate:

[231] TABLE OF RESPONSES TO RECOMMENDATIONS

The following table gives a brief assessment of the responses to each recommendation.

KEY:

ADEQUATE

S - Satisfactory

SM - Satisfactory but requiring ongoing monitoring

INADEQUATE

A - Agreed in principle but no action taken

B - Agreed and started but not finished

C - Still under review or consideration

D - Disagreed

X - No response at all

XI - No response on this particular issue

OTHER

NA - Not applicable

| N°. Recommendation | Recipient |
|---|---|
| 1 The POSFB consider civil proceedings to recover money. | Members of Board of POSF X Attorney-General B Minister for Finance and Treasury S |
| 2 The head lease for The Conservatory be terminated. | Managing Director of POSFB S Members of Board of POSF X Attorney-General D Minister for Finance and Treasury C Minister for Justice C |
| The POSFB engage a specialist consultant to advise on The Conservatory. | Secretary, Dept of Attorney-General D Managing Director of POSFB D Members of Board of POSF X |
| 4 The POSFB urgently introduce due diligence and investment analysis procedures. | Minister for Finance and Treasury S Managing. Director of POSFB S Members of Board of POSF X |
| 5 The NEC make a policy decision regarding all future Waigani precinct development. | Minister for Finance and Treasury S Managing Director of POSFB S |
| 6 The current or future employment of certain public officials be reviewed. | Prime Minister A |
| 7 The Cocoa Board review the employment of Ereman Ragi. | Secretaries of all Departments, or heads of governmental bodies Ministers responsible for those Departments, or governmental bodies |
| 8 The Minister for Finance and Treasury notify Michael Malabag of the intention to terminate his appointment to the POSFB. The Minister for Finance and Treasury notify Aloysius Eviaisa of the intention to terminate his appointment to the POSFB. | Members of the Cocoa Board D Minister for Agriculture & Livestock X Minister for Finance and Treasury S |
| 10 The Secretary of the Dept. of Finance and Treasury review the employment of Vele ramp. | Minister for Finance and Treasury S Secretary, Dept of Finance and Treasury B |
| 11 The Managing Director of the POSFB review the employment of Pe Cho. | Minister for Finance and Treasury B |
| 12 The Managing Director of the POSFB review the employment of Joseph Wingia. | Managing Director of POSFB S Minister for Finance and Treasury S |
| 13 The POSFB engage a consultant to conduct a management review of the POSFB. | Managing Director of POSFB B Minister for Finance and Treasury B Members of Board of POSF X Minister for Finance and Treasury S |

| | | | |
|----|--|---|---|
| 14 | Chris Haiveta make a public retraction and apology. | Mr Chris Haiveta MP | |
| 15 | Rupa Mulina make a public retraction and apology. | Prime Minister | S |
| | | Mr Rupa Mulina | X |
| 16 | The Attorney-General issue guidelines advising that Pato Lawyers should no longer act for the State or any governmental body. | Attorney-General | S |
| | | Minister for Justice | S |
| | | Secretary, Dept of Attorney-General | S |
| 17 | The NEC make a policy decision not to conduct business with Warren Anderson and Solly Benn. | Prime Minister | A |
| 18 | The Prime Minister make all future determinations of changes of portfolio of Ministers in writing. | Prime Minister | S |
| 19 | The Minister for Public Service initiate legislation to clarify the status of the Office Allocation Committee. | Minister for Public Service | |
| | | Secretary, Dept of Personnel Management | |
| | | Secretary, Dept of Finance and Treasury | |
| 20 | The Minister for Finance and Treasury initiate amendments to the <i>POSF Act</i> to alter the composition of the Board of the POSFB. | Minister for Finance and Treasury. | |
| | | Secretary, Dept of Finance and Treasury | |
| | | Attorney-General | |
| | | Secretary, Dept of Attorney-General | |

*** RECOMMENDATION N° 6 - SPECIFIC PEOPLE**

| | | |
|-----------------|-------------------------------|----|
| Kila Ai | Sec Dept Personnel Management | B |
| John Ban | Sec Dept Personnel Management | B |
| | Minister Finance | B |
| | Sec Finance | B |
| Mark Basausau | NIL | NA |
| Gabriel Dusava | NIL | NA |
| Zacchary Gelu | Sec Dept Personnel Management | |
| Jacob Lemeki | NIL | NA |
| Ugwalubu Mowana | NIL | NA |
| Rupa Mulina | NIL | NA |
| Tau Puka | NIL | NA |

2. CONCLUSION

[3.1] OBSERVATIONS

The good

The Ombudsman Commission is heartened by the first steps taken in several areas. In particular, the corporate governance review of the POSFB, the introduction of investment guidelines and the Investment Committee, and the general commitment to reform of the POSFB is encouraging. However, we note that these reforms are only as effective as the level of compliance with them.

The management of The Conservatory building also appears to have improved. Although occupancy of the building is only around 35% , the agreement with Raine & Home is a step in the right direction.

We were also encouraged by the initial actions of the Attorney-General and the POSFB in commencing court proceedings to attempt to recover some of the money lost in The Conservatory purchase.

The bad

Overall, the implementation of recommendations relating to specific public officials has been poor. We recommended that employers review the ongoing employment of these individuals on the basis of the facts given in our report. We wanted the employers to look at our report, ask the official for an explanation, think about what the official had done and what they could offer in the future, and make a decision.

With one or two exceptions, recipients of the recommendations have not followed these simple steps through to their conclusion. The Commission considers this shows a general unwillingness to make people accountable for their actions. It is important for all people who are paid from the public purse to realise that they are accountable to the public.

The level of implementation, as opposed to agreement, has also been poor. Some recipients of recommendations gave in-principle agreement and made very positive projections of future changes. However the actual implementation of these changes has either not happened or been long delayed. For example, the guidelines relating to Pato Lawyers were in draft form for many months.

Similarly, the NEC decision not to conduct business with Mr Benn and Mr Anderson has been agreed to but not finalised.

Of very serious concern are the numerous recipients who did not respond at all to the report and several follow up letters. These recipients have failed to fulfil their obligation under Section 22(3) of the *Organic Law on the Ombudsman Commission* and put themselves in jeopardy of having court proceedings brought against them by the Ombudsman Commission under Section 23 of the *Constitution*.

The ugly

Perhaps the most common and disappointing misconception that we encountered as a result of our report was the request from individuals (and supporters) to "clear" their names of "allegations". It is important to appreciate that when the Ombudsman Commission compiles a final report of an investigation, it is reporting its final opinion on whether the investigation has disclosed any instances of wrong conduct, defective laws or defective or discriminatory administrative practices. In the 1999 report these opinions were recorded as findings of wrong conduct. They are *not* "allegations" that can later be "cleared".

Every single person who was adversely commented on in our report was given at least one chance to state their case. That is a person's opportunity to clear their name. The Ombudsman Commission is obliged to set out a person's defence in a report. We did so in the report on The Conservatory through extensive quotes and summaries. The final report is the Commission's final findings on an issue.

The Commission must also express its disappointment at two newspaper articles that appeared in *The National* on 3 November 2000, written by senior journalist John Apami. Under the headlines "Future looks bright for Cairns Conservatory" and "Worthwhile asset Mr Apami's stories gave a shallow and superficial assessment of the current worth of the Conservatory to the POSFB.

There are still some serious outstanding issues surrounding the purchase and tenancy arrangements at The Conservatory that the media could be getting its teeth into. Unfortunately the articles that appeared in *The National* on 3 November did not address any of these issues.

[3.2j] ASSESSMENT OF INDIVIDUAL RECIPIENTS

In this section we list the recipients of our recommendations and give a brief overview of their responses to us.

Prime Minister and Minister for Finance and Treasury (Sir Mekere Morauta)

The Prime Minister has accepted the majority of our recommendations. He responded promptly to our report. Although action has yet to be taken on some matters, the Ombudsman Commission is generally satisfied with the Prime Minister's response.

Minister for Justice (Mr Kilroy Genia to November 2000; Mr Andrew Baing from November to December 2000; Mr Puri Ruing since December 2000)

When Kilroy Genia was Minister for Justice, he gave very general responses to our recommendations, advising in most cases that matters are "under consideration" or are "being progressed". The Ombudsman Commission would like to see more concrete action from the Minister on these matters.

Minister for Agriculture and Livestock (Mr Ted Diro to May 2000; Mr Mao Zeroing from May to November; Mr Muki Taranupi since November 2000)

There have been three different Ministers for Agriculture and Livestock since our final report was issued 12 months ago. None has made any response to the recommendations directed towards them. This is not acceptable.

Minister for Public Service (Mr Philemon Embel to May 2000; Mr biro Lasaro from May to November 2000; Mr Philemon Embel again since November 2000)

Neither Mr Embel nor Mr Lasaro has responded to our report. This is not acceptable.

Mr Chris Haiveta

Mr Haiveta did not make a response to our recommendation. The attitude he has displayed is disrespectful and unacceptable.

Attorney-General (Mr Michael Gene to July 2000; Mr Sao Gabi since July 2000)

Mr Gene has generally responded to our recommendations in full. However, the implementation of some matters, such as the termination of the head lease and the Attorney-General's role in pursuing court action to recover money lost as a result of the Conservatory purchase, appear to have been unduly delayed by Mr Gabi.

Secretary of the Department of Finance and Treasury (Mr Koiari Tarata)

Mr Tarata has responded unevenly to our recommendations. He has agreed in principle with some matters, such as the review of Vele Iamo's employment and the review of the Office Allocation Committee, but has not taken any substantive action. The Secretary disagreed with our recommendation regarding amendments to the *POSF Act*, but did not give cogent or convincing reasons to support his position.

Secretary of the Department of Personnel Management (Mr Bill Kua to March 2000; Mr Isaac Lupari from March to June 2000; Mr Soiat Williams from June to November 2000; Mr Peter Tsiamalili since November 2000)

Mr Williams responded to our report and agreed in principle to the relevant recommendations. He has taken preliminary action. But these actions remain incomplete, with the recommendations not fully implemented.

Members of the Board of the POSF

The Members of the Board of the POSF did not respond individually to our report. We would have liked to have received individual responses from each Board member, if necessary advising that the Managing Director would make a substantive response on their behalf.

Managing Director of the POSFB (Mr John Ban (Acting) to September 2000; Mr Ces Iewago since September 2000)

The Managing Director has sufficiently implemented those recommendations regarding the review and reform of the POSFB and more recently the employment review of Mr Cho. The matter of termination of the head lease has yet to be properly addressed. The recommendation concerning Mr Wingia has not yet been properly addressed.

Members of the Cocoa Board

The Chairman of the Cocoa Board has responded to the recommendation regarding the ongoing employment of Ereman Ragi. However, the Ombudsman Commission continues to be concerned that the members of the Cocoa Board have not properly considered the substance of our report.

Mr Rupa Mulina

Mr Mulina did not respond to our recommendation. This is very foolish of him.

In the past the Ombudsman Commission has had difficulty in getting its recommendations implemented. We have made detailed recommendations in comprehensive reports, such as the Report on the Upgrading of the Port Moresby Water Supply in 1996 and the Poreporena Freeway Report in 1992.

Many public officials still seem to have the view that "these are only recommendations, so I am free to ignore them".

In order to overcome this misconception we decided to produce a formal statement and to present that statement to the Parliament in the form of this status report.

This is a report on how our recommendations are being implemented *at this time*. It is not intended to be a once and for all summary of what action was taken as a result of The Conservatory report.

The Ombudsman Commission will therefore continue to keep a close eye on the implementation of our recommendations. We are following ongoing events, such as the proposed court proceedings in Australia, with keen interest.

We urge all recipients of recommendations to take note of the comments we have made in this report. Our recommendations were designed to prevent the mistakes and incompetence that surrounded The Conservatory purchase from happening again. Implementing these recommendations is one way to make sure that the lessons of The Conservatory have been thoroughly learnt.

