

PUBLIC ACCOUNTS COMMITTEE

INQUIRY INTO THE OFFICE OF THE PUBLIC CURATOR

REPORT TO NATIONAL PARLIAMENT

VOLUME 1.

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PUBLIC ACCOUNTS COMMITTEE

INQUIRY INTO THE OFFICE OF THE PUBLIC CURATOR

REPORT TO NATIONAL PARLIAMENT

VOLUME 1.

1. INTRODUCTION

- 1.1. On the 13th April 2005 the Permanent Parliamentary Committee on Public Accounts commenced a long running Inquiry into the operations of the Office of the Public Curator.
- 1.2. On the 1st March 2006 the Public Accounts Committee concluded the Inquiry into the Office of the Public Curator.
- 1.3. As a result of evidence taken in this Inquiry, the Public Accounts Committee has made findings which were highly critical of the performance of the Office of the Public Curator over many years. In particular, the Public Accounts Committee has identified incidents of fraud and criminal conduct, mismanagement of Estates, breach of trust and breach of fiduciary duties on the part of the Public Curator and his Agents, Contractors or Consultants.
- 1.4. As a result of evidence and documents tendered to the Inquiry, the Public Accounts Committee makes referrals of various persons for further investigation and possible prosecution for breaches of their statutory obligations.
- 1.5. As a result of evidence and documents tendered to this Inquiry, the Public Accounts Committee unanimously resolved to make a full and complete Report of its Inquiry and findings to the National Parliament in accordance with Section 17 of the *Permanent Parliamentary Committees Act 1994* and 86(1) (c) and (d) *Public Finances (Management) Act 1995*.
- 1.6. The Public Accounts Committee now tables the Report with strong recommendation that remedial action be immediately taken by the Government in accordance with findings and resolutions of the Public Accounts Committee.

2. EXECUTIVE SUMMARY

- 2.1. The Office of the Public Curator is a national disgrace.
- 2.2. 19,600 Estates remain unresolved – some for more than 15 years.
- 2.3. 680 properties remain under trust – many for years with no resolution of Estates.
- 2.4. Over 700 properties have been mishandled or cannot be found or accounted for.
- 2.5. The history of the Office of the Public Curator over the last decade, shows a disregard of the requirements of Law by managers and staff of the Office, a failure to carry out statutory duties, a clear failure to understand or implement the basic duties of a Trustee, instances of theft and fraud by staff and third parties and an almost total failure of the Office to keep, submit or understand accounts and financial Reports.
- 2.6. The failure of the Office of the Public Curator has been contributed to by failures of successive Governments to adequately or properly fund and resource the Office.
- 2.7. The failure of the Office of the Public Curator to attend to its duties and properly and lawfully service Estates may have exposed the State to significant liability.
- 2.8. Monies allocated to the Office of the Public Curator by Government have been misused and misapplied by the Public Curator and the Office of the Attorney General.
- 2.9. Estate monies, property and assets have been misused and misapplied by the Public Curator and the Office of the Attorney General.
- 2.10. The Public Curator has failed to lawfully retain Agents and Consultants to the detriment of Estates and the liability of the State.
- 2.11. The Public Curator and the Secretary for the Department of Justice and the Attorney General have failed to lawfully appoint Agents, Consultants or Contractors, paid those Contractors, consultants or Agents unlawfully, failed to supervise or control those Contractors and wrongfully applied Trust Monies to pay Contractors or Agents.
- 2.12. Despite very considerable expense to Estates, there is little (if any) lasting benefit from those Consultants and Agents.
- 2.13. Trust monies are mixed between various accounts with no hope of reconciling what money is owed to which Estate. The ability to trace trust

monies and assets is a basic duty of any Trustee. It has not been met by the Public Curator.

- 2.14. The Public Curator, the Attorney General and the Secretary for Justice have failed to take action to recover property, money and assets unlawfully detained or withheld by Consultants, Contractors or Agents to the Public Curator.
- 2.15. Estates have been overpaid or are owed large amounts of untraceable money. The State may well be liable for these failures.
- 2.16. The Public Curator has made unauthorized investments of Estate monies and has failed to pay money back to Estate accounts or to maintain such records as would enable that money to be paid to identified Estates.
- 2.17. The Public Curator has unlawfully applied Estate monies to Operational and administrative costs.
- 2.18. The Public Curator has overcharged Estates for administration costs.
- 2.19. The Public Curator has created a deficiency in Estates of millions of Kina, which the State may be liable to pay.
- 2.20. The Public Curator, the Attorney General and the Secretary for the Department of Justice have failed to take recovery action on behalf of Estates against Agents, Contractors, Consultants and other entities to recover money that was wrongly paid.
- 2.21. The Public Curator and/or the Attorney General have failed to seek or enforce an account from Consultants, Agents or Contractors to the Public Curator, of all monies had and received by those entities for or on behalf of the Public Curator or individual Estates.
- 2.22. The Office of the Public Curator has failed to take reasonable care and use due diligence to protect Estates under his management.
- 2.23. Public Curators, past and present, have failed to understand or comply with the obligations of a Trustee.
- 2.24. Public Curators past and present have failed to take any or any adequate care to identify, secure, preserve or realize monies, bank accounts, shares, property and real estate assets of Estates.
- 2.25. Public Curators have, in various ways, breached the terms of the ***Public Curator Act*** and ***Regulations, Insolvency Act***, and the ***Health Act***.

- 2.26. Public Curators and Attorneys General, past and present, have failed to comply with the terms of the *Public Finances (Management) Act* and the *Financial Instructions*.
- 2.27. Attorneys General have failed to account for or refund monies removed or used from Estates.
- 2.28. Consultants, Contractors and Agents have failed to account for or remit monies received from Estates.
- 2.29. Attorneys General, Secretaries for Justice and the Government have failed to heed or action warnings and reports concerning the state of the Office of the Public Curator.
- 2.30. The Office of the Public Curator has failed to follow up and to commence recovery action in respect of monies fraudulently taken from Estates.
- 2.31. The Public Curator has failed to implement or maintain internal control and accounting systems.
- 2.32. The Public Curator has failed to give service to any acceptable level to beneficiaries and Estates for many years and responds only to threats or Court Action.
- 2.33. Beneficiaries have been deprived of their entitlements by the failures of the Public Curator.
- 2.34. The Public Curator has failed to remit monies to Consolidated Revenue as required.
- 2.35. The Public Curator has failed to make Financial Reports as required.
- 2.36. Management, oversight, accountability and basic performance standards are entirely lacking in the Office of the Public Curator with a resultant lack of public confidence in the Office.
- 2.37. Urgent action is required to restore any credibility to the Office of the Public Curator.
- 2.38. The Committee commends the findings and recommendations made in this Report, in the Report of the Auditor General and by the Office of the Public Curator itself, as a basis for rebuilding the Office of the Public Curator.
- 2.39. The Government must move to establish a method whereby aggrieved persons can have their entitlements quickly assessed and paid.

- 2.40. The Government must, as a matter of urgency, establish an Inquiry to investigate and conclude on the likely extent of State liability arising from failures of the Office of the Public Curator.
- 2.41. The State must then make provision to meet its liabilities to Estates and beneficiaries.
- 2.42. Interim Trustee arrangements must be quickly established to take control of the Office of the Public Curator pending long term rebuilding.
- 2.43. The Statutes under which the Public Curator operates must be modernized and a long term, credible trustee arrangement be established.
- 2.44. Urgent recovery action must be taken to recover monies identified by the Auditor General and this Committee, as wrongly withheld or removed from Estates.
- 2.45. The Public Curator and his management team should be replaced by competent, experienced interim trustees – possibly from POSF or Nasfund.
- 2.46. The Government should recruit, by domestic and International advertisement, a competent and experienced Public Curator and management team experienced in Trustee obligations and accountability to rebuild the Office of the Public Curator.
- 2.47. Certain further findings are made by the Public Accounts Committee. See Para 45.
- 2.48. Certain further recommendations are made by the Public Accounts Committee. See Para 46.
- 2.49. Certain Referrals for Investigation and possible prosecution are made by the Public Accounts Committee. See Para 47.

3. CHRONOLOGY

- 3.1. The Public Accounts Committee commenced its Inquiry into the Office of the Public Curator on the 13th April 2005.
- 3.2. The Inquiry again convened on the 28th November 2005.
- 3.3. The Inquiry again convened on the 1st March 2006 and finished on that day.

- 3.4. On the 13th April 2005 the Public Accounts Committee directed the Office of the Auditor General to conduct a Special Audit of the Office of the Public Curator.
- 3.5. The Public Accounts Committee requested the Public Curator give full and complete assistance to the Auditor General in the performance of that Audit.
- 3.6. The Office of the Auditor General considered this request to be of interest to the general public and directed that, in accordance with Section 8 (2) of the *Audit Act*, the investigation be undertaken in accordance with the Terms of Reference given by the Committee. These Terms of Reference are recorded in Para. 15.9 of this Report.
- 3.7. The Office of the Public Curator complied adequately with the request, but failed to produce many documents and records to the Auditor General
- 3.8. The Office of the Auditor General complied with the request and produced a detailed Special Audit Report.
- 3.9. An Auditor General's *Report on the Special Audit Investigation of the Office of the Public Curator* was completed and delivered to the Public Accounts Committee on the 1st November 2005. A copy of that Report is contained in Volume 2 of this Report.
- 3.10. A copy of the Audit Investigation Report was delivered to the office of the Public Curator for perusal and response. The Public Curator delivered a *Response to the Special Audit Investigation Report* on the 28th day of November 2005. That Response is also contained in Volume 2 of this Report.
- 3.11. The Public Accounts Committee has given careful consideration to both the Report of the Auditor General and the Response from the Public Curator

4. LIST OF ABBREVIATIONS

Anvil	Anvil Project Services Ltd.
CSTB	Central Supply and Tenders Board
Jaco	Jaco Business Consultants Ltd.
PF (M) A	Public Finances (Management) Act

PAC	Public Accounts Committee
The Committee	The Public Accounts Committee
The Constitution	The Constitution of the Independent State of Papua New Guinea
The National Court	The National Court of Justice of Papua New Guinea
The Public Curator	The Office of the Public Curator
Agent or Agents	means an Agent of the Public Curator appointed by the Public Curator or the Attorney General.

5. THE INQUIRY

COMPOSITION OF THE COMMITTEE

- 5.1. The Public Accounts Committee which sat and made Inquiry into the Department of Lands and Physical Planning was constituted as follows:

13th April 2005:

1. Hon. John Hickey MP - Chairman
2. Hon Michael Maskal MP – Member.
3. Hon Tony Aimo MP - Member
4. Hon. Dr. Bob Danaya MP – Member
5. Hon. Sasa Zibe MP – Member
6. Hon Ekis Ropenau MP – Member

28th November 2005:

1. Hon. John Hickey, MP - Chairman
2. Hon. James Togel, MP – Member
3. Hon. Michael Mas Kal, MP – Member
4. Hon. Dr. Bob Danaya, MP – Member

5. Hon. Dr. Allan Marat, MP – Member

1st March 2006:

1. Hon. John Hickey, MP – Chairman
 2. Hon. Chris Haiveta, MP – Deputy Chairman
 3. Hon. John Vulupindi, MP – Member
 4. Hon. Sasa Zibe, MP – Member
 5. Hon. Michael Mas Kal, MP – Member
 6. Hon. Dr. Bob Danaya, MP – Member
 7. Hon. Malcolm Smith Kela, MP – Member
- 5.2. Also present at the Inquiry were Officers of the Public Accounts Committee, Officers of the Auditor General's office, Officers of the Department of Finance and the following Officers of the Public Curator:
1. Mr Paul Wagun – Public Curator
 2. Mr Theodore Bukikun, Regional Public Curator (Southern Region)
 3. Mr Vuatha Leva – Regional Public Curator (Highlands Region)
- 5.3. The Chairman, Deputy Chairman and Members of the Committee were properly and lawfully appointed and empowered to sit as a Public Accounts Committee.

6. LITIGATION

- 6.1. The Auditor General's Report on the Special Audit Investigation of the Office of the Public Curator contained certain findings against Contractors and/or Agents retained by the office of the Public Curator.
- 6.2. One of those Consultants was RAMS Business Consultants – a company apparently owned and operated by a Rex Paki.
- 6.3. On the 25th day of November 2005, Rex Paki and RAMS Business Consultants obtained an ex parte Restraining Order from the National Court of Justice.

- 6.4. That Order purported to restrain the Public Accounts Committee from considering any part of the Report of the Auditor General into the Office of the Public Curator which dealt with either RAMS Business Consultants or its principal, Mr Rex Paki, upon the basis that neither party had any opportunity to be heard in answer to the Report.
- 6.5. Before this action was commenced, the Committee had extended the opportunity to respond or appear to give evidence to Mr. Paki and RAMS.
- 6.6. Attempted service of the Order was made on 28th day of November 2005. That purported service breached Section 14 of the *Parliamentary Powers and Privileges Act 1964*. That Section states:

Section 14 SERVING OF PROCESS WITHIN THE PRECINCTS

(1) A person who, on a day in respect of which this Section applies, and within the precincts of the Parliament –

a) Serves, tenders for service or executes any Writ, Summons, Warrant, Order or other process issued by or with the Authority of any Court or otherwise in accordance with any law; or

b) ...

is guilty of an offence;

Penalty: A fine not exceeding K400.00 or imprisonment for a term not exceeding 6 months.

(2) This Section applies in respect of –

a) ...

b) A day fixed by a Committee of the Parliament to be a day on which the Committee will sit.”

- 6.7. The Committee has referred the Process Server to the Office of the Speaker of the Parliament for prosecution in accordance with Section 39 of the *Parliamentary Powers and Privileges Act 1964*.
- 6.8. On the 13th December 2005, the National Court of Justice refused to continue or remake the Restraining Order. Her Honour Davani J. said;

“The Plaintiffs make no appearance. There is no restraining order in place. The PAC should not be hindered from carrying out its lawful activities and should do so”.

6.9. The Public Accounts Committee continued with the Inquiry into the Office of the Public Curator and concluded the Inquiry on the 1st March 2006.

6.10. Neither RAMS nor Mr. Paki made any submission to the Committee.

7. JURISDICTION AND PURPOSE OF THE INQUIRY

INTRODUCTION

7.1. The Public Accounts Committee received a large number of very serious allegations of misconduct leveled against the Office of the Public Curator and its staff. Those reports and complaints extended over many years.

7.2. The Committee considered that the Office of the Public Curator fulfills a unique and highly important role in Papua New Guinea society.

7.3. The Public Curator is a Trustee who is responsible for the administration and finalization of the assets of, inter alia, deceased Estates and Estates of persons under disability.

7.4. By mid 2003 the Auditor General had provided reports and audits to the Minister of Justice and Attorney General concerning the financial statements of the Public Curator’s Office.

7.5. This Report was tabled in Parliament and it was immediately evident that the Auditor General was unable to determine the accuracy of virtually any information recorded in the financial statements due to the chaotic state of the Office of the Public Curator.

7.6. The Auditor General identified significant failures in those financial accounts, serious financial and administration problems and wide mismanagement at all levels within the Office of the Public Curator, over a long period of time.

7.7. These conclusions were not new. The Committee notes that, in 1999, the Auditor General was unable to provide any opinion as to the reliability of financial statements and the 1999 Audit Report identified significant shortcomings in record-keeping and control within the Office of the Public Curator.

- 7.8. That the Government has failed to address these findings in the last five years is unacceptable.
- 7.9. As a result of these complaints and Reports, the Public Accounts Committee resolved to request a Special Audit Investigation into the Public Curator of Papua New Guinea, from the Office of the Auditor General.
- 7.10. The Public Accounts Committee received the Special Audit Report and was so concerned at the findings, that the Committee deemed this Inquiry into the Office of the Public Curator to be a matter of National interest pursuant to Section 17 of the *Permanent Parliamentary Committees Act* and commenced a two-day Inquiry into the state of that Office.
- 7.11. At the conclusion of the Inquiry, the Committee resolved to report to the National Parliament its Findings, Resolutions, Recommendations and Referrals.
- 7.12. At all times, the Committee has taken great care to enable all witnesses to make full and complete representations and answers to any matter before the Committee – in particular those matters about which the Committee may make adverse findings against individuals or companies.
- 7.13. The Committee received and considered submissions from JACO Ltd., L.J. Hooker Ltd. And Anvil (PNG) Project Services These documents are presented in Volume 2 of this Report.
- 7.14. The Public Accounts Committee has given careful consideration to all responses and to all evidence given before the Committee.
- 7.15. All evidence was taken on oath and full and due Inquiry was made of all relevant State Agencies where the Committee considered those Inquiries to be necessary.

JURISDICTION

THE CONSTITUTION OF THE INDEPENDENT STATE OF PAPUA NEW GUINEA

- 7.16. The Committee finds its jurisdiction firstly, pursuant to Section 216 of the *Constitution of the Independent State of Papua New Guinea*. That Section reads:

“216. Functions of the Committee

(1) The primary function of the Public Accounts Committee is, in accordance with an Act of the Parliament, to examine and report to the Parliament on the public accounts of Papua New Guinea and on the control of and on transaction with or concerning, the public monies and property of Papua New Guinea”.

(2) Sub-section (1) extends to any accounts, finances and property that are subject to inspection and audit by the Auditor General under Section 214 (2) ... and to report by the Auditor General under that Sub-section or Section 214 (3)...”.

7.17. The Committee has taken care to restrict its Inquiry to an examination of the control of and transactions with or concerning the public monies and property of Papua New Guinea by the Office of the Public Curator and its Officers.

7.18. Whilst considering the relevant provisions of the Constitution, the Committee has had regard to the **Final Report of the Constitutional Planning Committee 1974** and been guided by or applied the stated intentions of that Committee wherever necessary.

7.19. Whilst engaged in the Inquiry the Committee was guided by two definitions contained in the Constitution, which are directly relevant to Section 216 of the *Constitution*. They are:

“Public Accounts of Papua New Guinea” includes all accounts, books and records of, or in the custody, possession or control of, the National Executive or of a public officer relating to public property or public moneys of Papua New Guinea;”

and

“Public moneys of Papua New Guinea” includes moneys held in trust by the National Executive or a public officer in his capacity as such, whether or not they are so held for particular persons;”

THE PUBLIC FINANCES (MANAGEMENT) ACT 1995

7.20. The Public Accounts Committee also finds its jurisdiction to inquire into the Office of the Public Curator in Section 86 of the *Public Finance (Management) Act 1995*. That Section empowers the Committee to examine accounts and receipts of collection and expenditure of the Public Account and each statement or Report of the Auditor General presented to the Parliament.

- 7.21. The Office of the Public Curator receives, spends, and is accountable for public monies.
- 7.22. The Committee has considered both accounts and receipts of public monies as they have been made available by the Office of the Public Curator and such Reports of the Auditor General as may have been presented to Parliament.
- 7.23. The Committee has further considered reports of the Auditor General which have not yet been presented to the Parliament, on the basis that that evidence was tendered by the Auditor General for the consideration of the Committee and on the basis that such material is within the power of the Committee to consider.
- 7.24. Power to refer matters for investigation and possible prosecution is granted to the Committee by Section 86A of the *Public Finances (Management) Act*.

PERMANENT PARLIAMENTARY COMMITTEES ACT 1994:

- 7.25. The Committee found further jurisdiction for the Inquiry in Section 17 of the *Permanent Parliamentary Committees Act*.
- 7.26. That Section provides that the Public Accounts Committee can consider any matter of national importance, on its own initiative. The Committee, as we have stated, considers the Office of the Public Curator to be such a matter.

PURPOSE OF THE INQUIRY

- 7.27. The Public Accounts Committee conducted this Inquiry to establish the standard to which and the competence and honesty with which the Office of the Public Curator has fulfilled its role as the Trustee of Estates – and therefore its statutory position as the State appointed, funded and accountable Trustee.
- 7.28. The Public Accounts Committee conducted this Inquiry to establish whether the Public Curator, in all its operations, complied with all lawful requirements and, if not, to make recommendations for change.
- 7.29. The Public Accounts Committee conducted this Inquiry to establish the exact state of Estates managed by the Office of the Public Curator and the liability of the State (if any) for failings within the Office of the Public Curator.

8. THE AUTHORITY TO REPORT

- 8.1 The Public Accounts Committee finds authority to make this Report in Section 17 of the *Permanent Parliamentary Committees Act* and Section 86 (1) (c) and (d) (i), (ii), (iii) and (iv) and (f) of the *Public Finances (Management) Act 1995*.

9. THE AUTHORITY TO REFER

- 9.1. Where satisfied that there is a prima facie case that a person may not have complied with the provisions of the *Constitution of the Independent State of Papua New Guinea* and / or the *Public Finances (Management) Act 1995* in connection with the control and transaction with and concerning the accounts of a public body or the public moneys and the property of Papua New Guinea, it may make referrals of that person to the Office of the Public Prosecutor in accordance with Section 86A of the *Public Finances (Management) Act*.
- 9.2. The Public Accounts Committee is not a true investigatory body capable of investigating and/or prosecuting persons for breaches of the law. The Committee is required to refer such matters to the appropriate authorities and may make such recommendations as it thinks fit in relation to any referral made pursuant to Section 86A of the *Public Finances (Management) Act 1995*.
- 9.3. The Committee is also empowered to refer for prosecution, any witness who fails to comply with a Notice to Produce any document, paper or book and / or any person who fails to comply with a Summons issued and served by the Committee. See Section 23 *Permanent Parliamentary Committees Act*.
- 9.4. The Public Accounts Committee refers past and present Public Curators, past and present Attorneys General and staff of the Office of the Public Curator for investigation of the alleged failures to carry out their duties and subsequent prosecution, should the investigating authorities adopt that course.
- 9.5. Those referrals were made after anxious consideration of the evidence and explanations given by the Public Curator and other witnesses. These parties were invited to make any response or show any reason why they should not be referred, but have made no or no adequate response to the Committee in this regard.
- 9.6. The Committee knows that to make Referrals, particularly of senior Public Servants is a very serious matter which may adversely reflect on the individual concerned. These Referrals are not made lightly but only after careful consideration and unanimous resolution of the Committee.

10. METHOD OF INQUIRY

- 10.1. The Inquiry by the Public Accounts Committee into the Public Curator was a public hearing at which sworn evidence was taken from a small number of witnesses. A list of witnesses is contained in Schedule 1 to this Report.
- 10.2. The Public Accounts Committee received a large number of documents and reports. Those documents are listed in Schedule 3 of this Report and are contained in Volume 2 of this Report.

11. RELEVANT STATUTES

- 11.1. The Committee was required to consider the following Statutes during the course of the Inquiry:

PUBLIC FINANCES (MANAGEMENT) ACT 1995.

- 11.2. The *Public Finances (Management) Act* prescribes the method and standard of the administration of and accounting for public monies, public properties and assets by State entities in Papua New Guinea.
- 11.3. Further, the Act imposes certain obligations on Public Servants for collection of State revenue and controls the expenditure of State or public monies.
- 11.4. Relevant sections of the Act which were considered by the Public Accounts Committee during the course of the inquiry into the Office of the Public Curator are:

- (i) **Section 5 – Responsibilities of Heads of Department**

This Section prescribes the duties, powers and obligations of a Head of Department.

- (ii) **Section 3 – Responsibilities of the Minister**

This Section prescribes the obligations and duties of relevant Ministers of State.

- (iii) **Part x - The Public Accounts Committee**

This Part empowers and imposes functions and obligations on the Public Account Committee. In particular, the Committee was required to consider Section 86 (A) – power to refer officers of the

Public Curator to the Office of the Public Prosecutor for investigation and possible prosecution relating to breaches of the *Public Finances (Management) Act 1995* and/or the *Constitution*.

(iv) **Part xi - Surcharge**

This Section prescribes personal liability for certain public servants who fail in their obligations to collect and protect certain public monies.

(v) **Section 112 – Offences**

This Section prescribes disciplinary action which may be taken against certain public servants or accountable officers who fail to comply with the terms of the *Public Finances (Management) Act 1995*.

FINANCIAL INSTRUCTIONS

- 11.5. Section 117 of the *Public Finances (Management) Act 1995* enables the promulgation of certain *Financial Instructions* which establish detailed procedures for the handling, collection, expenditure, disposal of and accounting for public monies, property and stores.
- 11.6. The Public Accounts Committee had regard to these *Financial Instructions* when considering the performance of the Office of the Public Curator and its relevant responsible officers.
- 11.7. In particular, the Committee had regard to:

Part 6 Division 1 Para. 2.1 – ACCOUNTABLE OFFICERS.

“.....the Departmental Head is liable under the doctrine of personal accountability to make good any sum which the Public Accounts Committee recommends should be “disallowed””.

ORGANIC LAW ON THE DUTIES AND RESPONSIBILITIES OF LEADERSHIP

- 11.8. The Public Accounts Committee has had regard to this Organic Law in the course of the Inquiry into the Office of the Public Curator. Certain referrals and resolutions were considered within the terms of this Organic Law and are more fully developed (infra).

AUDIT ACT

11.9. The Audit Act establishes and empowers the office of the Auditor General to carry out its work of overseeing and supervising the handling of public monies, stores and property by all arms of the National Government. The Public Accounts Committee had regard to the terms of this Act during the course of the inquiry into the Office of the Public Curator.

11.10. The Committee received considerable assistance from the Office of the Auditor General in the course of this Inquiry.

PERMANENT PARLIAMENTARY COMMITTEES ACT 1994

11.11. The Committee has had regard to Section 17 of the *Permanent Parliamentary Committees Act 1994* during the course of the Inquiry into the Office of the Public Curator.

PARLIAMENTARY POWERS AND PRIVILEGES ACT 1964

11.12. The *Parliamentary Powers and Privileges Act 1964* sets forth those privileges and powers extending to Members of Parliament, Committees of Parliament and Officers or Parliamentary Staff.

11.13. In the course of this Inquiry, the Committee had cause to examine and apply Sections 14 and 39 of that Act.

PUBLIC CURATOR ACT 1951

11.14. The Public Accounts Committee had given detailed consideration to the *Public Curator Act 1951*. This Act establishes and empowers the Public Curator in all its aspects of operation.

11.15. The Public Accounts Committee had particular reference to Parts II, III, V and VI of this Act.

WILLS AND PROBATE ADMINISTRATION ACT 1966

11.16. The Public Accounts Committee had general regard to the terms of this Act – as it deals with the Administration of deceased estates by the Public Curator both intestate and testate.

INSOLVENCY ACT 1951

11.17. The Committee had regard to the *Insolvency Act 1951* where that Act enables the Public Curator to act as a Trustee for Wills, Deeds of Trust and other Trust Investments or to act as Executor, Distributor and Administrator of deceased estates or Insolvent Estates.

PUBLIC HEALTH ACT Ch. 226

- 11.18. The Public Accounts Committee had regard to the terms of the *Public Health Act* insofar as that Act appoints the Public Curator to act as trustee or Manager of properties or affairs of persons certified insane, infirm, or incapable of managing their own affairs.
- 11.19. It is against this statutory background that the Public Accounts Committee conducted this Inquiry.

12. FISCAL RESPONSIBILITIES OF THE GOVERNMENT

- 12.1. The Government of Papua New Guinea is obliged to adequately fund and resource the Office of the Public Curator.
- 12.2. The Office of the Public Curator is accountable to the Office of the Attorney General and this Committee concludes that the Office of the Attorney General is responsible for ensuring adequate and proper funding and resourcing of the Office of the Public Curator.
- 12.3. This Committee finds that the Office of the Public Curator has been very considerably under-financed and under-resourced for many years.
- 12.4. The Committee finds that this failure by Government has and will result in very significant exposure of the State to liability for mismanagement, incompetence and corrupt conduct within the Office of the Public Curator.
- 12.5. The Committee also finds that the Government owes a further obligation to adequately and properly oversight and control the Office of the Public Curator. Both the Department of Justice, the Attorney General and the State have completely failed to fulfil this obligation.
- 12.6. The Committee makes certain findings and Referrals in this regard, later in this Report.

13. RESPONSIBILITES OF THE AUDITOR GENERAL

- 13.1. The Auditor General is a Constitutional Office Holder and the duties and responsibilities of that Officer are contained in the *Audit Act 1989*.
- 13.2. The standard of the Reports of the Auditor General into the Office of the Public Curator are found by this Committee to be both competent, detailed and correct.
- 13.3. The Committee fully understands the severe staffing constraints attending the Office of the Auditor General and will make recommendations in

respect of the funding and resourcing of that Office by the Government of Papua New Guinea, to enable it to carry out its statutory duty in a competent and timely manner.

14. OFFICE OF THE PUBLIC CURATOR – FUNCTIONS AND POWERS

14.1. The Office of the Public Curator is established and operated under the *Public Curator Act 1951* (“the Act”). The major functions of the Public Curator are:

- Administration of deceased Estates both intestate and testate under the *Wills and Probate Administration Act 1966*.
- To act as agent or attorney for Estates.
- Act as Trustee under the *Insolvency Act 1951* for Wills, Deeds of Trust and other Trust Investments, and as an Executor, Distributor and Administrator of deceased Estates;
- Act as trustee for minors properties;
- Act as Official Trustee to administer Estates adjudged insolvent by the National Court in accordance with the *Insolvency Act 1951*; and
- Act as Trustee or Manager for the management of properties of persons certified insane, infirm or incapable of managing their own affairs under the *Public Health Act 1973*.

14.2. The Public Curator’s office is located in Port Moresby with regional offices in Rabaul, Lae and Mt Hagen.

14.3. The Public Curator acts as Trustee and accepts all the onerous responsibilities of a Trustee administering money and property of deceased persons for the benefit of named and identified beneficiaries.

14.4. The Public Curator also stands in a fiduciary relationship to the Estate and its beneficiaries, with all the duties and obligations attending such a relationship.

14.5. The Committee finds that the Public Curator owes very strict obligations to carry out the work of a Trustee in a lawful and efficient manner.

14.6. The Committee considers that the position of Public Curator requires the appointment of a person with highly specialized training, experience and qualifications.

- 14.7. Moreover, that position and all staff positions within the Office of the Public Curator require high standards of probity, accountability, analysis and judgement by persons who hold those offices.
- 14.8. This Committee finds that those attributes have been lacking for many years.
- 14.9. In order to carry out these obligations the Office of the Public Curator requires sufficient trained and competent staff or trained and efficient and honest contractors that possess the appropriate skills and experience to undertake these responsibilities.
- 14.10. This Committee finds that these skills and experience have been lacking for many years.
- 14.11. The skills required are legal, financial, accounting/management, investment and property management, office support, public management and capacity to deal quickly and honestly with property entrusted to the Office.
- 14.12. The Committee finds that the Public Curator also owes a moral and ethical responsibility to beneficiaries and that the person holding the Office of Public Curator must be trained and experienced in carrying out this highly specialised statutory role, but has failed to meet those obligations.
- 14.13. The Public Curator has the power to appoint Agents to carry out certain functions – see Section 4 *Public Curator Act*.
- 14.14. This Committee considers that the position of Agent, contractor or consultant of the Public Curator requires the appointment of persons of high repute, honesty and competence.
- 14.15. This Committee concludes that those attributes were lacking in the majority of Agents so appointed.
- 14.16. The Committee finds that Consultants, contractors and agents to the Public Curator were unlawfully appointed and were often incompetent or ineffective.
- 14.17. In order to carry out his statutory role in an efficient manner, the Public Curator should be free of inter-meddling by any person.
- 14.18. This Committee finds that there is evidence of considerable interference in the management and financial operation of the Public Curator's Office by the Department of Justice and Attorney General. This Committee makes findings concerning that interference later in this Report.

- 14.19. Equally, this Committee finds that when the Attorney General should have intervened in the operations of the Public Curator – he did not, to the detriment of the Office, the State and beneficiaries.
- 14.20. The Committee finds that the Office of the Public Curator has, for many years, failed to carry out its function in anything like a competent manner.
- 14.21. Criminal dealings, fraud, forgery, incompetence and non-accountability have resulted in gross mismanagement of a huge number of Estates which may result in a significant liability to the State for those failures.

15. INQUIRY BY AND REPORT OF THE AUDITOR GENERAL

- 15.1. On the 13th June 2003 the Auditor General reported to the Minister of Justice and Attorney General on the financial statements of the Public Curator's Office for the year ending 31st December 2000. This report was tabled in the Parliament.
- 15.2. In that report the Auditor General found that
- “financial statements were prepared from incomplete and insufficient records resulting in the limitation of scope of my audit work. As a result, it was impractical to extend my audit procedures sufficiently to determine the accuracy of the information recorded in the financial statements”.*
- 15.3. The Auditor General identified and described serious failures in the financial accounts and raised matters which, prima facie, suggested a failure of the Trustee to act in a proper and lawful manner.
- 15.4. More significantly, the report identified serious financial and administrative mismanagement over a long period.
- 15.5. In 1999 the Auditor General undertook an audit of the financial statements for the period ending 31st December 1991 and in October 1999, provided a qualified audit opinion on these financial statements.
- 15.6. The Auditor General could not then form an opinion as to whether the financial statements were based on proper accounts and records or whether the financial statements showed fairly the state of affairs of the Public Curator's office as at the 31st December 1991.

That audit reported:-

- Incomplete reporting

- Accounting records either non existent or not made available
 - Inability to verify bank balance and cash books which could not be reconciled.
 - A Register of Assets belonging to Estates had not been maintained.
 - Inadequate accounting for investments.
 - Inadequate management of investments.
 - Estate and trust accounts that had been static for up to 20 years when the *Public Curators Act 1951* require these to be remitted to the Consolidated Revenue Fund
 - The Estate records had not been reconciled.
 - Fees and Commissions charged on Estates had not been paid into Consolidated Revenue on a regular basis.
- 15.7. On the 13th April 2005 the Parliamentary Public Accounts Committee commenced an inquiry into the office of the Public Curator.
- 15.8. The Public Accounts Committee resolved to request the Auditor General to carry out a Special Audit Investigation of the office of the Public Curator of Papua New Guinea.
- 15.9. The Public Accounts Committee set the following Terms of Reference for the Auditor General:
1. To review the *Public Curators Act* to ascertain compliance by the Public Curator's office in terms of administration of Estates.
 2. To review compliance with the Act in terms of investment and distribution of deceased Estates.
 3. In reviewing compliance with (1) and (2), ascertain the legitimacy and appropriateness of specific decisions and actions concerning the administration of deceased Estates.
 4. Establish whether proper accounts and records were maintained by the Public Curator's office in accordance with the *Public Curators Act* and other relevant legislation including an investigation into bank accounts, Estate accounts and records, office accounts and returns.

5. Establish lapses in the system and ascertain reasons for such lapses.
 6. Establish whether any misappropriation, theft or fraud might have occurred as a result of any weakness in the system, particularly during the time of the previous management and also under the current management.
 7. Review engagement of Consultants and ascertain whether proper procedures were followed for such engagement and also examine the scope of work and reports prepared by the Consultants and examine whether Certificates of Compliance were in place
 8. Review the *Insolvency Act* and the *Companies Act* to see whether the Public Curator has complied with those Acts
 9. Review the internal control procedures in place to establish their adequacy and effectiveness.
 10. Review the audit report issued under Section 8 (2) of the *Audit Act* for the year ended at 31st December 2000 to establish whether any misappropriation, theft or fraud might have occurred during the period under audit.
 11. Establish whether the current management has taken necessary action to improve control systems covering audit qualifications issued on the 13th June 2003.
 12. Based on the qualifications in the Auditor General's Report for the year 2000, investigate fully and provide the necessary documentary evidence in addition to the information that has been collected to support the Audit qualifications.
- 15.10. The Auditor General reports that the scope of the audit was handicapped by failures within the Public Curator's Office. These failures are:
- Lack of audit trail;
 - The Public Curator's Office has no proper accounting system in place. The Financial Statements were prepared by the Auditor by relying only on insufficient manual cash book without proper distribution of accounts. In addition, the Office did not maintain any General Ledger and any General Journal. Subsidiary books such as staff advances and various creditors lists were not kept.

- The Committee finds this is a fundamental breach of the requirements of the *Public Finances Management (Act)* and the *Financial Instructions*.
- The Public Curator does not maintain proper books of accounts. The Financial Statements were prepared from incomplete and insufficient records resulting in the limitation of scope of the audit. The audit was unable to determine the accuracy of the information recorded in the financial statements.
- Again, the Committee finds that this is a fundamental breach of the *Public Finances (Management) Act* and *Financial Instructions*.
- There is no reliable system of control over the Estate ledger accounting on which the Auditor could rely for the purpose of the audit. In particular, the Auditor was not able to satisfy himself as to the accuracy of the bank reconciliation or completeness of the Public Curator's books, was unable to obtain sufficient audit evidence concerning the accuracy and completeness of opening balances of assets and liabilities in the Estate ledger.

16. FINDINGS OF THE AUDITOR GENERAL

16.1. The Auditor General reports the following conclusions:

- That, in 2001, an independent Consultant commissioned by the Public Curator produced a strategy for addressing the problems of that Office and a future plan. The Auditor General finds little evidence that those strategies/recommendations have been acted on.
- The Office of the Public Curator has, for many years, acted in an ad hoc manner with no obvious direction or plan. That situation continues to the present day.
- There are significant problems with staff numbers, skills and qualification, financial and other resources, additional appropriation, facilities, procedures and manual and computer systems required to support the operations of the Office of the Public Curator.
- Limited evidence of any action to address staff numbers, skills and qualifications, financial and other resources, additional appropriation, facilities, procedures and manual and computer systems required to enable the Public Curator to competently carry out his statutory duty.

- The Public Curator has failed to establish policies and practices essential for the effective operation of the Public Curator's Office, including the establishment of control structures;
- A failure to secure sufficient and appropriate resources for the Public Curator's Office to operate effectively;
- A failure to manage the activities of Agents resulting in significant and unlawful losses to Estates;
- A failure to finalise Estates in a timely manner;
- A failure to maintain proper accounting records and documentation relating to the financial matters and the management of Estates;
- A failure to provide any proper accounting for its operation since 1991 or provide satisfactory financial reports;
- A failure to maintain proper accounting records relating to the operations of the Public Curator's Office;
- A failure to fully and accurately identify and value the extent of Estates;
- A failure to manage and maintain assets, including properties, that make up Estates;
- A failure to manage and effectively account for investments;
- A failure to remit commissions received to the Consolidated Revenue Fund as required by the *Public Curators Act 1951* and of *Section 211(2) Constitution*;
- A failure to remit monies to the Consolidated Revenue Fund relating to Estate investment and property not resolved within a period of six years as required by Section 17 of the *Public Curators Act 1951*;
- A failure to protect the assets of Estates and as a result significant amounts of money and assets held in trust have been lost through poor management and fraud;
- A failure to manage large Consultancies effectively, and as a result of this mismanagement, has not received any benefits from significant expenditures;

- A failure to take action to recover monies lost or to act against individuals or organizations responsible; and
 - A failure to provide any level of effective customer service to beneficiaries, responding only to Court actions and threats by beneficiaries;
 - That the Public Curator has failed to discharge his responsibilities as a Trustee and this failure extends to assets of the Estates, money, plant and properties.
 - That a significant amount of Trust money has been lost through fraud or has been spent and cannot be accounted for – this results from inadequate financial management and/or illegal expenditure on operating costs of the Public Curator’s Office.
- 16.2. More specifically, the Auditor General finds that the Public Curator has charged Commissions far in excess of that allowed by the ***Public Curator Regulations*** and cannot reconcile the Commissions removed from Estate monies, to individual Estates.
- 16.3. Further, monies collected as Commissions have been used to offset the running and operational cost of the Public Curator’s Office rather than being remitted to the Consolidated Revenue Fund.
- 16.4. This appalling litany of conclusions is compounded by a finding that over K 2.5 Million provided by the Government specifically to meet shortfalls in the Estate Trust Account caused by the inappropriate use of trust monies by the Public Curator’s Office, has not been used for this purpose but has been employed to discharge operating debts of the Public Curator’s Office
- 16.5. This blatant misuse of the allocated public funds requires urgent referral and investigation by the relevant investigatory Agencies.
- 16.6. The Auditor General concludes that the Department of Finance has an obligation regarding the review and monitoring of Trust Accounts. However, clearly, in the case of the Public Curator’s Office, the Department of Finance has completely failed to meet those obligations.
- 16.7. On the 13th June 2000 Mr Nouairi, the Acting Public Curator, reported that:
- “At the moment, the Office is under strength in manpower. It lacks basic skills and administrative knowledge in administering matters that fall under the Public Curator’s responsibilities.*”**

.....

Customer service is chaos (sic) and attending queries for the customers is even embarrassing because the information required either no existence (sic) or misplaced. Many estates have been in our custody for ages without attempting to grant them the probate or obtaining letters of administration for their releases.

The Office is inundated with legal threats of unnecessary procrastination of obtaining probates, and non responses to letters from the clients since September last year.

It should not be a surprise to anyone because the personnel are insensitive to the public pressures or indifference (sic) to their responsibilities. Given this background you can draw your own conclusions of the problems the Public Curator has in attempting to discharge his statutory responsibilities”.

16.8. It is therefore clear that as early as 2000, at least some of the problems were known to the Office of the Public Curator itself.

16.9. The Acting Public Curator continued:

“... State of Administration of numbers of estates which I have examined is very appalling ... as they involved huge amounts of overpayments. Due to lack of proper checks and balances, there are no audit records and situational reports; it is possible that the estate records may not be completely accurate.

... Overpayments are attributed to a number of things. The officials are incompetent in their duties which contributed to this mess. Records are missing, cheques have been written without authority by subordinates and no proper control of accounts and lack of audits for the last decade has led to the demise of this office’s integrity”.

16.10. The Auditor General concludes that the situation reported some five years ago, still prevails.

16.11. The Auditor General concludes that fraud and inappropriate use of Estate monies to fund the operation of the Public Curator’s Office means that there is a significant gap between Estate assets held by the Public Curator’s Office and its liabilities to beneficiaries of deceased estates.

16.12. The Auditor General continues:

“Due to the deplorable state of the Public Curator’s Office financial records, I am not able to accurately quantify this amount. I do know that the Public Curator estimated the gap to be more than K9,000,000 in its 2002 submission to the National Executive Council seeking financial assistance.

I am of the opinion that the situation has worsened over the last three years. In addition the Public Curator cannot be assured that he has identified all of the financial and non-financial assets including properties, belonging to estates”.

16.13. The Auditor General also concludes that systems, manual and computerized, that support the operations of the Public Curator’s Office are inadequate or do not operate effectively with even the most basic controls absent.

16.14. The Auditor General concludes that to accurately determine and finalise the disbursement of Estate assets to beneficiaries, is impossible.

17. RECOMMENDATIONS OF THE AUDITOR GENERAL

17.1. The Auditor General makes short and long term recommendations, which have been considered by the Public Accounts Committee. These recommendations are:

General Recommendations:

1. The Minister of Justice and Attorney General must act immediately to appoint someone with the appropriate background and capability to take responsibility for reform of the Public Curator’s Office.
2. The appointee should have experience in the operation and management of similar public trustee organization and be empowered to make the many and hard decisions required to move the Office of the Public Curator forward.
3. An immediate plan of action must be established. That Plan must set a timetable for the process, recommend a structure and organization for the Public Curator’s Office and specify the financial and manpower resources required to deliver at least the various stages of the plan.
4. In the medium term, the Minister for Justice and Attorney General need to address both the short term and long term objectives for the Public Curator’s Office.

Short Term Recommendations

1. It is necessary to obtain an understanding of the current financial and operational problems that face the Public Curator's Office. This should include the identification, documentation and resolution of instances where poor management practices and inappropriate behaviour, including fraud, have resulted in financial loss and to initiate recovery action;
2. Legal claims should be immediately pursued against parties for the recovery of assets of the Public Curator's Office or Estates that it manages including and in particular legal action against Consultants and Contractors that have failed to deliver contractual obligations and parties that have drawn on Estate funds or have failed to remit proceeds to Estate accounts;
3. Arrangements for appropriate and on-going funding of the Office of the Public Curator must be formalized immediately. That funding should be arranged through the budget and appropriation;
4. The State must immediately make up shortfalls in assets held in trust. This is likely to be a very expensive exercise;
5. The State must ensure appropriate and timely distribution of assets to beneficiaries as a priority;
6. The Public Curator and the State must ensure an understanding of the legal and business responsibilities and needs of the Public Curator's Office;
7. It is necessary to identify specific staffing numbers and skills base required to address the problems of the Public Curator's Office. This will need significant import of expertise through the engagement of Consultants and Contractors.
8. It is necessary to identify and establish policies, procedures and practices to support the operation of an effective and efficient Public Curator's Office, including the effective management of and accounting for all the assets of Estates.
9. Immediately identify and implement systems to support the operation of the Public Curator's Office. This will include:

Filing;

Document control;

Property/Asset Management;

Financial Management;

Reporting and Customer Support;

Property Registers;

Separate Financial Records of individual Estates;

Records of the full extent of the assets of an Estate;

Identification of new Estates;

Management and administration of businesses;

Asset Registers of Plant and Equipment including motor vehicles;

Property Management system to ensure properties are controlled, maintained and leased; and

Mortgage Registration and management.

10. Projects to obtain and analyse information relating to the responsibilities of the Public Curator as Public Trustee must be instituted;
11. Immediately initiate projects to ensure that systems contain and maintain complete and accurate Estate, asset and financial information for all of the Public Curator's clients.
12. Immediately establish processes for dealing effectively with clients of the Office of the Public Curator;
13. Propose changes to the legal framework set out in *the Public Curator Act* and *Public Curator Regulations*.

Longer Term Recommendations

- 17.2. After consolidation of the achievements in the short term, the State must:
 1. Develop a Corporate Plan supported by Risk Assessment and Policies and Business Plans for the Public Curator's Office;
 2. Analyse, identify and legislate the legal form of the Office of the Public Curator with attention to administrative autonomy of that Office and clear definition of the roles of other Agencies – in particular the Department of Justice and Attorney General;

3. Review longer term funding. Funding strategies will need to take into account that it is unlikely the Public Curator's Office can achieve self funding in the medium term, if ever, and that there would be the need for continued financial support from the State;
4. Formalise structure and staffing establishment for the Public Curator's Office;
5. Recruit staff and ensure effective on-going training and assessment programs;
6. Ensure a control environment over business operations including management and financial controls;
7. Analyse and update records of deceased Estates/accounts/clients and develop networks with relevant private and public Agencies to ensure continued maintenance of records and identification of Estates.

17.3. The Public Accounts Committee accepts the findings and recommendations of the Auditor General but makes further findings, recommendations and referrals in its own right. These are set forth at the conclusion of this Report.

18. RESPONSE BY THE PUBLIC CURATOR

- 18.1. The Office of the Auditor General invited the Public Curator to respond to its Report and provided the opportunity for the Public Curator to incorporate any response that it wished. The Public Curator declined to formally respond until after the Report had been tabled in the Parliament.
- 18.2. Eventually, the Public Curator did prepare and table a Response before the Public Accounts Committee on the 28th November 2005. A copy of that Response is contained in Volume 2 of this Report.
- 18.3. The Public Accounts Committee gave careful consideration to the Response from the Public Curator and summarises responses to individual findings of the Auditor General (infra).

19. SPECIFIC ALLEGATIONS AND FINDINGS BY THE PUBLIC ACCOUNTS COMMITTEE:

- 19.1. The Public Accounts Committee examined specific allegations and findings contained in the Special Audit Investigation by the Office of the Auditor General. The Committee now addresses each of those allegations,

the evidence, the response of the Public Curator thereto, and makes certain findings, resolutions and referrals.

19.2. These specific matters of Inquiry and findings in respect of them are:

20. PUBLIC CURATOR'S OFFICE STAFFING

AUDITOR GENERAL'S FINDINGS

- 20.1. The Auditor General found that the Public Curator has never had sufficient persons with the necessary qualifications to ensure that the Office of Public Curator was able to carry out its statutory duties. The lack of expertise, training, experience and qualifications extends also to the Public Curator himself and the Regional Public Curators.
- 20.2. The Auditor General finds that this lack of staff and or adequately trained personnel has resulted in a backlog of Estates in various stages of resolution. All too often the Committee finds that many Estates were left unattended or derelict. Few deceased Estates have been resolved in a reasonable time period and there are many instances of Estates not resolved after a decade or more.
- 20.3. The Auditor General finds that the Public Curator's office has no qualified accountant, qualified property management staff to deal with 680 properties under the trusteeship of the Public Curator, no trained or adequately trained search staff and no repository of skill or expertise in the evaluation, letting, maintenance, sale, transfer and general management of the Estate properties.
- 20.4. Further, the Auditor General finds that the Public Curator has no investment advice to ensure maximum return on investments of Estate monies, no qualified legal staff, no independent internal audit function and no or no sufficient office management staff including information technology, contract management and filing staff to ensure that manual and computer systems are installed, or work at all.
- 20.5. The Auditor General finds that the current permanent staffing of the Public Curator's office is 10 persons only. These numbers are totally inadequate to deal with approximately 19,600 Deceased Estates managed by the Public Curator.

Those 10 staff are:

- Public Curator (Waigani)
- Deputy Public Curator (Mt Hagen)

- Four Regional Deputy Public Curators (Waigani, Boroko, Lae and Rabaul).
 - Executive Secretary (Waigani)
 - Three Office Assistants (Waigani, Boroko and Mt Hagen)
- 20.6. Eleven casual employees are retained by the Public Curator, but these staff have inadequate training and qualifications to carry out their tasks.
- 20.7. The Auditor General finds a problem with continuity of expertise within the Office of the Public Curator. Most employees including casuals had been employed by the Public Curator for less than four years and few were with the office prior to 1999. Clearly the lack of expertise and competence is contributed to by high staff turnover.
- 20.8. The Auditor General concludes that the Public Curator's Office is not resourced with sufficient or appropriately skilled staff to meet its obligations. As a result, it has been unable to identify all the properties belonging to the deceased Estates or manage, maintain, dispose of or transfer to beneficiaries the 680 properties which are currently identified.
- 20.9. The Auditor General finds a total of 19,600 unresolved Estates dating back over 15 years and the backlog is growing all the time.
- 20.10. The Auditor General concludes that the Office of the Public Curator needs immediate additional and properly qualified staff to manage its operations. It also needs significant resources to re-establish any semblance of competence in its operations.
- 20.11. The Auditor General concludes that key positions in the Public Curator's Office including the Public Curator himself are held by Officers who do not have the capabilities, experience and qualifications to hold their positions.
- 20.12. Further, although such expertise has been sought through Agencies and Consultancies, the Public Curator is not in the position to control or direct those Agents – due mainly to a lack of skilled staff to accomplish even this role.

RESPONSE OF THE PUBLIC CURATOR

- 20.13. The Public Curator tendered to the Public Accounts Committee a document entitled **“Public Curator's Response on Special Audit**

Investigation of the Office of the Public Curator” on the 28th November 2005.

- 20.14. In respect of staffing of the Office of the Public Curator, that Response states:

“The Report on this is very accurate and facts pointed out are the core fundamental reasons for the failure of the Office to deliver services as should be expected in any jurisdiction with a vibrant justice system”.

And later at Page 8:

“No organization can function without properly qualified and capacitated manpower”.

- 20.15. So far as the Committee can ascertain, the Public Curator agrees with the conclusions of the Auditor General.

- 20.16. On the 28th November 2005 the Public Accounts Committee questioned the Public Curator on this issue. The sworn evidence was:

HON. JOHN HICKEY MP (Chairman) –

Is it true that the Public Curator’s Office does not have enough skilled staff to fully perform the functions of the Office and to update its records? Yes or no

MR PAUL WAGUN (Public Curator) –

Mr. Chairman it is very true.

HON. JOHN HICKEY MP –

Is it true that estates totaling K19,600 remain unresolved and some dating back to some 15 years? Yes or no

MR PAUL WAGUN –

Mr Chairman that’s correct.

HON. JOHN HICKEY MP –

Is it true that the financial accounts and records of estates are not updated or missing and large numbers of outstanding legal disputes need to be settled? And there are large numbers of outstanding legal disputes to be settled? Yes or No

MR PAUL WAGUN –

Mr Chairman that is very true and its getting more complicated every day and every year”.

- 20.17. The Committee accepts the conclusions of both the Auditor and the Public Curator.

FINDINGS OF THE PUBLIC ACCOUNTS COMMITTEE

- 20.18. The Committee find that the Public Curator’s Office is not now and has not been for many years adequately staffed with sufficient or appropriately skilled officers.
- 20.19. As a result of this neglect the Office of the Public Curator has become totally inadequate to the task of managing deceased Estates and the huge backlog of unresolved Estates dating back 15 years is growing all the time.
- 20.20. The financial records and accounts of the Estates are not up to date, are missing or incomplete – as are records of Estate dealings.
- 20.21. There are a large number of outstanding legal disputes. The Committee notes that in early March 2006, a Judgment was given against the office of the Public Curator for damages consequent upon a finding that the Public Curator had acted negligently in the administration of a particular Estate.
- 20.22. The Committee has been unable to ascertain the exact number of cases which have been brought against the Public Curator.
- 20.23. The Committee finds that the State may be open to significant liability as a result of this chronic understaffing and failure to properly resource the Office of the Public Curator with officers who understand and are trained to carry out their work.
- 20.24. The Committee finds that all key positions in the Public Curator’s Office are filled by persons who do not have the background, qualifications, training and experience required to hold the positions.
- 20.25. The Committee makes recommendations in respect of the staffing inadequacies later in this Report (infra).

21. INTERNAL CONTROLS

REPORT OF THE AUDITOR GENERAL

- 21.1. In order for the Office of the Public Curator to work effectively, the organization requires effective internal control structures appropriate to its highly specialized role and to ensure compliance with the *Public Finance (Management) Act 1995* and the *Financial Instructions* promulgated thereunder.
- 21.2. In order to establish appropriate controls, the senior management of the Public Curator's office needs to fully understand the unique and highly specialized requirements of Estate management and consequent business and financial risks which attend the position of a Trustee.
- 21.3. Had this understanding been present in the past, policies and internal lines of command and control could have been implemented and maintained. This has not occurred.
- 21.4. The very basic systems which are required are:
- Estate and Corporate file management, including a record of assets, decisions and status;
 - Correspondence control;
 - Financial management systems and accounting records for both corporate operations and Estate accounts;
 - Register of assets for investments, cash and property, plant and equipment.
- 21.5. The Auditor General's Report at Paragraph 5.3 outlines the types of basic controls which are required by the office of a Public Curator. The Committee accepts the comments of the Auditor General in this regard. Those basic controls are:
- Accounting policies including;
 - Dual signing of cheques;
 - Receipt Registers;
 - Separation of duties over approval to spend, certification of payments and authorization of payments;
 - Reconciliations of cash at bank to payments/receipts and posting to ledgers along with reviews of those reconciliations;

- Delegations over expenditure and other authorizations;
- Reconciliation of Registers of assets to Estates;
- Staff familiar with, and trained in, the processes and their individual responsibilities including new starters and temporary/contract staff;
- Secure storage for files;
- Accounting records, share certificates, passbooks, property titles and accountable documents;
- Monitoring and quality assurance processes to ensure that the control environment is operating effectively;
- Review and certification of all decisions on Estates;
- Control over access to manual and computer records;
- Review and quality assurance including internal audit.

21.6. The Systems which do exist had no effective controls, with an absence of even the most basic financial and management controls required to:

- Ensure completeness, accuracy and validity of records;
- Ensure security of assets;
- Ensure protection from corrupt and fraudulent behaviour by staff or third parties.

21.7. The Auditor General also finds corrupt systems incapable of providing complete or accurate records. Therefore the Systems cannot be relied upon to effectively manage the financial and other assets that the Public Curator holds in Trust and cannot provide Financial Reports to support the Management of the Organisation or satisfy external reporting requirements.

21.8. In Summary, the Auditor General finds a dysfunctional, incompetent and uncontrolled Management and Operational environment.

22. THE RESPONSE OF THE PUBLIC CURATOR

22.1. The Public Curator's Response to this issue is expressed in the first paragraph of the Response delivered on the 28th November 2005. The Public Curator there said:

“The internal controls are absolutely weak and I as Public Curator do not see any hope whatsoever of its improvement as the Public Curator’s Office is simply treated as a small branch of the Justice Department. Unless this attitude changes and the year budget submissions are honestly accepted and endorsed, it will never change, and the problems will persist and the blame will continue to be placed on the Public Curator”.

22.2. The Committee concludes that the Public Curator agrees with the findings of the Auditor General.

23. THE EVIDENCE

23.1. The Public Curator, in his Response to the Special Audit Report, refers to a Restructure Proposal prepared by Anvil Project Services.

23.2. The Public Curator was questioned on this Report and recommendations in the following manner:

HON. DR ALLAN MARAT MP (Member) –

Do you have any staff plan or corporate plan for the Public Curator’s Office? The positions that are to be occupied by the Officers in order to effect efficiency in the running of the Public Curator’s Office?

MR PAUL WAGUN –

Thank you, Dr Marat and Mr Chairman. In my Report there is a specific mention of monies that was clearly paid for this specific task by the Department of Justice and Attorney General before my appointment. There has been a complete task, well laid out plan, restructure plan for the Office and that plan I have in my possession now. It’s so to speak gathering dust.

HON. DR ALLAN MARAT MP –

Why is it gathering dust?

MR PAUL WAGUN –

There was a Budget submission in order for that corporate plan restructure plan to be implemented and there was a request for budget allocation in order that the restructure plan can be fully implemented to bring the Office forward. Unfortunately, the budget where there were two budget submissions so far during the time that I came on. Both

budget submissions got knocked back and only kept the salaries and emoluments aspects and the plan to move the Office forward submission got knocked by the Department of Finance and Personnel Management, respectively.”

24. FINDINGS OF THE PUBLIC ACCOUNTS COMMITTEE.

- 24.1. The evidence suggests that a full Brief and Budget Submission for the Restructuring of the Public Curator’s office was twice rejected by Government. The Committee makes findings concerning this failure to resource and finance the Office of the Public Curator later in this Report.
- 24.2. The Committee finds that the current and past Governments have consistently failed to adequately resource or fund the Office of the Public Curator to the detriment of beneficiaries of Estates and that the State has been exposed to potentially considerable liability as a result of this failure.

25. PUBLIC CURATOR’S OFFICE OPERATIONAL FUNDING

FINDINGS OF THE AUDITOR GENERAL

- 25.1. The operational funding for the Public Curator’s office is provided for in the Budget of the Department of Justice and Attorney General and is appropriated through the *Appropriation (Recurrent Expenditure) Act* and *Additional Appropriation (Recurrent Expenditure) Act* for each year.
- 25.2. The Public Curator collects Commission and is entitled to charge Estates for services rendered. These charges form part of the Consolidated Revenue Fund and cannot legally be expended by the Public Curator.
- 25.3. The Auditor General finds that since 1999 the Public Curator has spent K4,169,137 of those monies on the Administration of the Public Curator’s Office, including salaries, travel, computers, Consultants and legal costs.
- 25.4. The Auditor General finds Appropriation expenditure for the Public Curator’s office over the past 14 years as follows:

Recurrent Budget		
Year	Appropriation (K)	Expenditure (K)
2005	524,300	
2004	576,600	#585,226
2003	557,200	516,071
2002	239,800	327,224
2001	200,000.00	218,700
2000	NIL	*

1999	NIL	*
1998	226,400	249,800
1997	221,700	240,954
1996	211,100	227,719
1995	188,900	193,177
1994	180,600	176,193
1993	160,200	168,138
1992	158,100	146,714
		3,827,975

These figures do not include K 1,000,000 provided to the Arrears Trust Account on 17th December 2004.

* Figures not available from the Department for Justice and Attorney General.

- 25.5. The Auditor General concludes that appropriations and expenditure on the Public Curator's Office are not sufficient to cover the salary costs of staff – permanent and casual, much less the other operational costs of the Office.
- 25.6. The Auditor General concludes that successive Public Curators have unlawfully appropriated money to meet operating costs. This has included taking monies from Trust to pay for the cost of running and operating the Office.
- 25.7. The Auditor General also identifies K 2,624,639 which was appropriated by Government for the repayment of arrears in the Estate Trust Account but has been used by the Public Curator to offset Operational costs. This diversion of funds was completely unlawful.

RESPONSE OF THE PUBLIC CURATOR

- 25.8. The Public Curator has provided to the Public Accounts Committee, a lengthy response to the findings of the Auditor General.
- 25.9. The response is not easy to understand. However, the Committee concludes that the Public Curator agreed that inadequate appropriations by the Attorney General is
- “... one big cause, directly contributing to the lack of funds to resource the Office to carry out its duty”.*
- 25.10. However, the Public Curator seeks to draw a distinction between Operational costs which should be funded by Estates and those Operational costs which should be funded by the State.

- 25.11. The Public Curator concedes that monies drawn as Commission from Estates should be paid to the Consolidated Revenue Fund. The Public Curator makes no comprehensible explanation as to why that has not occurred.
- 25.12. Further, the Public Curator attempts to justify the application of funds appropriated for the repayment of arrears in the Estate Trust Accounts by describing that money as “Estate Funds” but fails to justify the application of K2,624,639 of that money to Operational costs.
- 25.13. The Public Curator does, however, quantify the amount outstanding to Estates and yet to be recouped through litigation, at a staggering K27 million.
- 25.14. In summary, the position of the Public Curator appears in the last paragraph of his Response, viz,:

“Commission funds not remitted to the Consolidated Revenue Fund is not a deliberate act or omission but a very direct result of disorganization at its worst. Get the Office properly funded with the right people and these things will flow as they should”.

THE EVIDENCE

- 25.15. The Public Curator was questioned firstly on the adequacy of the funding for his Office. The totality of his evidence suggests that the Public Curator agreed with the conclusions of the Auditor General.
- 25.16. The Committee questioned the Public Curator as to the use of K2,624,639 of funds allocated by the NEC to the Estate Trust Account, for operational costs.
- 25.17. The Public Curator denied that money was used for operational costs, claiming that the sum of K2,624,639 was only used to meet legitimate costs of the Estate Management.
- 25.18. The evidence is as follows:

“HON. JOHN HICKEY MP (Chairman)–

Can you confirm to this Committee that the total of K2,624,639 allocated for repayment of arrears of Estate Trust Account was instead used to offset operational costs? Was it or was it not?

MR PAUL WAGUN –(Public Curator)

If I say yes to that question, I believe there are a lot of issues involved. It is clearly reported in detail in my response.

HON. JOHN HICKEY MP –

The hard answer would be that, you are not allowed to illegally direct monies. Even though it may be towards supporting your Office, it must still be within the framework of the law”.

MR PAUL WAGUN –

I believe there are legal implications and that position is fully expressed in the Report.

HON. JOHN HICKEY MP –

Did you realize that the use of State funds to meet operational cost amounts to gross misappropriation?

MR PAUL WAGUN –

Mr Chairman, I am fully aware of that. My response is this Report would put the operations of the Public Curator in a totally different picture than what is being portrayed.

HON. JOHN HICKEY MP –

You are not allowed by law to use State funds for your operational costs above this stipulated amount.

MR PAUL WAGUN –

It depends on what the operation is. If the operations are directly relating to an Estate, meaning estate distribution and estate administration, then I wouldn't know. But in my Report clearly highlights that those particular payments relates to 20,000 Estates which were never touched. Those costs were clearly Estate related. They are not Public Curator's operational related at all.

HON. JOHN HICKEY MP –

Was the State liable for the management of those Estates?

MR PAUL WAGUN –

That is correct.

HON. JOHN HICKEY MP –

Is that the Public Curator's job?

MR PAUL WAGUN –

That is Public Curator's statutory responsibility. The statutory responsibility meaning administering and distribution of deceased estates at its own cost. The State does not pay for statutory responsibilities, particularly to an Estate Administration and the Estate Distribution. The Estates pay for the cost that accumulates.

HON. JOHN HICKEY MP –

Was the K2.6 million used for operational costs?

MR PAUL WAGUN –

Not the Public Curator's operational cost but it is strictly for Estate Administration and distribution costs.

MR CRAIG DEAN (Office of the Auditor General) –

Mr Chairman, the K2.6 million was made up of K825,000 paid to Jayco Business consultants for preparing the Audit Reports. K394,000 paid into the Consultant's Trust Account, K111,000 was paid as legal fees. K21,000 paid on Consultancy matters. K116,000 was paid into a Corporate Trust Account and just over a K1 million was paid to Project Services for Professional Services rendered to the Public Curator's Office dating back to October 2001”.

- 25.19. An attempt by the Public Curator to justify the diversion of funds intended for the arrears in an Estate Trust Account relies upon a characterization of pure Operational tasks and costs as the responsibility of Estates - a distinction which this Committee does not accept.
- 25.20. The Committee makes certain findings as to this Response and to the diversion of funds later in this Report.

FINDINGS OF THE COMMITTEE

- 25.21. The Committee finds that since 1999, the Public Curator has spent K4,169,137.00 of monies that should have been remitted to Consolidated Revenue Fund on the administration of the Public Curator's Office, including salaries, travel, computers, consultants and legal costs.

- 25.22. The Committee finds this expenditure to be unlawful.
- 25.23. The Committee finds that for many years the appropriations and expenditure on the Public Curator's Office are insufficient to cover the salary costs of 10 full time staff and 10 casual staff. Appropriation is also insufficient to cover all Operational costs of the office.
- 25.24. This failure to adequately fund the office of the Public Curator has resulted in the unlawful diversion of monies which should have been remitted to the Consolidated Revenue Fund, to meet operating costs of the Public Curator.
- 25.25. The Committee notes with concern that the Public Curator has unlawfully applied monies held in trust to pay for the costs of running and operating his Office.
- 25.26. The Committee has been told that the NEC allocated K 5, 734,000 to pay Estate arrears.
- 25.27. The Committee further finds that K 2,624,639.00 of the total allocated by NEC to repay arrears of Estate trust accounts, has instead been used to off-set pure Operational costs.
- 25.28. The Committee finds that the diversion of funds by the Public Curator is unlawful and warrants expert investigation to establish whether there has been a breach of the *Criminal Code Act*.
- 25.29. The Committee rejects the attempt by the Public Curator to justify this misapplication of sums by claiming that only Estate expenses were met by this money.
- 25.30. The evidence of the Auditor General and contents of his Report are clear. The matters upon which this money was expended are Operational costs of the Public Curator's Office – administrative matters which it is the duty of the State to fund – not an Estate.
- 25.31. It is clear that the Public Curator either fails to understand the difference or that he has dissembled the facts to favour his position before this Committee.
- 25.32. It is also clear that the Public Curator attempted to change the NEC determination to enable legitimate payment of these expenses from the monies allocated by the Government. This attempt failed, but the application of those monies was made in any event.

26. CHARGES BY THE PUBLIC CURATOR

FINDINGS OF THE AUDITOR GENERAL

- 26.1. The *Public Curator (Amended) Regulations 1998* (“the Regulations”) establishes the level of Commissions, administrations and audit fees the Public Curator is entitled to charge against Estates.
- 26.2. In addition, the Public Curator can charge for disbursements incurred in the administration of any particular Estate.
- 26.3. The Regulations, until the 31st December 1998, provided for the commissions to be charged on Estates thus:

Public Curator Commissions On the realization of an Estate or part of an Estate		
Deceased died intestate (Item 1)	Deceased died testate (Item 2)	Commission
Up to K4,000	Up to K1,000	5%
K4,000 to K20,000	K1,000 to K20,000	2.5%
Greater than K20,000	Greater than K20,000	1%

- 26.4. The *Regulations* provide for a Commission to be collected at the rate of 5% on interest or gross income from an Estate and Commissions of 5% on property belonging to an Estate upon transfer to a beneficiary.
- 26.5. On the 1st January 1999, the *Regulations* were amended to increase various items. This resulted in Commissions on Estates where the deceased who died intestate, being charged at the rate of 10% for amounts up to K4,000.00, and where the deceased died testate at 10% for amounts up to K1,000.00.
- 26.6. From 1994 until 1997, the Public Curator made payments of commissions on deceased Estates as follows:

Date	Amount K	Comments
6 September 1994	K158,939.00	Posted to unallocated payments – Fees
18 August 1995	K89,963.00	Posted to unallocated payments – Fees
11 December 1995	K316,053.00	Posted to unallocated payments – Fees
11 January 1996	K167,000.00	Posted to suspense account 00638 July – November

		1995
17 September 1997	K300,000.00	Posted to unallocated payments – Fees
	K1,031,956.00	

- 26.7. Due to the posting of these figures to suspense accounts within the Estate Trust Accounts, there are no records of these amounts against actual Estate balances.
- 26.8. The Committee finds that these charges were not based on any calculation of Estate balances and, on disbursement of Estates, it is impossible to determine the Commission payments made and to appropriately reduce the balance.
- 26.9. The Auditor General finds that total Commissions charged amounted to K4, 193, 331. 00 The Auditor General calculates that this represents an overcharging of more than K1,787,513. This figure does not include the overcharging that occurred through the use of incorrect rates of Commission which, when calculated, may amount to several million more Kina.
- 26.10. The Auditor General also finds that for the years 2002 and 2003 the Public Curator charged Estate Audits and Administration fees amounting to K4,450. The Regulations provide for the charging of an annual fee of K2.00 and a fee of K2.00 on the finalization of an Estate.
- 26.11. The Auditor General finds that the Contract for JACO Business Consultants provided for a charge of K5.00 to each Estate for an Estate Account Audit and that there is no basis in Law for this arrangement.
- 26.12. In summary, the Auditor General finds over calculation and overcharging of Estates by past and present Public Curators.

RESPONSE OF THE PUBLIC CURATOR

- 26.13. At Page 12 of his Response to the Report of the Special Audit into the Public Curator, Mr Wagan attributes overcharging to:

“... The non-existence of a professionally qualified Financial Controller. If this person did exist in the Office of the Public Curator, most of the problems associated with suspense accounts, wrong postings, non postings, clear and effective controls etc would be brought under control. I am afraid these problems will never be solved because I do not believe I can cope on my own without the help of such professionals. They must be recruited now and quickly and that the Departments of Justice and Personnel must be ordered that they facilitate immediately”.

26.14. The Public Curator accepts the finding of the Auditor General in the following terms:

“The conclusion reached regarding taking of K 5,375,797 of the State monies in Commissions and/or other payments and the improper recording of these monies cannot be denied. This practice has existed over many years and will continue to exist unless the system is properly funded and resourced with the right people to do it properly and correctly. The suspense accounts created also speak of the fact that some of the funds received by the Public Curator over the years did not have proper remittance advices resulting in such confused postings as Clerks and Grade 10 Casuals have been doing the job”.

26.15. The Committee makes recommendations as to this matter at the conclusion of this Report.

EVIDENCE BEFORE THE COMMITTEE

26.16. In evidence before the Public Accounts Committee, the Public Curator referred to his written Response to the Report of the Special Audit into the Office of the Public Curator. There was no further oral evidence on the subject.

27. FINDINGS OF THE PUBLIC ACCOUNTS COMMITTEE

27.1. The Committee finds that beneficiaries may well had been deprived of their full entitlement as a result of the improper or unlawful taking of money from Estates by the Public Curator under the guise of charges or Commissions.

27.2. The Committee also finds that the Public Curators, past and present, took no steps to rectify these failings and thereby opened the State to potential liability to Estates and beneficiaries.

27.3. The Committee finds that for the years 2000-2004, the following Commissions were paid into the Corporate Trust Account from the Estate Trust Accounts:

Commissions into Corporate T/A 2001 – 2004				
Year	Waigani	Lae	Rabaul	Total
2000	797,040			797,040
2001	1,253,874			1,253,874
2002	439,543	123,884		563,428
2003	223,220	76,012	50,000	349,233

2004	50,713	110,412	20,000	181,125
Total	2,764,392	310,309	70,000	3,144,702

- 27.4. The Committee accepts the conclusion of the Auditor General on these payments. The Committee finds:
1. The commission charged was 10% irrespective of the value of the Estate. A Commission of 10% is only provided for Estates up to K4,000.00 where the deceased has died intestate and K1,000.00 for Estates where the deceased died testate. This is a significant overcharging of Commissions.
 2. The Committee finds that the current and past Public Curators took no steps to rectify the situation and that the State has been exposed to potential liability as a result of this failure.
 3. The Regulations only provide for a Commission of 5% on income earned on Estate investments, not the 10% charged.
 4. The Committee finds that the current and past Public Curators failed to either recognize or rectify this defect.
 5. The charges represent a duplication of the Commissions already charged for the years 1994-1997.
- 27.5. The Committee notes with concern that the Auditor General identifies an overcharging of K 1,787,513.00. This is money which should have been distributed to beneficiaries and does not include overcharging occurring through the use of incorrect rates of Commission which, when calculated, may amount to several million Kina.
- 27.6. The Committee again finds that the State has been exposed to significant liability as a result of the continuing failures of the Public Curator and his staff to recognize or deal with this unlawful conduct.
- 27.7. The Committee also finds that the Public Curator has charged the Estates audited administration fees for the years 2000-2003 in the sum of K 4,450.00.
- 27.8. The Committee finds that JACO Business Consultants provided for a charge of K 5.00 to every Estate for Estate account auditing while the Regulations provide for the charge of an annual fee of K2.00 and a fee of K2.00 on the finalization of an Estate.

27.9. The Committee makes recommendations and referrals arising from this conduct later in this Report.

28. EXPENDITURE FROM ESTATE TRUST ACCOUNT

REPORT OF THE AUDITOR GENERAL

28.1. The Auditor General finds that monies held in the Estate Trust Account have been used for purposes other than disbursements or direct administration of Estates. In particular, the Committee finds:

- On 14th July 2000, the sum of K150,000.00 was paid out of the Estate trust account for the purchase of computers;
- K803,149.00 of minors trust money were paid to the Insolvency Trust Account on maturity of a Treasury Bill in January 2004;
- Interest on Treasury Bills and Finance Corporation Term Deposits amounting to K160,039.00 and K105,493.00 respectively, was paid into the Estate Trust Account; and
- On maturity, the principal from Treasury Bills and Finance Corporation Term Deposits amounting to K219,278.00 and K500,000.00 respectively, was paid into the Estate Trust Account and Corporate Trust account.

28.2. In total these payments from the Estate Trust Account amount to K 1,937,959.00. These monies should have been allocated against individual Estate accounts – but this did not occur. There is no documentation as to their purpose and/or the Public Curator's authority for using this money.

28.3. The Auditor General finds that the Public Curator has taken K5,375,797 of Estate monies in commissions or other payments. A significant amount of these payments have not been correctly accounted for in the Estate Trust Account but have been posted to various Expense Accounts with no detail on postings to individual Estates available.

28.4. There has been no posting to Suspense Accounts and there is absolutely no record in the Estate Trust Account Ledger of their existence.

28.5. The Auditor General finds that the Public Curator has failed to ensure that commissions charged are in line with the rates provided for in the **Public Curator Act** and the **Public Curator Regulations** and this has resulted in significant overcharges. The Auditor identifies K1, 937,959 charged by the Public Curator that he has no legal right to charge.

RESPONSE OF THE PUBLIC CURATOR

- 28.6. The Public Curator provides a detailed Response to the findings of the Auditor General. That Response clearly shows that the Public Curator considered his actions to be bona fide and lawful.
- 28.7. Clearly, in the absence of well-defined Trust Rules and understanding of the obligations of Trustee misapplication of monies is bound to occur. The Committee has given full weight to the explanation by the Public Curator.

FINDINGS OF THE PUBLIC ACCOUNTS COMMITTEE

- 28.8. The Committee finds that the Public Curators past and present may well have conducted themselves unlawfully in the handling of these monies and almost certainly acted in breach of Trust.
- 28.9. The Committee finds that Public Curators have taken K5,375,797.00 of Estate monies in Commissions or other payments. These payments should have been accounted for in the Estate Trust Account but have been posted to Suspense Accounts with no detail on postings to individual Estates available. In some cases the payments have not even been posted to Suspense Accounts and there is no record in the Estate Trust Ledger of their existence.
- 28.10. The Committee finds that Public Curators past and present have failed to act in the best interest of beneficiaries, failed to carry out the duty of a Trustee adequately or at all, failed to either recognize that a problem existed and/or to deal with that adequately or at all and may well have conducted themselves in an unlawful manner.
- 28.11. The Committee also finds that Public Curators past and present have failed to ensure that Commissions charged are either lawfully applied or applied at a proper rate. The resultant overcharging of Commissions on Estates has been made with no legal basis at all.
- 28.12. The Committee further finds that the Public Curator has charged Estates an additional K 1, 937.959.00 which he has no legal right to do.
- 28.13. The Committee again finds that the State has been exposed to potential liability as a result of this negligence and/or unlawful conduct.
- 28.14. The Committee will make further recommendations and referrals later in this Report.

29. PUBLIC CURATOR'S OFFICE ACCOUNTS AND RETURNS

REPORT OF THE AUDITOR GENERAL

- 29.1. Section 30 (1) of the *Public Curator's Act* requires the Public Curator to provide the Secretary of Department of Finance bi-annual returns for all monies received and paid by him during the 6 months prior to the report in respect of all Estates administered by him.
- 29.2. The Public Curator is also required to furnish at the same time a returnable balance for sums of monies in his hands to the credit of each Estate.
- 29.3. Further, Section 30 (2) requires a Public Curator to keep proper books and accounts.
- 29.4. The Auditor General has found the Public Curator failed over a period of 15 years to provide these returns to the Secretary of the Department of Finance and has maintained an accounting system which would not be able to produce those reports in any event.

30. PUBLIC CURATOR'S RESPONSE

- 30.1. The Public Curator addresses this matter at Page 14 of his Response to the Report of the Special Audit into the Public Curator's Office.
- 30.2. The Committee notes that Mr Wagun has attempted to fulfil the obligation of the Public Curator to provide the Secretary of the Department of Finance with bi-annual returns.
- 30.3. However, the Public Curator retained agents to carry out this task. As will be seen later in this Report, very large sums of Estate monies were spent on Agents who either performed no work at all or work of an unsatisfactory standard.
- 30.4. The Public Accounts Committee gives due weight to the response by the Public Curator.

EVIDENCE BEFORE THE COMMITTEE

- 30.5. No sworn evidence was taken on this issue.

FINDINGS OF THE PUBLIC ACCOUNTS COMMITTEE

- 30.6. The Public Accounts Committee accepts the findings of the Auditor General that the Public Curator has failed, over at least the past 15 years, to provide returns to the Secretary of the Department of Finance as required by Section 30(1) of the *Public Curator Act* and that the systems

maintained by the Public Curator would not be capable of providing the reporting in any event.

- 30.7. The Committee further finds that the Public Curators, past and present, have not recognized the limitations inherent in the accounting systems and have failed to address or remedy this problem effectively or at all.
- 30.8. The Public Accounts Committee further finds that the present Public Curator has, at least, attempted to comply with the statutory duty to report by employing agents to carry out that task. The quality and competence of the Agents retained and the huge cost of that exercise will be addressed later in this Report.
- 30.9. The Public Accounts Committee will make resolutions and referrals concerning this issue, later in this Report.

31. BANK ACCOUNTS AND INVESTMENTS

REPORT OF THE AUDITOR GENERAL

- 31.1. Section 17 of the *Public Curators Act* requires that one year after the Public Curator obtains administration of an Estate he should invest all monies to the credit of the Estate. Section 6 of the *Public Curator Regulations* specifies the manner in which the Public Curator may invest those monies. These are common incidents of any trust relationship and must be strictly adhered to.
- 31.2. When administering an Estate, the Public Curator identifies all the bank accounts and monies held in those accounts and then transfers those monies to an Estate Trust Account.
- 31.3. The Public Curator's office operates a Bank of PNG Estate Account in Waigani and a Bank of South Pacific Limited Estate account in Lae and Rabaul for the purpose of holding Estate balances.
- 31.4. The Public Curator also operated:
 - During 1999 a Term Deposit operated by Finance Corporation Limited.
 - Corporate Trust Account established as the Public Curator's Trust Account.
 - Insolvency Trust Account; and

- Arrears Settlement Trust Account to manage an amount of K5,570,000.00 provided by the Government for the purpose of reimbursing the Estate Trust Funds lost as a result of unrecoverable overpayments to beneficiaries, defalcation and mismanagement.
- 31.5. The Committee finds that the Public Curator has not closed all passbooks savings account belonging to an Estate as he is required to do. This is a breach of his duty.
- 31.6. The Auditor General considered various bank accounts and investments made or maintained by the Public Curator. These were:

INVESTMENT WITH FINANCE CORPORATION LIMITED

- 31.7. The Auditor General finds that, in 1999, the Public Curator invested a total of K3 million with Finance Corporation Limited. That money was withdrawn from the Waigani Estate Trust Account and breached Section 6 of the *Public Curator's Regulations* in that it was not an allowable form of investment.
- 31.8. Further, the Public Curator did not seek directions from a National Court or Judge as required by the *Public Curator Act*.
- 31.9. Further, Section 61(2) of the *Public Finances (Management) Act* requires the Public Curator to obtain specific approval from the Minister of Finance and Treasury for this form of investment. This approval was not obtained.
- 31.10. The Auditor General has established that the Secretary for Justice and the Attorney General were aware of this activity.
- 31.11. The Auditor General highlights further “significant concerns” regarding those investments. These are:
- On the 11th November 1999 an amount of K500,000 less K10,887.87 interest was redeemed and paid into the Estate Trust Account and credited into a Suspense Ledger called a Various Suspense Ledger. This money should have been credited against individual Estate Accounts;
 - On the 7th February 2000 an amount of K1 million plus interest of K19,910.96 was redeemed and paid into an Estate Trust Account and credited to the Various Suspense Ledger – again there were no postings to individual Estate accounts;

- On the 21st June 2000, the Public Curator withdrew K515,818 was deposited into the Corporate Trust Account rather than into the Waigani Estate Trust Account – although the money was receipted into the Waigani Estate Trust Account “Cash Book” and posted into the unallocated receipts “Suspense Ledger”.

There is no evidence that this money has ever been returned to the Waigani Estate Trust Account; and

- On the 28th September 2000 an amount of K1 million plus interest of K 89,675 was redeemed and paid into the Estate Trust Account and credited to the various Suspense Ledgers.

This money was subsequently paid into the Corporate Trust Account.

31.12. The *Public Curator Regulations* do not provide for the consolidation of investment money such as the Finance Corporation Limited Term Deposits.

31.13. The Auditor General concludes that the Public Curator did not establish and maintain a record of the Estate Accounts that had contributed to the investment, with the withdrawal of K3 million and subsequent deposits not recorded in financial ledgers. Any attempt to trace the monies of individual Estates would be impossible.

31.14. Further, the Public Curator has taken K515,818 belonging to the beneficiaries and deposited that money illegally into a Corporate Trust Account to offset running costs of the Public Curator’s Office.

INVESTMENT IN TREASURY BILLS

31.15. The Auditor General concludes:

- There are no Investment Registers to provide a record of returns on investment for individual Estates;
- There is no safe custody for IBD Certificates.
- There are no Certificates to support financial balances disclosed by the Public Curator’s Financial Reports;
- An investment by the Public Curator in PNG Treasury Bills is not provided for by Section 6 of the *Public Curator Regulations*, although the Investment meets the spirit of the *Public Curator Act* and is consistent with the requirements of Section 57(2) of the

Public Finances (Management) Act regarding investment by Public Bodies. The *Public Curator Regulations* need to be reviewed in this regard.

- The Public Curator could not provide a breakdown of the earnings from the Treasury Bill Investments against the IBD's from which they have been redeemed;
 - From June 2003 until December 2004, interest of K160,039.18 and K3,901.47 earned by the investment, was paid into the Estate Trust Accounts for Waigani and Rabaul respectively. These deposits were not recorded against individual Estates and as a result cannot be accounted for and distributed to beneficiaries of those Estates;
 - In 2004 the Public Curator deposited K68,652 and K150,915 into the Waigani Estate Trust Account. These deposits were not recorded against individual beneficiaries and as a result cannot be accounted for distribution to beneficiaries of Estates;
 - K 803,149 was deposited into the Insolvency Trust Account in December 2004 and there is no evidence that this money has ever been returned to the Waigani Estate Trust Account.
 - Section 8 of the *Public Curator Regulations* does not provide for the consolidation and placement of monies in such investments as Treasury Bills. Such an investment should be in the name of the "Public Curator" to which designation shall be added the name of the Estate on behalf of which the investment is made.
- 31.16. The Auditor General further concludes the Public Curator has failed to ensure proper accounting for invested monies as a result of which it is not possible to identify what money belongs to which beneficiary. This is the most fundamental duty of any Trustee and it has not been met.
- 31.17. This failure means that a fair and accurate distribution of interest earned cannot be made.
- 31.18. Further, the Public Curator has mixed in the Waigani Estate Trust Account monies which should have been deposited in the Rabaul Estate Trust Account with no attempt to rectify that situation.
- 31.19. The Auditor General finds that the Public Curator has inappropriately and illegally used K 803,149 and this money has not been returned to the Estate Trust Account.

31.20. The Committee further finds inappropriate use of money by the Public Curator that is held on trust on behalf of minors. This has occurred by the Public Curator diverting money to the Insolvency Trust Account. These monies are not being used for the purpose for which the Public Curator is legally entitled to use them.

SAVINGS ACCOUNTS

31.21. The Public Curator is required under the Public Curator Act, to take possession of all assets belonging to Estates. These assets include savings accounts with banking institutions.

31.22. The Auditor General identified the following problems with the manner in which the savings accounts are managed:

- A failure to delegate responsibility and accountability and a lack of formal process to identify and manage savings accounts;
- A failure to invest monies in the name of the Public Curator clearly designating the name of the Estate and thereby to meet the requirements of Section 8 of the *Public Curator Regulation*;
- A failure to take custody of passbook accounts;
- No register of all passbooks; and
- Passbooks not being kept in a secure location.

31.23. The Auditor General concludes:

- The Public Curator cannot be assured that he has identified and has custodianship of all accounts;
- Dormant accounts have been closed or significantly diminished by fees and charges;
- Passbooks cannot be located;
- Dormant accounts have been absorbed by the Banks;
- There is significant uncertainty regarding the status of balance of dormant accounts. This money should have been remitted by Banks to the Public Curator's Office and thence to Consolidated Revenue and the Banks or the State must be made accountable for any monies which have been paid into the Consolidated Revenue Fund.

INSOLVENCY ACCOUNT

- 31.24. The Public Curator operates an Insolvency Trust Account.
- 31.25. The Public Curator could not provide accounts or records to support a balance of K 32,982.95 or to detail the activity of past Public Curators as the Official Trustee under the *Insolvency Act 1951*.
- 31.26. There has been no Financial Report from the Public Curator since 1991 and no audited financial transaction records relating to his role as Official Trustee under the *Insolvency Act*.
- 31.27. The existing files for 19 Insolvent Estates contain no record of financial transactions, but only correspondence – including court records.
- 31.28. The Auditor General concludes that the Public Curator has failed to keep proper accounts and records and provide Reports as required by the *Insolvency Act* relating to his management of insolvency cases.
- 31.29. The Auditor General identifies inappropriate deposits into the Insolvency Trust Account that are either in breach of duty as Public Curator of deceased Estates as required by the *Public Curator Act*, or in breach of direction by the Government for the management and disbursement of monies provided for the repayment of arrears in deceased Estates.
- 31.30. These deposits totalled K1,307,478 into the Insolvency Trust Account. Of those deposits:
- K692,845 in January 2005 being part of a Treasury Bill of Estate Trust monies that should have been credited to the Estate Trust Account for the benefit of Deceased Estates;
 - K212,974 in January 2005 represented proceeds from the sale of shares and rent receipts belonging to Deceased Estates. This money should have been paid to the Estate Trust Account.
 - K13,773 in March 2005 – audit has been unable to identify the source of this money; and
 - K387,884 on the 11th May 2005 that should have been paid into the Estate Trust Account for the benefit of a specific deceased Estate;
 - K384,734 from the Arrears Settlement Account which should have been paid into the Estate Trust Account and credited to individual Estate ledgers as directed by the NEC.

31.31. The Committee concludes that the State may have been exposed to considerable liability as a result of these actions by the Public Curator.

ARREARS SETTLEMENT TRUST ACCOUNT

31.32. The Auditor General has found that as a result of neglect, mismanagement and misappropriation over a period of a decade, the Public Curator has unfunded liabilities of at least K 9,387,416.00. These liabilities relate to:

- K 5,575,104.00 overdrawn Trust Accounts;
- K 1,236,783.00 interest lost on advanced payments; and
- K2,575,527.00 in State administration fees and expenses relating to the engagement of Consultants by the Attorney General's Department, but funded by the Public Curator when the Department could no longer meet the costs, private Accountants, audit fees to the Auditor General, office systems, support services and property management.

31.33. The Auditor General finds that in April 2003 the Government by a *National Executive Council Decision 53/2003* gave K 5, 570, 000 to settle Estate arrears and directed the Departments of Finance and Treasury and the Public Curator to settle the arrears through a jointly managed Trust Instrument. A copy of that Decision is contained in Volume 2 of this Report.

31.34. The Government further:

- Directed the Department of Finance and Treasury through the Central Agencies Co-ordinating Committee to review and administratively handle the operational budget of Public Curator's Office;
- Noted and endorsed the corrective actions undertaken by the Public Curator to ensure the prudent management of the Public Curator's office;
- Directed that subsequent actions be undertaken by the Attorney General and the Public Curator to institute recovery proceedings against individuals and companies who have defrauded the State;
- Directed the Attorney General and Secretary for Justice to prepare drafting instructions if necessary, for Cabinet's consideration to

review the relevant legislation to prevent further abuse of deceased Estate funds.

31.35. By actions and decisions of the Public Curator, this money was expended unlawfully and the Trust Account fell into arrears.

31.36. The Auditor General finds that Estate Trust Account Arrears arose from:

- Third party fraud cheques encashment K2.5 million;
- Payments to Ram Business Consultants K1.5 million;
- Monies used by Department of Attorney General K1 million;
- Professional audit and accounting fees K0.7 million;
- Advance to Public Officers Superannuation Fund beneficiaries unspecified.

31.37. More particularly, the following payments were made:

- 23 March 2005 – K103,500.00 to the Auditor General;
- 23 March 2005 – K825,000.00 to JACO Business Consultants for the audit and preparation of Annual Financial Reports;
- 12 April 2005 K384,000.00 was paid into the Insolvency Trust Account. This is a breach of the Trust Instrument;
- 23 March 2005 – K112,105.00 was paid for professional fees to Jerry Kama Lawyer;
- 18 April 2005 – K120,073.00 paid to the Corporate Trust Account;
- 23 March 2005 – K1,079,226.00 to Anvil Project Services for professional services rendered to the Public Curator.

31.38. An amount of K 2,624,638 was not used for the repayment of accumulated arrears of deceased Estate trust monies resulting from the neglect, mismanagement and misappropriation by former management of employees of the Public Curator's Office over the past 10 years but instead directed to operational, contractual and administration expenses.

31.39. The Auditor General finds that these payments were made on or after the 23 March 2005 and were clearly outside the approval of the NEC given on 10 April 2003. The Committee finds that this misapplication of funds was

a breach of trust, a breach of the NEC directives and thereby an illegal application of trust monies.

- 31.40. Officers and third parties including recipients of these money may have acted unlawfully and, prima facie, there may be a breach of the Criminal Law by the Public Curator in the misapplication of these funds.
- 31.41. The Auditor General further finds that the Public Curator has not met the requirements of the Trust Instrument which were designed to ensure the maintenance of effective accounts and records. In particular, the Auditor General found:
- That cheques drawn on the Arrears Trust Account have been handwritten despite specific instructions in the Trust Instrument that they be computer-printed; and
 - The Public Curator had not provided Reports on expenditure and Cash Management to the Department of Finance within fourteen days of the end of each month;
 - The NEC decision specifically directed “actions be taken by the Attorney General and the Public Curator to institute recovery proceedings against individuals and companies who have defrauded the State”. The Auditor General finds limited, if any, evidence of any progress in this regard.

CORPORATE TRUST ACCOUNT

- 31.42. The Corporate Trust Account was established on 16 February 1999 in accordance with Section 15 of the *Public Finances (Management) Act 1995*. It is styled the “*Public Curator’s Trust Account*”.
- 31.43. The Trust Instrument establishing the Account instructs that:
- “funds received as commissions by the Public Curator under the provisions of the Public Curator Act Chapter No. 81 and the Regulations shall be paid or credited to the trust account for the purposes of the administration of the Public Curator’s Office”.*
- 31.44. The Auditor General finds that this direction by the Treasurer under Section 15 of the *Public Finances (Management) Act 1995* to the effect that the Public Curator can use monies for the administration of the Public Curator’s Office, is unlawful. Commissions collected by the Public Curator must be remitted to the Consolidated Revenue Fund. The Public Accounts Committee agrees with this finding.

31.45. The Auditor General finds further problems attending the administration of the Corporate Trust Account. These are:

- Money is deposited which is not collected by way of Commissions;
- Advance payments totaling K14,795.00 were made to staff of the Public Curator's Office from the account;
- The Corporate Trust Account was administered by the Secretary of the Department of Attorney General in the early stages of its existence. Approximately K1,000,000.00 of monies from that Trust Account have been appropriated by the Department for its own use. There are no vouchers and no apparent authority for the use of this money;
- K48,307.00 was used to pay beneficiaries of deceased Estates in 23 payments;
- Travel expenses and advances totaling K240,621.00 had been paid from the account and there has been no acquittal of these amounts; and
- The Trust Instrument requires that all disbursements or payments from the Account should comply with the *Public Finances (Management) Act*. This has not occurred.

31.46. The Auditor General concludes that the Corporate Trust Account has been inappropriately established as it provides for the receipt and expenditure for the administration of monies that should be remitted to the Consolidated Revenue Fund.

31.47. Further, monies that are not covered by the Corporate Trust Account Trust Instrument have been receipted to this account and expended.

31.48. Finally, the Auditor concludes that the Public Curator has failed to keep proper accounts and records and has also failed to meet the control and reporting requirements of the *Public Finances (Management) Act*.

31.49. The costs of running the Public Curator's Office must be appropriated by an Act of Parliament. Commissions and other payments received by the Public Curator should be paid to the Consolidated Revenue Fund.

31.50. The Public Accounts Committee finds that the Public Curator has failed to keep proper accounts and records and has failed to meet the control and reporting requirements of the *Public Finances (Management) Act*.

31.51. The Public Accounts Committee further finds that the Public Curator past and present, have failed to recognise or understand his obligations in this regard and failed to recognise that any problem existed. Both the present and past Public Curators have failed to take any steps to rectify the illegalities found by the Auditor General.

31.52. The Public Accounts Committee makes further recommendations and referrals in respect of this matter later in this Report.

32. SYSTEMS AND RECORDS

REPORT OF THE AUDITOR GENERAL

32.1. Although the Public Curator has attempted to computerize certain records of assets and receipts and payments for individual Estate accounts, there have been significant problems with the implementation of the systems. These problems have arisen as a result of incompetent management by both Consultants and the Public Curator and his staff and, more particularly, as a result of the constant changing of Consultants for no apparent commercial reasons.

32.2. The Auditor General finds that the Public Curators, past and present have:

- Failed to correctly upload Estate records into a database – a large number of Estates are not recorded in the system as a result of a loss of manual files over the past 15 years;
- Individual Estate ledger accounts only depict transactions that have occurred since 1991 and opening balances for accounts that existed prior to 1991 were not brought forward;
- Transaction details were entered with no comparisons or reconciliations of the few existing documents such as cheque butts and receipt books to cash book, deposit slips and bank statements;
- Cheque butts have been removed from used cheque books and there are instances where cheque books could not be located at all.
- Presented cheques could not be located and payment vouchers and bank statements were missing;
- Receipt details were missing and it was not possible to allocate monies received to individual accounts;

- Individual posting information is not available as receipt and payment details have not been posted to individual Estate accounts but to suspense ledgers;
 - The accounts have not been reconciled to cash book and to the bank statements and they fail to account for unposted receipts and payments, including fraud and accounting errors and direct debits/credits including re-issue cheques, dishonored cheques and charges;
- 32.3. A lack of basic control over the system is in evidence. The Committee accepts the findings of the Auditor General (Page 34 of the *Special Audit Report*) in this regard.
- 32.4. There are no accounting policies to ensure dual signing of cheques, receipt registers, reconciliations of cash at bank to payments/receipts, delegations over expenditure and other authorizations or reconciliation of the register of assets or investments to Estates;
- 32.5. There is no secure storage for Estate files, manual accounting records, shares, certificates, investment certificates, passbooks, property titles and accountable documents;
- 32.6. There is a lack of basic controls to ensure monitoring, review and quality assurance processes that ensure the control environment is operating effectively;
- 32.7. There is no basic control over accounting systems to ensure review and certification of all decisions on Estate and/or control over access to manual or computer records.

RESPONSE OF THE PUBLIC CURATOR

32.8. So far as the Public Curator answered the findings at all, that Office seems to accept the findings of the Auditor General and, rightly, to attribute the absence of systems and controls to inadequate funding and resourcing by Government.

32.9. The Response states:

‘.....The Internal controls are absolutely weak and I as Public Curator do not see any hope whatsoever of its improvement as the Public Curators Office is simply treated as a small branch of the Justice Department.

Unless this attitude changes and the year budget submissions are honestly accepted and endorsed, it will never change and the problems will persist.....”

**RESPONSE OF THE PUBLIC CURATOR TO THE AUDITOR
GENERALS REPORT ON SPECIAL INVESTIGATION OF THE
OFFICE OF THE PUBLIC CURATOR -Page 12.**

- 32.10. While this complaint may be true, this Committee finds that the causes are much wider than a simple Government failure to adequately fund the Office of the Public Curator.

THE EVIDENCE

- 32.11. No oral evidence was taken by the Committee on these topics.

FINDINGS OF THE COMMITTEE

- 32.12. The Committee finds that there has never been any formal and documented risk assessment of the Public Curator’s operation. Despite some detailed recommendation from Anvil Project Services during 2000-2001, the Committee finds that the Public Curator has not implemented these recommendations.
- 32.13. The Committee notes that the Public Curator’s office does have a financial management system, Estate Tracker, Estate files and simple asset registers. However, the Committee finds that there is no effective control over the operation of these systems with an absence of even the most basic financial and management controls required to ensure completeness, security and protection of records and estate assets. There is and has been completely inadequate protection from corrupt and fraudulent behaviour by staff or third parties.
- 32.14. The Committee further finds that the systems that do exist are corrupt and incapable of providing complete or accurate records. Clearly the Public Curator and his staff do not understand the nature of their work or the systems which are required in order to carry out their statutory functions in a proper manner.
- 32.15. The Committee finds that the existing systems within the office of the Public Curator do not function effectively and are unreliable. This failure has contributed to the enormous backlog of unresolved Estates and added to the hardship experienced by beneficiaries of the deceased Estates. The situation is totally unacceptable.

- 32.16. The Committee also finds that these problems had been known to the Attorney General and the Government for many years. The Committee finds that neither of those two entities has taken or any effective steps to remedy the situation. Accordingly, the Committee finds that the State may be exposed to very considerable liability from disappointed beneficiaries.
- 32.17. The Public Accounts Committee accepts that a detailed plan for restructure of the Office of the Public Curator was prepared by Anvil Project Services, as long ago as 1999. The Committee also accepts that the Government has refused funding to implement this plan and this refusal is a matter of great concern.
- 32.18. The Public Curator cannot provide the actual balance of accounts, cannot tell whether Estates are paid to the correct beneficiaries – or paid at all, cannot trace assets and monies held in trust on behalf of dead persons and their beneficiaries, cannot fulfill even the most basic trustee obligations towards the beneficiaries, does not understand the basic obligations of the trustee or of a fiduciary relationship and has no ability to carry out those obligations even if he did understand them.
- 32.19. Public Curators past and present failed to establish and maintain any systems that allow him to manage the financial assets of Estates and to protect them from inappropriate or fraudulent activity – which has been rife.
- 32.20. The Public Accounts Committee accepts the finding that the Public Curator did not follow requirements in respect of tendering for goods and services – particularly for the engagement of Consultants and computer facilities, did not ensure appropriate certification and authorization of payments, consistently exceeded financial delegations and did not maintain an effective audit trail of financial transactions including payment vouchers and invoices.
- 32.21. The result of these failures has been a considerable gap between the liabilities of the Public Curator and the monies that he holds on trust.
- 32.22. In the opinion of the Committee, this opens the State to very significant liability. It has failed to adequately staff, resource or finance the Office of the Public Curator for many years and must now accept the consequences of that failure.

33. EXTERNAL CONSULTANTS AND AGENTS

- 33.1. Section 4(1) of the *Public Curator Act* permits the Public Curator to appoint a person to act as Agent for the purpose of the administration of an

Estate. Section 4(2) provides that the purpose, powers, conditions and limitations are to be set out in the appointment and that the Agent shall act under the direction of the Public Curator.

33.2. In the past, Public Curators had appointed Small Estate Distributors. under Section 35 of the *Wills Probate and Administration Act* and Agents under Section 4 of the *Public Curator's Act*. Many of the Agents appointed were District Administrators although there were a number of significant appointments from 1998 of others as Agents.

33.3. The Public Curator reviewed the performance of Agents in 2003 and revoked all the appointments of District Administrators as Agents in June 2003. In light of the findings by the Public Curator, this revocation was quite proper.

33.4. An earlier review by the Public Curator in 2000 found:

- Distribution of Estates were made unlawfully. Section 84 of the *Wills Probate and Administration Act* was not complied with;
- Many Estates had not been dealt with at all or there was inadequate tracing and follow up – particularly of Estates of public servants where there was an Estate to be distributed;
- Appointments did not have an end clause and as a result many were now no longer appropriate;
- Assets were distributed that did not form part of the Estate and;
- Over the past 20 years not a single Report on activity had been furnished as required by the *Wills Probate and Administration Act*.

There were clearly persistent problems despite significant expenditure on Agents and Consultants.

33.5. From 1998 the Public Curator, or on his behalf, the Secretary for Justice and the Attorney General have entered other contractual arrangements. These were:

Agents Appointed under Section 4			
Date	Agent	Fees (K)	Comments
Dec 98	RAM Business Consultants	1,560,094	Appointed by the Attorney General
May 99	LJ Hooker	521,265	Initially subcontracted by RAM and subsequently

			appointed by the PC
June00	Anvil Project Services (PNG) now known as CCS Anvil (PNG) Ltd	5,120,464	Appointed by the Public Curator and Attorney General
Nov 01	Jaco Business Consultants Ltd	1,512,102	Appointed by the Public Curator to prepare financial statements
Nov 01	Jerry Kama & Co. Lawyers	205,989	

- 33.6. The Committee finds that at least four of these appointments were unlawful, inappropriate, or unnecessary.
- 33.7. The Committee finds that appointments were not transparent, were politically driven and commercially unnecessary or unjustified.
- 33.8. The Committee finds that there has been significant expenditure on these Consultants and/or Agents for little or no benefit or result.
- 33.9. The Committee finds that payment to these Consultants or Agents was unlawfully made from Estates.
- 33.10. The Committee also finds that there are significant questions as to the quality of work performed by the Consultants and that significant overcharging has been made by some of these Consultants.
- 33.11. In most cases the Agents or Consultants had no more ability or understanding of the specialized role of the Public Curator than the incumbent Curator himself.

34. RAM BUSINESS CONSULTANTS

- 34.1. In 1998 the then Attorney General ordered an investigation into claims of corruption, fraud and theft of insolvent and deceased Estates.
- 34.2. Ram Business Consultancy Services was engaged by the Attorney General to assist with the investigation and rectify the financial accounting of the Public Curator's Office.
- 34.3. The cost of this exercise was to fall on the Public Curator – and thereby on Estates under his control.

- 34.4. Specifically, Ram was engaged to:
- a) Review the Accounting system with a view to improve and computerize the account system;
 - b) Review upgrading and computerization of filing system;
 - c) Establish proper training program for staff;
 - d) Improve counter services provided to the clients;
 - e) Ensure proper property management system;
 - f) Perform a general audit of the accounts books, maintained by the Public Curator's Office
- 34.5. The selection and appointment process was unclear to the Auditor General. No contract was sighted.
- 34.6. However, an hourly rate of K 150 was agreed by the Attorney General.
- 34.7. The total amount paid to RAM over an eighteen month period was K 1, 561, 062.
- 34.8. The retainer was terminated on the 24th May 2000 for failure to meet contractual conditions.
- 34.9. The Public Accounts Committee finds that the Attorney General and the Public Curator failed to comply with Sections 39 and 40 of the ***Public Finances (Management) Act*** in either the initial appointment and subsequent long term appointment of RAM and in payments made to that company.
- 34.10. The Public Accounts Committee finds that there was no formal contract produced to the Auditor General and concludes that the document does not exist.
- 34.11. Invoices received from RAM did not refer to any contracted deliverable or provide any basis for certification or payment.
- 34.12. Further, there was no check of the claimed hours worked and no evidence that any benefit flowed to the Public Curator at all.
- 34.13. The Auditor General finds that after eighteen months of work, the Public Curator could only report that a small amount of computer equipment was provided.

- 34.14. The Committee notes that RAM has not made any submission to this Committee despite being invited to do so and despite commencing litigation to restrain this Committee from considering those parts of the Report of the Auditor General that dealt with RAM, upon the basis that the company should have the opportunity to respond.
- 34.15. The Public Accounts Committee will make further recommendations and referrals in respect of this matter later in this Report.

L.J. HOOKER PTY LTD.

- 34.16. RAM retained LJ Hooker Pty Ltd. to deliver certain services under RAM's contract to the Public Curator.
- 34.17. The sub-contract required LJ Hooker to:
- Identify Estates that include real estate properties;
 - Create a Property Register;
 - Check titles and outstanding rates with the Department of Lands;
 - Check for mortgages with Banks and the Housing Corporation;
 - Value properties; and
 - Evaluate condition of properties.
- 34.18. In 1999 the Public Curator entered a direct arrangement with LJ Hooker Pty Ltd, which was extended by the Attorney General in October 1999 for twelve months.
- 34.19. Payments to LJ Hooker Pty Ltd were K 521,265.
- 34.20. On the 16th October 2000 the contract was terminated for poor performance.
- 34.21. The Public Curator asked for a detailed finalization Report. This has not been found by the Auditor General.
- 34.22. The Public Accounts Committee finds that the Attorney General and the Public Curator failed to obey Sections 39 and 40 of the *Public Finances (Management) Act* in engaging and paying LJ Hooker Pty Ltd.

- 34.23. The Committee further finds that the Public Curator failed to manage the contract to ensure the Consultant delivered the services contracted for.
- 34.24. In reaching these conclusions the Public Accounts Committee has given due weight to a submission delivered by LJ Hooker, dated the 25th November 2005.
- 34.25. The Committee makes further recommendations in this issue, later in this Report (infra).

JACO BUSINESS CONSULTANTS LTD.

- 34.26. JACO Business Consultants were retained the Public Curator to prepare financial statements for the Public Curator for the years 1991 – 2000.
- 34.27. The Auditor General could only find bank records of three payments commencing on the 13th December 2000, to evidence that the arrangement ever existed.
- 34.28. There was no evidence that any formal procurement had ever taken place, nor was there any evidence of any formal contract.
- 34.29. The Public Curator provided to the Auditor General an *Appointment of Agent* retaining JACO and one Jack Naiyep to be an Agent under Section 4 of the *Public Curator Act*. The terms of that Agency are recorded by the Auditor General at Page 48 of his Special Audit Report – see Volume 2 of this Report.
- 34.30. The Public Curator paid JACO a total of K 1,508,477 to the 23rd March 2005.
- 34.31. The Committee has had regard to a submission made by JACO addressed to the Public Curator and dated the 25th November 2005.
- 34.32. The Committee makes the following findings:
- The Public Curator failed to comply with Sections 39 and 40 of the *Public Finances (Management) Act* in the appointment of JACO as an Agent and the payment of large amounts to JACO.
 - The Attorney General, quite correctly, advised the Public Curator on the 4th September 2001, that the engagement of JACO was a breach of the *Public Finances (Management) Act*.
 - The Public Curator ignored this Advice, claiming that JACO was appointed as an Agent and that the Public Curator was, therefore, not

bound by the *Public Finances (Management) Act*. This Committee does not agree.

- Procurement processes must be transparent and competitive to ensure best value for the State and clear contractual conditions for payment and performance.
- The Committee finds that the Public Curator has wrongly used the power of appointment of an Agent. Section 4 of the *Public Curator Act* permits the appointment of an Agent.....”*for the purpose of the administration of an estate*” and for the delegation of powers of the Public Curator.

The appointment of JACO was not an agency appointment. That company was retained to perform purely operational matters and not the administration of an Estate. The Committee finds that the appointment and subsequent execution of an *Appointment of Agent* was unlawful in that it was a breach of the *Public Finances (Management) Act*.

- Payment to JACO was made from Estate funds as follows:
 - K 599,671 from the Estate Trust Account.
 - K 58,806 from the Corporate Trust Account.
 - K 825,000 from the Arrears Trust Account.
- The Committee finds that this use of Trust funds to pay for purely Operational matters is unlawful. Such matters should be funded from budget appropriations.
- The Auditor General finds (and the Committee accepts the finding) that the quality of work was not acceptable and of little use to the Public Curator By 1995, it was found that 95% of all Estate records had not been audited for the past ten years.
- This Committee is concerned that despite these serious flaws and non performance, the Public Curator continued to pay JACO – in particular an amount of K 825,000 paid on the 23rd March 2005.
- Further, the Committee finds an overpayment to JACO by the Public Curator in a sum of K 60,000 on the 23rd March 2005. This amount has not been recovered.

- The Committee further finds that the agreement with JACO allowed for the following payments:
 - The Appointment as Agent provided for K 5 from each Estate and an upfront payment of K 15,000 for work to commence – a total of K 135,000; and
 - K 50,000 per annum for the preparation of financial reports for the years 2001 – 2004.

These arrangements would allow for total payments to JACO of K 1,221,000 including GST.

- The Committee finds a total payment of K1,467,387 were made to JACO by the Public Curator. We find an overpayment of K 312,207. This amount is disallowed and recovery action should commence immediately.

34.33. The Public Accounts Committee makes recommendations and referrals arising from this matter at the end of this Report.

ANVIL PROJECT SERVICES

34.34. On the 23rd May 2000, Anvil Project Services were retained by the Secretary for the Department for Justice and the Attorney General to visit PNG and provide a report on corporatisation of the Office of the Public Curator.

34.35. On the 12th June 2000 the Department for Justice and the Attorney General's Corporate Executive Team approved the engagement of Anvil to audit work by previous consultants, review the Office of the Public Curator and develop and implement a Plan for the future.

34.36. The Public Curator then embarked on a series of actions that, this Committee concludes, was designed to avoid the requirements of Sections 39 and 40 of the *Public Finances (Management) Act*. The following occurred:

- The Public Curator applied to the Central Supply and Tender Board for a Certificate of Inexpediency. This was rejected on the basis that the engagement had not been advertised. CSTB were not advised that an engagement had actually been made.
- The Public Curator called restricted tenders for the second stage of the project and advised the CSTB that Anvil were the successful tenderers. The CSTB rejected the process as not being transparent.

- Despite these refusals, Anvil continued to work on the project.
- Rather than obey the law and call for open and competitive tenders, the Public Curator entered another six month contract with Anvil on the 30 November 2000. The Committee finds that this process did not comply with the *Public Finances (Management) Act*.
- The Public Curator persisted in his attempts to circumvent the requirements of Law. On the 14th May 2001 there was a further request for a Certificate of Inexpediency for the appointment of Anvil to complete the work. This was refused by CSTB.
- Despite this refusal, the Public Curator entered another engagement of Anvil for work relating to the corporatisation process.
- Further, from October 2001 until October 2002, Anvil undertook a range of additional engagements for the Public Curator for which there were no procurement processes. The cost of this work was K 1,720,000.

34.37. The Committee is very concerned that an arm of the very Department of Government responsible for the administration of Justice could conduct itself in such a way.

34.38. This Committee finds that:

- The Public Curator entered contractual arrangements with Anvil on at least 10 occasions with no power to do so and in breach of the law.
- The Public Curator and the Attorney General failed to provide or implement any or any adequate management or control of Anvil.
- Payments totaling K 4,872,375 were made to Anvil from Estate monies held in the Estate Trust Fund, the Arrears Account and/or the Corporate Trust Account. This was unlawful.
- There are problems attending the certification of payments to Anvil. *Financial Instruction 5* Section 31 and 32 controls the appointment of and duties of certifying officers.

The Auditor General found that a payment to Anvil from the Estate Arrears Trust Account was actually certified by the PNG principal of Anvil – not the Public Curator or a public servant. There were no

apparent checks or balances at all applied to the money given by the NEC to the Public Curator.

In the opinion of the Committee, this situation well illustrates the extent of the breakdown of control, accountability, responsibility and obedience to Law that characterises the Office of the Public Curator.

- Anvil has withheld monies received by it from realization of assets of deceased Estates including sale of properties, shares, investments and rent. The Auditor General can find no evidence that these monies have ever been paid into the Estate Trust Account.

A full account of all monies had and received should immediately be sought through the National Court of Justice followed by recovery action. Further, this withholding may constitute a criminal offence, and/or a breach of Trustee obligations.

These payments total K 1,966,677, which should have been remitted to Consolidated Revenue under Section 28 of the *Public Curator Act*.

- The Committee finds that due to failures to follow up the work performed by Anvil, the benefit of that work has been lost.
- Failure by the Government to fund the recommended changes has resulted in the benefit of work performed by Anvil being lost to the Public Curator.
- Certain records, files and documents relating to Estates have been retained by Anvil. It is impossible for the Public Curator to assess the Estate management by Anvil – including financial accounting.

34.39. The Committee concludes that the retainer of Anvil by the Public Curator was riddled by illegalities and an unlawful waste of Estate monies. The Committee concludes that the Public Curator, the Attorney General and Anvil may be liable for the losses to Estates and will make certain recommendations and referrals in respect of this matter later in this Report.

34.40. The Committee also concludes that the State may have been exposed to liability and accountability for and as a result of these losses and unlawful conduct.

35. INAPPROPRIATE FINANCIAL TRANSACTIONS

FINDINGS OF THE AUDITOR GENERAL

- 35.1. The Committee has been shocked by the revelations of theft and inappropriate dealing with money and assets of dead persons.
- 35.2. The Committee, as a whole, has been left to conclude that there is no ethical or moral sense attending the Office of the Public Curator and no attempt to control or rectify abuses of past and present decision makers or to protect Estates thereby.

35.3. FRAUDULENT CONDUCT BY EMPLOYEES OF THE PUBLIC CURATOR'S OFFICE AND THIRD PARTIES

- 35.4. The Committee notes with great concern a table of variations between Estate Tracker, Cash Book and Bank Balance at Page 35 of the Report of the Auditor General.
- 35.5. In short, as at 31 December 2004 the balance of the Estate Trust Fund Bank Account that contains the cash assets of deceased Estates is K 31,036.00.
- 35.6. The Public Curator has recorded liabilities to deceased Estates of K 12,083.669.00. There is therefore a shortfall of K 12,052,633.00.
- 35.7. The Committee notes with great concern the conclusion of the Auditor General that this recorded shortfall has resulted from inappropriate use of Estate monies by the Public Curator, overcharging of Commission, fraud and a failure to keep appropriate accounts and records including:
- Overpayment to Estates of K8,781,035.00 that has resulted from incorrect posting of receipts and payments;
 - Incorrect payments to Consultants of K4,647,707.00 from the Estate Trust Account;
 - Prepayments to beneficiaries;
 - Payments to beneficiaries where Estate monies were held in investments;
 - Payment of investments on maturity to other accounts – Corporate Trust Account and Insolvency Trust Account;
 - Payment of wages for casual staff totaling K63,076.00;
 - Audit fees totaling K72,000.00;

- Payments to beneficiaries without providing for Commission as a result of the Commission payments not been posted to individual accounts;
- Advance payments to POSF beneficiaries that have not been recovered and;
- Posting errors including duplications.

35.8. The Committee finds that the Public Curator past and present may well have acted negligently and in breach of his statutory obligations in failing to implement and maintain proper accounting records resulting in abuse of the trust monies to the liability of the State and the disadvantage of beneficiaries.

35.9. The Committee notes with concern the very significant reduction in the balance of the Estate Trust Account that occurred in 1999. This reduction coincided with the engagement of Consultants and at the time when the Public Curator's Office commenced consolidated investments.

35.10. The fact of inappropriate financial dealings is not new.

35.11. In May 1999 the Public Curator wrote to the Police Commissioner concerning a review commissioned by the Attorney General into the workings of the Public Curator's Office. That letter stated in part:

“This review reveals, amongst other things, a number of cases where money was paid out of deceased estates when clearly there were no or sufficient funds in the appropriate estate accounts. There are also instances where neither documentary evidence of requests or approval of payments exists. Often amounts approved for payment did not correspond with the amount on the actual cheques and the amounts on some cheques were different from the amounts entered on the cheque butts.

There may be collaboration between certain beneficiaries and staff members which have resulted in large overpayments being made. In these cases, both the beneficiaries and the staff responsible knew that there was not sufficient money in these estate accounts. Those overpayments now exceed K1,700,000.00”.

35.12. One employee of the Public Curator's Office was prosecuted and convicted of fraud or misappropriation of K 46,900.00. No further prosecution has occurred and approximately K 1,700,000.00 cannot be accounted for.

- 35.13. That figure relates to payments that, except in a few cases where there may have been legitimate advance payments, should not have been made. The Auditor General has been unable to discriminate between incompetent payments and those involving fraudulent activity due to poor record-keeping and lost records.
- 35.14. The Committee is very concerned at the Auditor General's finding that the total of overdrawn accounts now stands at K 8,781,035.00. Prima facie, the State is liable for that shortfall.
- 35.15. This Committee will make recommendation and referrals in respect of that missing money.
- 35.16. The Committee has evidence of one particular instance of unlawful and inappropriate use of Estate monies.
- 35.17. The fact that this misappropriation involved the Attorney General, the Department of Justice and the Public Curator is a matter of very great concern.
- 35.18. There was clearly no regard paid at all to legal requirements or form and a cavalier disregard of the Criminal Law.
- 35.19. In October 2000 the Department of Attorney General arranged for the purchase of a new motor vehicle for the Public Curator's Office at a cost of K65,486.98.
- 35.20. The vehicle was purchased from the Public Curator's Corporate Trust Account.
- 35.21. Shortly after it was purchased, it was traded in on the purchase of the Attorney General's personal vehicle – a Toyota Land Cruiser Station Wagon. As this vehicle is for private use it would not be exempt from taxes and duty.
- 35.22. On 15 June 2001 a legal firm, the Vapo Lawyers, acting for clients that were beneficiaries of Estates administered by the Public Curator, wrote to Ela Motors regarding the purchase of this Toyota Land Cruiser Station Wagon.
- 35.23. The letter was copied to the Office of the Public Curator and the Office of the Attorney General. Each of those offices therefore had full knowledge of the allegation of impropriety which was made to Ela Motors.
- 35.24. That letter read, in part:

“.....(the vehicle)..... was purchased by the Office of the Public Curator using proceeds from interest earned on the investments of deceased estates with Finance Corporation Limited. We represent clients whose estates were invested and interests earned have been used to purchase a vehicle instead of monies being paid to the deceased estates. Our client has an interest in the vehicle together with other deceased estates.

We firmly believe that the trade-in was fraudulent and illegal act thus we will pursue the matter further with the appropriate authorities concerned.

This letter serves to put you on notice that our clients have an interest in the vehicle concerned and that any steps taken to further deal with the vehicle may raise considerable problems”.

35.25. In December 2001 the Department for Justice and Attorney General paid a cheque for K 65,000.00 to the Public Curator.

35.26. The Auditor General concluded:

A purchase of a motor vehicle for the Public Curator’s Office is a “running cost” and as a result to be covered by appropriation provided to the Attorney General’s Department through the budget process.

This motor vehicle was acquired by the State and held for less than three years. It therefore is not exempt from State taxes and is not duty free. There may be monies owed to the State.

35.27. In 2001, CCS Anvil (PNG) Limited identified a range of inappropriate behaviour by claim beneficiaries and other parties in dealings with the State. Reports provided to the Public Curator over the last three years detail these behaviours.

35.28. The Auditor General has determined there has been no action taken by the Public Curator up to the time of the Auditor General’s review.

35.29. The Auditor General finds that incidents related to fraud within the Office of the Public Curator have been reported to the Fraud Squad over the past 15 years. Outstanding cases with the Police should be finalized as soon as possible.

35.30. The Auditor General has identified a significant number of problems relating to the Public Curator’s dealings with the Department of Lands and Physical Planning and the National Housing Corporation and the management of land titles and properties by those bodies.

35.31. On the 27th January 2004 the current Public Curator outlines some of those problems. He said:

Generally speaking, we don't encounter problems with most organizations, but consistently we experience serious difficulties in our dealings with the Department of Lands and the Housing Corporation. Not only is it complex to get straight answers and information, but often there are vested interest already in play that obstruct us in establishing facts.

Below are some issues of concern with the Department of Lands that we have encountered.

- *Titles granted to different entities over the same land;*
- *Files lost and removed from the Office;*
- *Land rentals not collected;*
- *Allocated land not developed;*
- *Procedures unclear and not transparent;*
- *Procedures not followed;*
- *Lack of Title security;*
- *Slow processing of simple actions”.*

35.32. The Committee can report that these complaints are entirely consistent with evidence received by this Committee in Inquiries into the Department of Lands and Physical Planning and the National Housing Corporation.

35.33. The Auditor General concludes that there may be collaboration between beneficiaries and staff members of the Public Curator's Office which have resulted in large overpayments being made. These cases, both the beneficiaries and the staff responsible knew there was not sufficient money in these Estate accounts.

35.34. The Auditor found cheque butts torn from cheque books without explanation.

35.35. 96 Cheques leaves were missing in one cheque book alone – the cheque book itself is still missing which makes it impossible to identify the Estate

35.51. The Public Accounts Committee accepts the findings of the Auditor General that the Office of the Public Curator has, for some years, been subject to theft, fraud and misapplication of funds by persons within and without the Office.

35.52. The Committee makes recommendations and referrals in respect of this matter later in this report.

36. TST SUPERMARKETS

REPORT OF THE AUDITOR GENERAL

36.1. The Auditor General finds that K2,472,343 of non-negotiable cheques drawn on the Public Curators Estate Trust Account have been cashed at TST Supermarkets and honoured by the Bank of Papua New Guinea.

36.2. These are only the cheques that can be identified by the Auditor General through an examination of un-presented cheques. There are a large number of presented cheques that are not available to the Auditor General and the total of cheques presented to TST Supermarkets may be significantly large.

36.3. Many of these cheques were not presented and endorsed by the payee and should not have been negotiated at TST Supermarkets.

37. RESPONSE OF THE PUBLIC CURATOR

37.1. The Public Curator does not respond or rebut the findings of the Auditor General.

38. FINDINGS OF THE PUBLIC ACCOUNTS COMMITTEE

38.1. The Committee accepts the conclusion of the Auditor General to the effect that non-negotiable cheques drawn on the Public Curator's Estate Trust Account have been cashed at TST Supermarkets in a sum of K2,681,525 as at the end of 2004.

38.2. The true amount of cheques presented to TST Supermarkets may be significantly larger.

38.3. The matter was referred to the Police Commissioner in May 1999 but no apparent action has occurred.

38.4. The Committee will make findings and referrals in respect of these matters, at the conclusion of this Report.

39. LEGAL ACTION BY BENEFICIARIES

- 39.1. There are a large number of complaints and court actions by beneficiaries concerning the handling and distribution of assets and money of deceased Estates by the Public Curator.
- 39.2. Some of these complaints relate to significant amounts of money and the State may have a much larger exposure

40. FINDINGS

- 40.1. The Committee will make findings as to claims against the Office of the Public Curator and the State and will make certain recommendations in respect of the State's liability and the method of disposing of that liability.
- 40.2. The Committee is satisfied that the Public Curator cannot be entrusted with any recovery or rectification of the Estates – nor should he be permitted to employ Consultants to do so.

41. OTHER ISSUES

- 41.1. The Committee accepts the finding of the Auditor General of further fraudulent activity within the Office of the Public Curator. Such activity as staff colluding with external parties to have cheques paid from Estates for which they have no right – even from accounts where there was no remaining balance – have been identified by the Auditor General.
- 41.2. Further, the Committee concludes that while the Corporate Trust Account was administered by the Secretary of Department for Justice and Attorney General, approximately K1,000,000.00 from the Trust Account cannot be supported by vouchers held by the Public Curator's Office and appear to have been used by the Department for its own purpose.
- 41.3. These monies have not been reimbursed and the Committee will make certain findings and recommendations in this regard at the conclusion of this report.

42. PUBLIC OFFICERS SUPERANNUATION (POSF)

- 42.1. Until 1995 superannuation entitlements were provided by POSF to the Public Curator to distribute as part of deceased Estates. There was often a time delay in POSF providing the payments and the Public Curator would normally advance monies to beneficiaries to facilitate payment of school fees and other urgent expenses.

- 42.2. By 1999 POSF ceased to remit superannuation payments related to deceased Estates. The Public Curator however, continued to advance payments where circumstances required.
- 42.3. The Public Curator was unable or unwilling to acquit the distribution of monies that POSF had remitted to the Public Curator. Overall POSF had remitted K10,354,137 to the Public Curator.
- 42.4. Ultimately, the Public Curator lost a National Court application to force POSF to continue paying entitlements to the Public Curator and, the Public Curator has failed to recover monies advanced to beneficiaries.
- 42.5. The Committee notes with concern that the potential liability to the Public Curator (and thereby to the State) is very significant. This arises from a perceived failure by the Public Curator to understand or accept that POSF was empowered to distribute to beneficiaries and an unwillingness or refusal to prepare and present an audit of monies received from POSF.
- 42.6. The Committee will make recommendations and referrals in respect of this matter.

43. ESTATE PROPERTY MANAGEMENT

- 43.1. This is the fundamental task of any trustee of a deceased , or any other, form of Estate.
- 43.2. The trustee has an obligation to the beneficiaries to trace, identify, value, secure, realize and distribute the assets forming the Estate. The word “assets” includes financial assets such as cash at bank, shares, stocks as well as property, plant and equipment.
- 43.3. Where real estate property is concerned, the trustee must take possession of the property and ensure that it is properly occupied, productive to the Estate, confirm the title to the property, value the property, lease the property for income if that is appropriate, ensure that insurance is current, ensure responsibility for payment of mortgages and that the property is maintained in good repair. In other words, the trustee must ensure that all prudent steps are taken to prevent waste of the asset.
- 43.4. When the Public Curator actually manages the Estate he may be required to distribute or transfer property to beneficiaries or sell it to maximize a return for distribution on finalization of the Estate.

FINDINGS

- 43.5. The Committee has received evidence that the Public Curator administers at least 670 properties. The Committee notes that the Public Curator only provided an original list to the Auditor General of 175 properties.
- 43.6. The Committee finds that there is no or no adequate Property Register. A trustee Property Register should contain at least:
- Estate and file number;
 - Clear identification of property;
 - Title details;
 - Occupancy/state of possession;
 - Description of fixtures and chattels;
 - Valuation of the Property;
 - Income from the Property;
 - Liabilities;
 - Insurance details;
 - Maintenance history and requirements;
 - Identify the agents or managing agents;
 - A statement of the current status of the property;
 - Financial records pertaining to the property.
- 43.7. The Committee has found that the property lists maintained by the public Curator are not a comprehensive register of properties and do not contain even basic information for all properties under management.
- 43.8. The Committee has heard that there is no process at all to take responsibility for properties within the Office of the Public Curator. If this system does not exist, it is very difficult to imagine what the Public Curator actually does in respect of property for he will have no understanding of where the property is, whether it exists, its condition or its title.

- 43.9. The Committee has heard that no property title has ever been transferred to a beneficiary. If this is true, there is a very serious problem within the Office of the Public Curator in this regard.
- 43.10. It is with great concern that the Committee accepts the conclusion of the Auditor General as follows:
1. Mortgages have not been serviced by the Public Curator and Banks have foreclosed and sold properties. It is not possible to identify where the proceeds of these sales have gone. The Committee concludes that it is difficult to imagine a more fundamental breach of Trust obligations.
 2. Properties are illegally occupied and no rent has been collected by the Public Curator:
 - Properties have been damaged or destroyed;
 - Properties have been sold without the knowledge of the Public Curator;
 - Titles have been transferred without the knowledge of the Public Curator.
- 43.11. The Committee finds that the Public Curator has failed to meet his obligations in respect of the Management and realization of the real estate properties on behalf of the deceased Estates that he administers.
- 43.12. The Committee finds that the value of Estates has thereby been greatly reduced and the beneficiaries of deceased Estates are being significantly disadvantaged.
- 43.13. The Committee has received evidence that the Public Curator is so dysfunctional that some Estates and properties have been under the control or management of the Public Curator's Office for as long as 20 years and are neither finalized, nor have assets been transferred to beneficiaries.
- 43.14. The Committee finds that while there have been some sales of properties the value has been significantly reduced by the failure of the Public Curator to exercise his responsibilities. An example is the Estate of Dr Tiong Choon Tan. A report from the Agent that dealt with the Estate says:
- “This Estate demonstrates that the consequence of the Office of the Public Curator not taking possession of the deceased estate immediately”.***

- 43.15. The final value of the estate was K 897,647.00. The Agent stated that the amount was significantly less than what would have been received if immediate action had been taken by the Public Curator as there had been damage to the property, loss of assets and fraudulent activity.
- 43.16. It is notable that the cost of finalizing the estate was K 207,968.00 with much of this cost due to the delay in obtaining and acting on orders of administration.
- 43.17. The Committee notes with great concern that the Auditor General was unable to determine whether the Public Curator's Office has implemented any process or mechanisms to identify deceased Estates, but seems to rely on beneficiaries making the initial approach.
- 43.18. There seems to be no intelligence gathering and no attempt to be proactive in the identification administration of the Estates. There is therefore no power or ability in the Public Curator to move quickly and effectively to take possession of and to protect assets for further distribution.

44. POTENTIAL LIABILITY OF THE STATE

- 44.1. The Public Accounts Committee concludes that the State has, been exposed to significant liability as a result of the negligent mismanagement and incompetence of the Public Curator and his staff.
- 44.2. The Committee also finds that this liability is very largely due to the failure by the State to adequately and properly fund and resource the Office of the Public Curator.
- 44.3. That liability may lie toward beneficiaries of Estates of which assets have been wasted, lost or mismanaged – and there are likely to be a great number of such examples.
- 44.4. In the opinion of this Committee, the State owes a duty to assess and recompense beneficiaries and all other persons including those whose Estates are administered by the Public Trustee by reason of their insanity or insolvency or other disability.
- 44.5. This Committee makes certain recommendations in this regard at the conclusion of this Report.

45. FINDINGS OF THE PUBLIC ACCOUNTS COMMITTEE

1. The Office of the Public Curator has fallen into a chaotic and non-functioning state. The Committee accepts and endorses the following opinion of the Auditor General at Page 1 of his Special Audit Report:

“The Office of the Public Curator has failed in his duty to the public to protect and maintain the estates that have passed into his care”.

2. The Office of the Public Curator has little understanding of the duties of a Trustee and is in breach of its obligations and duties to beneficiaries and to the State in a number of areas.
3. The Office of the Public Curator has been underfunded and under resourced for years. This has resulted in the growth of fraud and theft and an almost complete absence of lines of command, control and accountability.
4. The Office of the Public Curator has clearly mismanaged estates and monies held in Trust. Hundreds of properties cannot be found or traced. Millions of Kina cannot be found or traced.
5. The net result has been gross delay in beneficiaries and dependants receiving assistance – assistance which the dead trusted the Public Curator to deliver. In many cases no assistance at all was received because the Curator has lost assets, assets have been stolen and records cannot be found. This is totally unacceptable.
6. Further, the State has been exposed to significant liability as a result of these failures.
7. We conclude that the Public Curator himself and/or senior members of his staff may be personally liable for the negligent or downright fraudulent practices in that Office.
8. But we also conclude that the Attorney General has failed to exercise control or to adequately fund or resource the Office. That officer has also interfered in the work of the Public Curator without power so to do.
9. The Public Curator has retained agents, consultants and contractors without complying with the requirements of Law.
10. We accept that the Office of the Public Curator and its staff and agents have wrongfully taken monies from Estates and/or overcharged Estates – in some cases for work that was not performed.
11. That there was no understanding or training to assist staff to understand the nature of a Trust, trustee obligations or fiduciary duties.
12. That a payment by the NEC intended to meet shortfalls in Estates was almost entirely misused and wrongly applied.

13. That there has been an almost total failure by Government, the Attorney General and Secretary for Justice and the Public Curator to adequately resource, fund, manage, control or direct the Office of the Public Curator.
14. That the Curator has failed to direct or control adequately or at all, agents, contractors or consultants appointed by him.
15. That the Attorney General unlawfully meddled in the discretion and work of the Public Curator – particularly in the appointment of agents, contractors and Consultants.
16. That the Public Curator failed to assert his independence against the directions or meddling of the Attorney General- to the detriment of the State and the Estates under his care.
17. That the Public Curator failed to implement or maintain adequate control, audit, accounting or management systems.
18. That the Public Curator past and present failed to finalise Estates in a timely manner.
19. That the Public Curator past and present failed to maintain proper accounting records or documents.
20. That the Public Curator past and present failed to identify the extent of, or to value assets adequately or at all.
21. That the Public Curator past and present failed to prevent theft and waste of assets.
22. That the Public Curator past and present failed to manage and account for investments adequately or at all.
23. That the Public Curator past and present failed to make or ensure remittance of Commissions to Consolidated Revenue.
24. That the Public Curator past and present failed to remit to Consolidated Revenue, Estates not resolved within six years.
25. That the State may be exposed to considerable liability as a result of those failures.
26. That beneficiaries, dependants and persons whose affairs are administered by the Office of the Public Curator should seek legal advice as to their rights and entitlements.

27. That the duties of the Office of the Public Curator requires all Officers to exhibit high standards of competence, probity and accountability. The Office fails to exhibit those qualities.
28. The Public Curator has not implemented or maintained any systems of accounting for, tracing, securing, realizing or distributing Estate assets.
29. The Public Curator has failed to manage, identify, secure and realize real estate assets of Estates.
30. The Public Curator has failed to comply with any and all Statutory reporting requirements.
31. The Public Curator has failed to comply with procurement and payment requirements in the *Public Finances (Management) Act* for the appointment of Agents, Consultants and Contractors.
32. The Public Curator and the Attorney General have failed to take any recovery action for overpayments, wrongful payments or monies illegally withheld from Agents, Contractors or Consultants despite knowing of these payments in some cases, for years.
33. Retained or appointed incompetent Agents, Contractors or Consultants with no regard to capacity to perform and with no Contractual performance requirements or, in some cases, with no contract at all.
34. The Public Curator actively misled the Central Supply and Tender Board in the appointment of Anvil Project Services.
35. The Public Curator has had no policies or practices for the effective operation of the Office.
36. The Public Curator failed to understand or meet even basic trustee obligations.
37. The Public Curator failed to supervise adequately or at all the work of Agents, Contractors or Consultants and thereby failed to obtain any benefit from significant expense paid from Estate monies. The Public Curator failed to make satisfactory financial reports at all since 1991.
38. The Public Curator failed to properly manage and account for investments.
39. The Public Curator failed to provide any adequate level of customer service.

40. The Public Curator paid itself Commissions far in excess of the allowable rate and in many cases cannot reconcile Commissions paid from Estate monies to individual Estates.
41. The Public Curator unlawfully used Estate monies to offset the running and operational costs of his Office, when such monies should have been remitted to Consolidated Revenue.
42. The Department of Finance failed completely to review and monitor the operation of Trust Accounts controlled or operated by the Public Curator.
43. The Public Curator has no adequate administration or accounting systems, manual or computerized.
44. The State must move immediately to establish the extent of liability for failures of the Office of the Public Curator.
45. The Government must move immediately to recover monies wrongly or fraudulently taken from Estates by staff, third parties, Consultants, Agents or Contractors and instigate investigation and prosecution of those responsible for these thefts.
46. The Committee finds that new, competent and qualified management is required if change is to occur.
47. The Office of the Public Curator requires urgent and immediate remedial attention from the Government.

46. RESOLUTIONS AND RECOMMENDATIONS OF THE PUBLIC ACCOUNTS COMMITTEE

- 46.1 In light of these findings the Committee has resolved :
1. To accept the report of the Auditor General into the Office of the Public Curator.
 2. That the Office of the Public Curator requires urgent intervention and restructuring. The whole concept of a Public Curator requires modernization and reform.
 3. That the Government urgently, adequately and fully staff and fund the Office of the Public Curator.
 4. That the Government must ensure ongoing and adequate funding of the Office of the Public Curator through Budget and Appropriation.

5. That the Public Accounts Committee will report to the Parliament on its findings and recommend urgent and immediate action to address the problems in the Office of the Public Curator.
6. That the State appoint an Inquiry with wide terms of reference, to investigate and recommend reform and restructuring of the Office of the Public Curator.
7. That there be a complete review and where necessary, modernization of the Statutes administered by the Public Curator or which empower that office.
8. That the Parliament, as a matter of urgency, empower an Inquiry to establish the extent of likely State liability in law for losses, shortfall and theft within the Office of the Public Curator.
9. That the Public Curator and his senior managers including the Deputy Public Curators, be relieved of his duties and consideration be given to appointing a skilled interim Curator or permitting the POSF or NASFUND trustees to manage the Office of the Public Curator pending recruitment of a skilled management team.
10. That the Government give consideration to establishing some independent means by which claimants, dependants or beneficiaries may be heard and their true entitlements established.
11. That consideration be given to a Statutory scheme allowing forfeiture of old or inactive Estates to the State, while allowing a statutory period for claimants to prove their entitlements – after which claims are statute barred.
12. That the Government, with the help of foreign aid donors if necessary, immediately recruit by National and International advertisement, and appoint a competent and experienced Public Curator and team of managers and trainers to restructure the Office of the Public Curator.
13. That the Office of the Public Curator urgently requires, at the least, modern Trust Rules, Trust Act, Public Curators Act, Insolvency Act provisions, General Orders, Investment Rules, Instructions to Staff (who themselves are Trustees), a competent Legal Officer, competent accounting staff, competent accounting systems, compliance with the *Public Finances (Management) Act*, lawful tender systems and directives, internal auditors, systems of oversight of accounting and administration systems, modern and lawful

procedural manuals for all staff, outstation office oversight and oversight of banking and investment decision making.

14. That controls be implemented over the appointment of agents, contractors and consultants and requirements that selection and appointment be subject to public tenders.
15. That all Contractors, Agents and consultants retained or appointed by the Public Curator be competent, experienced and qualified to perform their contracted tasks.
16. That the Government act to ensure timely distribution of Estate assets without further expense to Estates.
17. That the Attorney General have no power to direct the Public Curator in his work or in the exercise of his discretion as Trustee.
18. That the Government make provision for potential losses or claims arising from the failures of the Public Curator.
19. That the Government direct the Offices of the Attorney General and the Solicitor General to take all steps to recover monies previously allocated by the NEC to remedy Estate shortfalls – in particular from agents or contractors of the Public Curator and the Office of the Attorney General where appropriate.
20. That the Government instruct State lawyers to consider the liability of the Public Curator for breaches of the Public Curators Act or other legal obligations.
21. That the Government instruct the Office of the Solicitor General to consider the liability of the Attorney General (or past Attorneys General) for Estate moneys used to fund operating costs of the Office of the Attorney General.
22. That the appointments of all agents to the Public Curator be terminated forthwith and that no monies be paid to those agents pending audit and approval of all claims.
23. That all relevant evidence and records before this Committee (including the report of the Auditor General) be referred to the Office of the Solicitor General to assist that Office to determine the civil liability of various office holders and agents of the Public Curator.

47. REFERRALS BY THE PUBLIC ACCOUNTS COMMITTEE

The Public Curator and his staff (past and present) will be referred to the Office of the Public Prosecutor pursuant to Section 86 A of the **Public Finances (Management) Act 1995** for investigation of possible breaches of the **Constitution**, the **Public Finances (Management) Act 1995**, the **Public Curators Act**, the **Financial Instructions**, the **Trustee Act**, the **Insolvency Act** and/or breaches of Trustee obligations with directions to conduct a thorough and complete investigation of all allegations and findings made either by the Office of the Auditor General and / or the Public Accounts Committee.

The report of the Auditor General will be referred to the Fraud and Anti Corruption Squad of the Royal Papua New Guinea Constabulary with directions to conduct a full and complete investigation of all allegations and findings of misconduct made by either the Office of the Auditor General or the Public Accounts Committee against the Public Curator (past and present) and his staff, to establish breaches of Acts of Parliament and in particular of the **Criminal Code Act**, the **Insolvency Act**, misconduct as a trustee, theft of Estate assets and money and/or breaches of the **Public Curator Act** and the **Trustee Act**.

All Consultants, Agents, Contractors and advisers of or to the Office of the Public Curator will be referred to the Internal Revenue Commission for full investigation to ensure that all taxes and other imposts on money received from the office of the Public Curator has been the subject of a proper and lawful declaration by the recipients, assessment by the Internal Revenue Commission and payment by the recipient. The Committee recommends that, if any of these recipients are found to have breached their obligations to the Internal Revenue Commission, they be prosecuted.

Agents, Consultants and/or Contractors to the Public Curator including RAMS Business Consultants, Jaco Business Consultants Ltd and CCS Anvil (PNG) Ltd. and/or Anvil Project Services Pty. Ltd. will be referred to the Office of the Solicitor General to establish civil liability for monies paid or taken by or for those services. Wherever possible, recovery proceedings should be commenced.

The Office of the Public Curator, the Office of the Attorney General of the time and all agents, contractors or consultants to the Public Curator, the subject of the Report of the Auditor General, will be referred to the Royal Papua New Guinea Constabulary Fraud and Anti Corruption Squad for full investigation to establish any breaches of the criminal law in the selection and contracting process, the claims for work performed, the method of payments and the certification for payment– particularly payments made from monies allocated to the Office of the Public Curator

by the NEC to meet shortfalls in deceased Estates and held in the Estate Arrears Trust Fund.

That all agents, contractors or consultants to the Public Curator, the subject of the Report of the Auditor General, be referred to the Royal Papua New Guinea Constabulary for full investigation of all monies, property, assets, real estate and any and all other Estate assets that may be held or withheld by any or all of these entities, to establish whether there is any breach of the Criminal Law by that withholding.

That all agents, contractors and consultants to the Public Curator, the subject of the Report of the Auditor General will be referred to the Solicitor General with a recommendation that these entities be asked for a formal Account for monies, real estate, property and assets that may either be withheld by them or which have been had and received for or on behalf of the Public Curator or Estates under his management – especially monies withheld from the proceeds of sale of real estate or any other asset of an Estate and that, where appropriate, recovery action be taken immediately.

The Office of the Attorney General will be referred to the Office of the Ombudsman for investigation of any monies received by any Attorney General or his Office from Estates under the control of the Public Curator to establish if any breach of the Leadership Code has occurred.

The Public Curator will be referred to the Office of the Ombudsman for investigation of findings in the Report of the Auditor General of breach of Acts administered by him and financial irregularities within the Office of the Public Curator.

That the Office of the Public Curator and the Office of the Attorney General will be referred to the Public Services Commission, the Department of Personnel Management and the relevant Ministers for investigation of any breaches of the Public Service Code of Conduct, Standing and General Orders, arising from the report of the Auditor General.

The Committee has considered whether it should apply the “disallowance” provisions of the Financial Instructions. To do so means that the “Accountable Officer” is personally accountable for the amount so disallowed. The Committee concludes that this power should only be exercised in the clearest of circumstances and where there can be no doubt that the Accountable Officer should be held liable.

The Committee considers that the waste and unlawful activity within and by the Office of the Public Curator is so complete and complex and

involves matters of both Law and fact, that it should not apply the “disallowance” provisions, but that the proper investigatory agencies should conduct their own specialized inquiries and recover such monies as they are able.

48. CONCLUSIONS

The Committee concludes that:

- 48.1 Modernisation, restructure and reassertion of control is immediately required.
- 48.2 Losses to the State will be very considerable and should never have occurred.
- 48.3 More importantly, the Government Trustee has failed the beneficiaries of Estates for years and failed the Trust of deceased persons.
- 48.4 The whole Inquiry has revealed a squalid picture of incompetence, criminality, opportunism and indifference.
- 48.5 The people and citizens of this country deserve much better. This Committee hopes that this Inquiry and Report may mean that those expectations are met and that the Office of the Public Curator can become a model of its kind.
- 48.6 The Committee acknowledges the excellent report prepared by the Office of the Auditor General and the assistance of all witnesses and other persons provided to the Committee.

SCHEDULE 1

LIST OF WITNESSES

Paul Wagun – Public Curator

Mr. Theodore Bukikun – Regional Public Curator (Southern Region)

Mr. Vuatha Leva – Regional Public Curator (Highlands Region).

Mr. Craig Deane – Office of the Auditor General.

Mr. Fred Tomo – Acting Attorney General

SCHEDULE 2

LIST OF DIRECTIVES AND SUMMONSES

Other than a request to the Office of the Auditor General to prepare and deliver a Special Audit Report on the Office of the Public Curator, there were no Summonses issued or Directives given.

SCHEDULE 3

DOCUMENTARY EVIDENCE BEFORE THE COMMITTEE

The Parliamentary Public Accounts Committee received the following documents into evidence:

1. The Auditor General's report on the Special Audit Investigation of the office of the Public Curator
2. The Public Curator's response on the Special Audit Investigation of the office of the Public Curator
3. Various correspondences to and from the office of the Public Curator and various government agencies.

4. Copy of the National Executive Council Decision no. 53-2003.
5. Reports from consultants retained by the Public Curator.
6. Response from JBC Consultants 25 November 2005.
7. Response from Anvil (PNG) Project Services 23 November 2005.
8. Response from LJ Hooker to Auditor General's Report 25 November 2005.
9. Correspondences and instruments of appointment of consultants by the office of the Public Curator.