THE INDEPENDENT STATE OF PAPUA NEW GUINEA

PUBLIC ACCOUNTS COMMITTEE

FINAL REPORT

REPORT TO NATIONAL PARLIAMENT

INQUIRY INTO THE NATIONAL MUSUEM AND ART GALLERY AND THE SALE AND EXPORT OF THE SWAMP GHOST AIRCRAFT

CONTENTS

CONTENT	PAGE
INTRODUCTION	4
EXECUTIVE SUMMARY	5
CHRONOLOGY	18
LIST OF ABBREVIATIONS	18
COMPOSITION OF THE COMMITTEE	20
JURISDICTION AND PURPOSE OF THE INQUIRY	21
PURPOSE	21
JURISDICTION	25
The Constitution Of The Independent State Of Papua New Guinea	25
The Public Finance (Management) Act	27
Permanent Parliamentary Committees Act	27
THE AUTHORITY TO REPORT	28
THE AUTHORITY TO REFER	28
METHOD OF INQUIRY	29

PRIVILEGES AND PROTECTION OF WITNESSES 30

RELEVANT STATUTES 30

Public Finances (Management) Act 1995 30

Financial Instructions 31

Organic Law on the Duties and Responsibilities of Leadership 31

Investment Promotion Authority Act 32

Audit Act 32

War Surplus Materials Act 32

National Museum and Art Gallery Act 34

National Cultural Property (Preservation) Act 35

THE SWAMP GHOST - BACKGROUND FACTS 36

LEGALITY OF THE SALE, REMOVAL AND ATTEMPTED EXPORT OF THE SWAMP GHOST 42

THE FIRST DAY OF THE INQUIRY 45

THE SECOND DAY OF THE INQUIRY 63

OTHER AIRCRAFTM WRECKS EXPORTED FROM PAPUA NEW GUINEA 84

FISCAL RESPONSIBILITIES OF THE GOVERNMENT 105

RESPONSIBILITIES OF THE AUDITOR GENERAL 105

OBLIGATIONS OF THE NATIONAL MUSEUM AND ART GALLERY TO THE PUBLIC ACCOUNTS COMMITTEE 106

DUTIES OF THE DIRECTOR AND MANAGEMENT OF THE MUSEUM 107

LOSS TO THE STATE 108

REPORTING OF THE INQUIRY BY HANSARD 109

RESOLUTIONS OF THE COMMITTEE 110

FINDINGS 112

REFERRALS 117

RECOMMENDATIONS 120

THE PUBLIC ACCOUNTS COMMITTEE

INQUIRY INTO THE NATIONAL MUSEUM AND ART GALLERY

REPORT TO THE NATIONAL PARLIAMENT

1. INTRODUCTION

1.1. On the 22nd day of September 2004 the Permanent Parliamentary Public Accounts Committee concluded a long running inquiry into the Papua New Guinea National Museum and Art Gallery.

1.2. On the 4th day of July 2006, the Public Accounts Committee re-convened the Inquiry to consider the circumstances attending the attempted sale and proposed export of the wreck of a B17 aircraft Serial Number 41 – 2446 by Aero Archaeology LLC, an American company. That sale and approval of the export was made by the National Museum and Art Gallery of Papua New Guinea.

1.3. The Public Accounts Committee also considered the legality of past approvals by the National Museum and Art Gallery permitting the export of War Surplus Materials from Papua New Guinea by foreigners.

1.4. As a result of evidence taken in the Inquiry, the Public Accounts Committee made certain findings which were highly critical of performance of the National Museum and Art Gallery and, in particular, the performance and competence of present and past Directors and Senior Officers of that Institution.

1.5. The Committee found widespread illegal practices and a failure to protect the property and monies of the Independent State of Papua New Guinea extending over many years

1.6. As a result of evidence given and documents tendered to the Inquiry, the Public Accounts Committee made certain

referrals of both management and staff of the National Museum and Art Gallery and of foreign salvors for inquiry and possible prosecution for breaches of Law in the sale, removal, export and on sale of War Surplus Materials.

1.7. As a result of evidence given and documents tendered to the 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 86 (1) (c) of the ***Public Finances (Management) Act 1994.***

1.8. The Public Accounts Committee now tables the report with its strongest recommendation that remedial action be immediately taken by the National Parliament in accordance with findings and resolutions of the Public Accounts Committee – in particular, that the Swamp Ghost aircraft be retained in Papua New Guinea and that all War Surplus Materials removed from Papua New Guinea be traced and located and that State ownership of that material be reasserted.

2. EXECUTIVE SUMMARY

In summary the Committee finds:

2.1 The National Museum and Art Gallery is incompetently managed and ineffective in carrying out its statutory obligations to manage our Cultural Heritage and fails to protect and further the property and fiscal interests of the State.

2.2 The Committee concludes that the NMAG has failed to fulfil its statutory duties, failed to comply with the ***Public Finances (Management) Act***, failed to act in a lawful manner when dealing with foreign "salvors" of War Surplus Materials, failed to co-operate with the Office of the Auditor General, failed to comply with its own Guidelines for the consideration of applications to salvage war surplus, failed to protect State property at all, illegally accepted money for the sale of State property, actively misled its own Trustees, failed to assert State ownership of War Surplus Materials, failed to comply with the ***National Museum and Art Gallery Act***, failed to comply with the

War Surplus Materials Act, failed to comply with ***Financial Instructions***, failed to take reasonable steps to ascertain the bona fides of foreign salvors, was subject to external influence and threats, failed to account properly or at all for monies or "gifts" received from foreign "salvors" and acquiesced in the on sale of State property by foreigners with no concern for the interests of the State.

2.3 In summary, a Trustee of the NMAG described the Museum to the Committee as a ***"national disgrace".*** This Committee is inclined to agree.

2.4 The Director and management of the National Museum and Art Gallery have, quite unlawfully, assumed power to sell War Surplus Materials which are owned by the State. The Museum has no right or ability to do so.

2.5 The Director and management of the National Museum and Art Gallery have assumed an agency for and on behalf of the State, which it does not have and has acted unlawfully in negotiating and executing a contract of sale of State property – namely the Swamp Ghost aircraft.

2.6 The Director and management of the National Museum and Art Gallery have illegally entered a into contract to sell State property to foreigners for no return or revenue to the State.

2.7 The National Museum and Art Gallery has for many years allowed the sale, removal and on-sale of State property – namely War Surplus Materials - illegally and with no checks or controls on dealing in State property by foreigners. There has been no return or gain to the State from virtually any of these transactions.

2.8 The National Museum and Art Gallery has no power to sell, approve removal or export or to collect money from the sale, removal or on sale of War Surplus Materials.

2.9 The National Museum has failed to implement and maintain competent or adequate systems of accounting, control or monitoring of War Surplus Materials removed from Papua New Guinea.

2.10 The National Museum and Art Gallery has misused and misapplied a considerable amount of money received by it from foreign salvors of State property.

2.11 The National Museum has, in breach of the ***Public Finances (Management) Act***, received money from the on-sale of War Surplus Materials by foreigners. The Museum has failed to properly account for or hold such monies in accordance with Section 16 of the ***Public Finances (Management) Act.***

2.12 The National Museum and Art Gallery has been and still is subject to the considerable and improper influence of foreigners and foreign companies which unlawfully obtain, export and on-sell War Surplus Materials from Papua New Guinea – which materials are and remain, State property.

2.13 The National Museum and Art Gallery illegally entered a contract of sale for the Swamp Ghost aircraft and thereby breached the ***Public Finances (Management) Act*** and the ***National Museum and Art Gallery Act*** and the ***War Surplus Materials Act.***

2.14 The National Museum and Art Gallery, in contracting to sell the Swamp Ghost aircraft, falsely held itself out as representing the State and having power to sell State Property – and its officers may thereby have breached the ***Criminal Code Act.***

2.15 The National Museum and Art Gallery, in entering a contract to sell the Swamp Ghost aircraft, ignored legal advice from the Office of the State Solicitor to the effect that it had no power to sell State property unless in accordance with the terms of the ***Public Finances (Management) Act*** – i.e. by public tender - and that any proceeds of sale were treated as Trust Funds belonging to the State.

2.16 The National Museum accepted as independent, a valuation of the Swamp Ghost aircraft made by a shareholder in the purchasing company who was the actual physical salvor retained by and acting for and on behalf of the buyers of the wreck.

2.17 The valuation accepted by the Museum was a fraction of the true market worth of the aircraft and the entire valuation process was not independent or transparent. As a result of this failure, the State was to be deprived of valuable State property for no return.

2.18 The National Museum had for years issued invalid and illegal "Permits" to salvage, remove and export War Surplus Materials to foreign salvors who were themselves illegally operating in Papua New Guinea.

2.19 The Acting Director and management of the National Museum and Art Gallery intentionally misled the Board of Trustees as to the nature and the effect of the "Contract" between the Museum and Aero Archaeology LLC for the sale of the Swamp Ghost, in that the Trustees were told, inter alia,:

(i) That there was no alternative to approving the Contract; and

(ii) That the aircraft would remain the property of the State; and

(iii) The aircraft would be returned to Papua New Guinea; and/or

(iv) The aircraft would be and remain under the control of the Independent State of Papua New Guinea; and

(v) That the Trustees could impose conditions on the export of the aircraft; and

(vi) That the Trustees could impose the terms on which the purchaser would hold the aircraft; and

(vii) The aircraft would be restored and exhibited at March Field Museum in California; and

(viii) That litigation would issue against the Trustees personally unless they approved the Contract.

Moreover the Trustees were intentionally misled in that they were **not** told by Museum Management, before the Board of Trustees approved the Contract for sale of the Swamp Ghost that:

(i) The Contract was one of sale of State property The Trustees never understood the true effect of the contract or

(ii) The State lost all rights, ownership and control of the aircraft thereby; or

(iii) Provided with a copy of the Contract; or

(iv) Of the powers of the Museum or the Board of Trustees to enter into or approve such a transaction – which did not exist; or

(v) That the Contract was illegal, void and unenforceable; or

(vi) That a previous attempt to export the aircraft was refused; or

(vii) That Museum Guidelines had not been complied with by the Management of the Museum; or

(viii) That the purchaser was, literally, a back-yard operator with no ability to restore, house, exhibit or preserve the aircraft; or

(ix) That the Museum had received an independent valuation from a Mr. Justin Taylan; or

(x) That the valuation relied on as "independent" by the Museum was in fact prepared by an individual who was both a shareholder in the purchasing company Aero Archaeology LLC and the person retained by Aero Archaeology LLC to recover the aircraft; or

(xi) Any opportunity to obtain any legal advice at all on the transaction; or

(xii) Of legal advice from the Office of the State Solicitor which would have led the Trustees to conclude that the transaction was illegal; or

2.20 The Trustees were not properly or adequately advised by Management of the National Museum and, therefore, could not have reached an independent or lawful decision.

2.21 Had the Board of Trustees been properly and fully advised, they would not have approved the Contract.

2.22 Combining these failures with the threat to Trustees of personal litigation unless they approved the sale and export of the Swamp Ghost, a concerted subversion of the Independent Board of Trustees becomes clear.

2.23 The Trustees were not empowered to consider or approve the transaction at all, but even if they were, the Board was robbed of the right and ability to act independently by the failings that we have outlined.

2.24 This conduct by Management has been referred to the Royal Papua New Guinea Constabulary for full investigation and possible prosecution.

.

2.25 The Management of the National Museum and Art Gallery failed to make any or any adequate inquiry concerning the purchaser and in particular failed to discover that the purchaser:

(i) had no experience in aircraft restoration; and

(ii) had no experience in historic aircraft curation; and

(iii) had never owned an aircraft; and

(iv) had never restored an aircraft; and

(v) had no history in the aviation industry; and

(vi) had lied to the Museum as to its intentions for the aircraft; and

(vii) had no facilities to restore the aircraft; and

(viii) had no facility to exhibit the aircraft; and

(ix) did not own, operate or have any institution, museum, hanger or other building suitable to store, restore or exhibit the aircraft; and

(x) was not a recognized museum, collector, curator, restorer, preserver, historian or institution but rather was a private individual with money necessary to buy and export the aircraft; and

(xi) had illegally obtained an aircraft from Papua New Guinea in the past using a third party to remove and export it; and

(xii) had threatened the Museum Board of Trustees with personal litigation unless they approved the sale and removal; and

(xiii) was not certified to carry on a business in Papua New Guinea; and

(xiv) had no permit or legal right to remove or export War Surplus Materials from Papua New Guinea; and

(xv) had no agreement with March Field Museum to store and restore the Swamp Ghost, as stated to the Board of Trustees, the Minister, the NEC and the Prime Minister; and

(xvi) had no apparent plan for the aircraft other than to obtain it as his own personal possession; and

(xvii) had no intention of returning the aircraft to Papua New Guinea as stated to the Board of Trustees; and

(xviii) had no salvage permit or authority from the Museum or anywhere else; and

(xix) relied on a "middle man", Robert Greinert to obtain and export the aircraft – an agent who personally had no approvals to remove and export War Surplus Materials from Papua New Guinea; and

(xx) had actively misled the Museum, the NEC, the Prime Minister and the Board of Trustees into believing, variously, that the aircraft would be owned or part owned by Papua New Guinea and would be returned to Papua New Guinea, whilst also asserting (to the same persons) that the aircraft would be housed and restored at March Field Museum in California; and

(xxi) provided no or no adequate Police clearance or reference material in compliance with the Museum Guidelines; and

(xxii) plainly saw an opportunity to make a significant amount of money by obtaining State owned property for no payment to the State and was prepared to make whatever representation seemed likely to further that intention, irrespective of the truth; and;

(xxiii) had dealt directly with Landowners in contravention of the War Surplus Materials Act; and

(xxiv) failed to provide any truthful, competent or coherent proposal for the aircraft; and

(xxv) changed statements of intention and proposals for the aircraft according to the person or Office to which the representations were made; and

(xxvi) failed to obtain or provide any evidence of comparative sales or valuations of similar aircraft; and

(xxvii) failed to disclose that permission to export the aircraft had previously been refused by the Government of Papua New Guinea.

2.26 The National Museum and Art Gallery has failed to maintain any control or supervision of War Surplus Materials after such material has left Papua New Guinea and has thereby compromised the State's ownership of such materials.

2.27 The National Museum and Art Gallery had no interest in the fate of War Surplus Materials exported from Papua

New Guinea other than to collude in their on-sale and to demand and receive money from those sales; and

2.28 The National Museum and Art Gallery has misused Trust Funds under its control and has failed to account properly or at all for "gifts" and payments of cash made to the Museum and its staff by foreign exporters of War Surplus Materials.

2.29 The National Museum and Art Gallery failed to comply with its own Guidelines when considering and approving the sale, removal, salvage and export of War Surplus Materials.

2.30 The National Museum and Art Gallery failed to make any or any sufficient inquiry into the history, legality and intentions of foreign exporters of War Surplus Material before entering into business with them.

2.31 The National Museum and Art Gallery failed to establish whether foreign exporters of War Surplus Materials were properly and lawfully registered or certified to carry on business in Papua New Guinea.

2.32 The National Museum and Art Gallery has failed to trace, register, inspect or monitor in any way the War Surplus Materials removed from Papua New Guinea and has thereby failed in its duty to protect and preserve the cultural and historical heritage of Papua New Guinea.

2.33 Upon all the evidence before the Committee, the Committee has referred the management of the National Museum and Art Gallery to the Office of the Ombudsman and the Royal Papua New Guinea Constabulary, for full investigation of the sale of the Swamp Ghost and the export of other War Surplus Materials, to establish whether there is any breach of the Criminal Law – and in particular, whether there is any evidence of conspiracy to illegally obtain State property.

2.34 In this Inquiry, the Committee sought but received no assistance from the Office of the Attorney General.

2.35 The Acting Attorney General failed or refused to action instructions from this Committee to obtain Court Orders preserving the Swamp Ghost aircraft pending the completion of this Inquiry. That Officer failed to make any adequate explanation to the Committee for this failure despite being requested to do so.

2.36 Consequently, the Committee has resolved to refer the Acting Attorney General Mr. Fred Tomo to the Papua New Guinea Law Society and to the responsible Minister.

2.37 The National Museum and Art Gallery has failed for years to maintain any or any competent systems of accounts, accountability, control, transparency or governance over its operations.

2.38 The management of the National Museum and Art Gallery clearly saw the trade in War Surplus Materials as a lucrative commercial opportunity. The Acting Director referred to exporters as "clients" of the Museum.

2.39 Not once in the entire Inquiry did any witness attempt to justify the trade on the basis that the aircraft were exported for the purpose of restoration or preservation of State owned property.

2.40 The National Museum and Art Gallery has failed to comply with the terms of the Audit Act, the ***Public Finances (Management) Act*** and the ***National Museum and Art Gallery Act*** in that it has not, for **six years**, provided audited accounts.

2.41 The management of the National Museum and Art Gallery have refused and failed to assist and/or cooperate with the Office of the Auditor General – to the extent of refusing the Auditor General entry to the Museum premises.

2.42 The National Museum and Art Gallery has failed or refused to render annual statements, accounts or Reports as required by Law.

2.43 The Committee finds that the National Museum and Art Gallery has actively misled the Minister for Culture and Tourism and the National Executive Council in various

submissions designed to justify its actions in selling and approving the export of the Swamp Ghost aircraft.

2.44 It is clear to this Committee that the management of the Museum have a vested interest in the successful completion of this transaction and were prepared to make any representation that might attract favour at any time – regardless of the truth or otherwise of the statement(s).

2.45 The Committee finds that the Management of the National Museum and Art Gallery was prepared to mislead this Committee and actively attempted to discredit a Committee Member by false and concocted allegations of impropriety and illegal dealings in War Surplus Materials. This appalling conduct has been referred to the Royal Papua New Guinea Constabulary for full investigation.

2.46 The behaviour of the foreign salvors involved in the sale and removal of the Swamp Ghost aircraft and other War Surplus Materials from Papua New Guinea, has been a matter of concern to the Committee.

2.47 Evidence of threats to and assault of Museum Managers, lies and obfuscation concerning their intentions for salvaged materials and threats to the National Museum and Art Gallery Board of Trustees were received by the Committee.

2.48 How such persons gained influence in the Museum is a matter of concern to the Committee. That such conduct could occur in a scientific institution and be tolerated by its Director and staff, is totally unacceptable.

2.49 The National Museum and Art Gallery should never again deal with these persons or entities or with any foreigner of similar dubious intent.

2.50 The trade in War Surplus Materials is clearly big business. Equally clear is the fact that Papua New Guinea is one of the last repositories of such material.

2.51 The Museum has clearly colluded in this trade with no regard to its legality or to the powers of the Museum. The resulting loss to the State is considerable.

2.52 The Committee has traced 89 aircraft or parts of wartime aircraft into private hands all over the world. The exporters operating in Papua New Guinea have sold and traded in State property with no regard to the Law – and clearly assisted by the Museum and its management.

2.53 Foreign exporters have on-sold or traded this State property in blatant breach of their own agreements with the Museum – which recognise and record the fact of State ownership in wartime aircraft and parts.

2.54 Buyers have, presumably quite innocently, paid and/or expended large amounts of money on these wrecks believing that they would receive good title. The Museum has done nothing to stop this trade.

2.55 The Committee strongly recommends that State ownership of these aircraft or aircraft wrecks be asserted with the assistance of International Law Enforcement Agencies, International Cultural Protection Agencies and foreign Governments.

2.56 The Committee recommends that the National Museum and Art Gallery be prevented from dealing with, trading in, selling, approving for removal or export or in any way having any power over War Surplus Materials and that managers who have entered illegal contracts or arrangements, be held fully accountable for the loss to the State.

2.57 The Committee disallows the contract of Sale of the Swamp Ghost aircraft and recommends that the aircraft not leave the country unless on a State to State loan basis which recognizes, preserves and protects the fact of State ownership and ensures the restoration, preservation and curation of the aircraft by a reputable State recognized museum or scientific institution.

2.58 The Committee finds that the State has lost extremely valuable property as a result of the incompetence and misconduct of the National Museum and Art Gallery and that the Museum has no interest in rectifying that situation.

2.59 The Committee recommends that all Agreements entered into by the Museum permitting the removal and export of War Surplus Materials be immediately suspended as unlawful and ultra vires the power of the National Museum and Art Gallery.

2.60 The Committee has concluded that the National Museum and Art Gallery is the worst and most incompetently run of any that have been before us.

2.61 Accordingly, the Committee has asked the Office of the Auditor General to conduct a full review and investigation of the Museum finances and Accounts for the last six years and will reconvene this Inquiry when that material is available.

2.62 The National Museum and Art Gallery requires urgent restructuring and this Committee recommends that competent and professional managers be deployed to the Museum to commence that restructuring. Clearly the current management should be removed from their positions.

2.63 The Committee detects no will or ability in the current Management of the National Museum and Art Gallery to effect any change – or even to understand that they have misconducted themselves in any way.

2.64 A Member of the Board of Trustees of the National Museum and Art Gallery described the institution to this Committee as a ***"national disgrace"*** and we are inclined to agree. Urgent remedial action is required if the Museum and Art Gallery is to fulfil its statutory obligations.

2.65 The National Museum and Art Gallery management and, in particular, the Acting Director Mr. Simon Poraituk obstructed the Inquiry by the Public Accounts Committee by failing to produce documents when ordered to do so, with the intention of using information to discredit the Committee at a time of his choosing. This Committee has referred him for investigation.

2.66 The National Museum and Art Gallery has failed in its duty to protect and secure State property and has acted in an illegal manner in dealing with State property by assuming a power that it did not have.

2.67 The Committee has received full co-operation and assistance from the Investment Promotion Authority and the National Cultural Commission in the course of this Inquiry. We acknowledge that assistance .

2.68 The Committee makes referrals and recommendations at the conclusion of this Report.

3. CHRONOLOGY

3.1. The Public Accounts Committee commenced its Inquiry into the National Museum and Art Gallery on the 22nd September 2004 and then adjourned generally.

3.2. The Inquiry reconvened on the 4th of July 2006 and continued on the 12 and 13th day of September 2006 when the Inquiry was adjourned to a date to be fixed.

3.3. Notices to Produce evidence and documents were given to the Acting Director of the National Museum and Art Gallery on the 23rd September 2005 and in June, July and September 2006.

3.4. These Directives were complied with adequately.

3.5. Interim findings were made on the 13th day of September 2006 and sent to all interested parties. Those Findings gave all parties seven days to make any response or to produce any further evidence to the Committee.

4. LIST OF ABBREVIATIONS

4.1 **PF(M)A** Public Finances (Management) Act

4.2 **PAC** Public Accounts Committee.

4.3 **NMAG** National Museum and Art Gallery

4.4 **The Constitution**

The Constitution of the Independent State of Papua New Guinea

4.5 **The National Court**

The National Court of Justice of Papua New Guinea

4.6 **The Committee**

The Permanent Parliamentary Committee on Public Accounts.

4.7 **The Chairman / Acting Chairman**

The Chairman or Acting Chairman of the Public Accounts Committee.

4.8 **The Museum**

The National Museum and Art Gallery of Papua New Guinea

4.9 **The Swamp Ghost** Boeing B 17 SN 41 – 2446.

4.10 **The Director or Acting Director**

The Director or Acting Director of the National Museum and Art Gallery of Papua New Guinea

4.11 **The Trustees**

The Board of Trustees of the National Museum and Art Gallery of Papua New Guinea**.**

4.12 **The Board**

The Board of Trustees of the National Museum and Art Gallery of Papua New Guinea.

4.13 **The President**

The President of the Board of Trustees of the National Museum and Art Gallery of Papua New Guinea

4.14 The NEC means the National Executive Council.

5. COMPOSITION OF THE COMMITTEE

5.1 The Public Accounts Committee which made inquiry into the National Museum and Art Gallery was constituted as follows:

5.2 **22nd September 2004:**

Hon. John Hickey MP	(Chairman)
Hon Ekis Ropenu MP	(Member)
Hon. Dr. Bob Danaya MP	(Member)
Hon. Dr. Allan Marat MP	(Member)
Hon. Michael Mas Kal MP	(Member).

5.3 **12 September 2006**.

Hon Chris Haiveta MP	(Acting Chairman).
Hon Dr. Bob Danaya MP	(Deputy Chairman).
Hon. Ekis Ropenau MP	(Member).
Hon Michael Mas Kal MP	(Member)
Hon Sasa Zibe MP	(Member).
Hon Mal Smith-Kela MP	(Member).
Hon Tony Aimo MP	(Member).

5.4 **13 September 2006.**

Hon. Mal Smith-Kela MP (Temporary Chairman).

5.4 The Chairman, Deputy Chairman and Members of the Committee were properly and lawfully appointed and empowered to sit as a Public Accounts Committee.

6. JURISDICTION AND PURPOSE OF THE INQUIRY

PURPOSE OF THE INQUIRY

6.1 The National Museum and Art Gallery is the entity charged with the protection , preservation and management of the historical, cultural and scientific heritage of Papua New Guinea.

6.2 The National Museum and Art Gallery is responsible, inter alia, for specimens, collections and exhibits of National importance from both historical and pre-historical times. The Committee finds that the NMAG is responsible for the curation and protection of items of significant value and rarity.

6.3 The NMAG should be a competently managed custodian of the National heritage. The nature of the organization requires competent staff and managers and a Board of Trustees strong and independent enough to resist political and other pressure which may be brought to bear on the Museum by persons or organizations seeking to obtain valuable or rare items of National Heritage.

6.4 The purpose of the Inquiry conducted by the Public Accounts Committee was to make full and complete examination of the manner in which the National Museum and Art Gallery in all its aspects, and officers of the Museum, controlled transactions with or concerning public property and accounted for monies and property, protected the position of the Independent State of Papua New Guinea, collected revenue, controlled and monitored expenditure and protected the position of the State and the security and integrity of property, assets and money of the State.

6.5 The purpose of the Inquiry was not to improperly pursue or criticize any person or company, but to make a constructive and informed Report to the Parliament on any changes which the Committee perceives to be necessary to any item or matter in the accounts, statements or reports or any circumstances connected with them, of the National Museum and Art Gallery and any matter considered by the Committee to be of national importance.

6.6 Further, the intention of the Inquiry was to enable the Committee to report to the Parliament in a meaningful way on alterations that the Committee thinks desirable in the form of the public accounts as manifested in the National Museum and Art Gallery, in the method of keeping them, in the method of collection, receipt, expenditure or issue of public monies and/or for the receipt, custody, disposal, issue or use of stores and other property of the State by the National Museum and Art Gallery and in particular the custody, preservation and protection of War Surplus Materials.

6.7 The Public Accounts Committee has conducted ongoing Inquiries into the National Museum and Art Gallery for at least three years.

6.8 Throughout this period the Committee has been concerned at the apparent failures by that organisation to carry out many of its functions with any degree of competence or legality.

6.9 The Committee has been particularly concerned at the apparent inability of the museum to protect and manage State owned property, to maintain accounts and records, to make Reports as required by Law and to manage our National heritage free of influence and pressure – particularly from foreigners.

6.10 By the ***War Surplus Materials Act 1953***, the State owns all War Surplus Materials left in Papua New Guinea at the end of the Second World War. The National Museum and Art Gallery "administers" that Act. The term "administration" has an unclear meaning. No delegation to approve removal or export of War Surplus Materials appears to have been given to the Museum or its Trustees. That power remains with the Head of State. The Committee accepts that the Museum may be charged with accepting and assessing applications to remove War Surplus and advising on the merits of an application, but not selling or dealing in War Surplus Materials.

6.11 The Committee became increasingly concerned by a media report in 2006 that the NMAG had sold the wreck of a B17

wartime aircraft known as the Swamp Ghost to an American company owned by a private individual with no apparent ability to restore or exhibit the aircraft.

6.12 How the Museum had the power to sell the Swamp Ghost and how it made the decision to sell this very valuable piece of State property to a foreigner with no experience or ability to preserve the wreck and who, moreover, was prepared to mislead the Museum as to his true intentions for the aircraft, became the core issues in this Inquiry.

6.13 Further Inquiries revealed that the NMAG has permitted the export of at least 89 other wartime aircraft wrecks and parts to foreign interests with no record of the current whereabouts of those aircraft or parts maintained by the Museum and therefore no ability to protect this State property or the fact of State ownership.

6.14 The Committee resolved to make an Inquiry into the legality of these exports and sales and establish precisely the quality of management, accountability and transparency exhibited by the NMAG and its staff both in respect of those exports and the accounting for and use of monies received by the NMAG from those exports or sales.

6.15 The Committee resolved to establish the precise circumstances attending the sale of the Swamp Ghost aircraft and all other aircraft and the degree to which the NMAG had preserved State ownership of those aircraft or parts.

6.16 Information received by the Committee showed that there had been a thriving trade in on-selling wartime aircraft and parts exported from Papua New Guinea despite the fact that the State owns them. This practice had occurred with the full complicity of the NMAG – which had absolutely no intention to interest in tracing or asserting State ownership of these aircraft after they left Papua New Guinea.

6.17 The Committee resolved to inquire as to why such a trade was allowed to occur with no protection given to the fact of State ownership.

6.18 The Committee resolved to establish whether the NMAG had fulfilled its legal obligations to any degree when approving the export and on-sale of these aircraft and what, if anything, should be done to trace and reassert State ownership of these wartime relics – wherever they may now be located.

6.19 The Museum had apparently assumed an authority to supervise and approve each step in the process of sale, removal and export of this State property by foreign interests – at no financial benefit to the State – and on no apparent legal basis. This Inquiry was intended to establish the source of that power.

6.20 Further, the Committee was informed that the NMAG had not made any accounts, audits or reports for **six years.** This allegation combined with the allegations of sale and export of State property with active participation of the NMAG, persuaded the Committee that a full and complete Inquiry into the management and activities of the NMAG was justified.

6.21 The Committee concluded that corrupt practices and inept management by the NMAG have existed for some years and continue with impunity and immunity.

6.22 In respect of the sale or export of War Surplus Materials, the Committee concluded that the NMAG has no power to act as it has in approving and assisting in the salvage and export of very valuable items. The Museum itself could not show the source of power to justify its actions.

6.23 The Committee finds that the NMAG have been overborne by foreign "salvors" who had no other agenda than to access and take possession of War Surplus Materials that were and remain the property of the State of Papua New Guinea – property of considerable value – for on sale to wealthy collectors with no return to the State. This is not acceptable.

6.24 The Committee has received evidence of threats to the Trustees, Management and staff of the Museum by these foreign "salvors" – who seem to be mere "middle men" serving the interests of wealthy foreign collectors.

6.25 The Committee resolved to Inquire into the management of all exhibits and material in the custody of the NMAG since Independence. The Committee is concerned to establish that the same practices of selling or giving away historical heritage has not occurred in other areas of the Museums operations.

6.26 The Committee further resolved to ask the Office of the Auditor General to conduct a full and complete audit into the NMAG and to reconvene the Inquiry at a later time.

6.27 At all times, the Committee has taken great care to enable 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.

6.28 The Public Accounts Committee has taken care to give careful consideration to all responses and evidence given before the Committee.

6.29 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.

7. JURISDICTION OF THE COMMITTEE

THE CONSTITUTION OF THE INDEPENDENT STATE OF PAPUA NEW GUINEA.

7.1 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 <u>and property</u> of Papua New Guinea".(our emphasis).

(2) Sub-section (1) extends to any accounts, finances <u>and property</u> that are subject to inspection and audit by the Auditor General under Section 214 (2) … and to reports by the Auditor General under that Sub-section or Section 214 (3)…".(our emphasis).

7.2 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 National Museum and Art Gallery of Papua New Guinea and it's officers.

7.3 War Surplus Materials are rare and valuable State property and the Committee has jurisdiction to consider the standard of management and control exercised over that asset by the National Museum and Art Gallery, on behalf of the State – particularly when a decision has been made by the Museum to sell State property for no revenue to the State, with no agreement from Government and no regard to the Law of disposal in the ***Public Finances (Management) Act*** or the ***Financial Instructions*** promulgated thereunder.

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

7.5 The Public Accounts Committee has had due regard to reports by the Auditor General made pursuant to audit inspections of the National Museum and Art Gallery but has conducted an Inquiry into matters deemed by the Committee to be of National Importance or which arise naturally from primary lines of Inquiry and which are within the jurisdiction and function of the Committee as set forth in the Constitution.

7.6 Whilst engaged in the Inquiry the Committee was guided by two definitions contained in Sch 1.2 of 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;"

8. THE PUBLIC FINANCES (MANAGEMENT) ACT.

8.1. The Public Accounts Committee also finds its jurisdiction to Inquire into the National Museum and Art Gallery in Section 86 of the ***Public Finance (Management) Act***. That Section empowers the Committee to examine accounts and receipts of collection and expenditure of the Public Account and each statement in any Report of the Auditor General presented to the Parliament.

8.2. The Committee has considered both accounts and receipts as they have been made available by the National Museum and Art Gallery and such statements and reports of the Auditor General as may have been presented to Parliament.

8.3. 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 purview of the Committee as a matter of national importance. (See Para. 9 infra).

8.4. Power to refer matters for investigation and possible prosecution is granted to the Committee by Section 86A of the ***Public Finances (Management) Act***.

9. PERMANENT PARLIAMENTARY COMMITTEES ACT:

9.1. The Committee received very serious allegations of misconduct, maladministration and illegal dealing by Officers of the National Museum and Art Gallery – particularly concerning the attempted sale of the Swamp Ghost aircraft and the export of other War Surplus Materials.

9.2. The Committee resolved that a full Inquiry into the actions of the National Museum and Art Gallery was a matter of National importance and found further jurisdiction for the inquiry in Section 17 of the ***Permanent Parliamentary Committees Act***.

9.3. That Section provides that the Public Accounts Committee can consider any matter to be of national importance. The Committee, as we have stated, considers the actions of the National Museum and Art Gallery in selling the Swamp Ghost and allowing the export of other War Surplus Materials, to be such a matter.

10. THE AUTHORITY TO REPORT

10.1. 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***.

11. THE AUTHORITY TO REFER

11.1. 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*** 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***.

11.2. 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.

11.3. 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 1994.***

11.4. Further, Section 20 of the ***Parliamentary Powers and Privileges Act*** permits the Committee to refer for prosecution any person who, inter alia, fails to comply with a Summons to produce books, papers or documents specified in the Summons.

11.5. The Committee has made referrals of the now Director of the National Museum and Art Gallery Mr. Simon Poraituk, four foreign "exporters" of War Surplus Materials and the principals of those companies or entities, the Acting Attorney General Mr. Fred Tomo for investigation and one Robert Greinert upon an allegation of assault of an employee of the Museum.

11.6. Those referrals were made after anxious consideration of the evidence and explanations given by the Director and the Acting Attorney General. All persons and companies liable to be referred were invited to make any response or show any reason why they or it should not be referred, but made no or no adequate response to the Committee in this regard.

11.7. The Committee is cognisant that to make referrals, particularly of a senior public servant is a very serious matter which will adversely reflect on the individual concerned. These referrals are not made lightly but only after careful consideration of all the evidence and unanimous resolution by the Committee.

12. METHOD OF INQUIRY

12.1. The Inquiry by the Public Accounts Committee into the National Museum and Art Gallery was a public hearing at

which sworn evidence was taken from a small number of witnesses.

12.2. Assistance was obtained from representatives of the Office of the Auditor General and the Investment Promotion Authority, Legislative Counsel, the Government Printer, the Parliamentary Library and the Office of the Governor General.

13. PRIVILEGES AND PROTECTION OF WITNESSES

13.1. The Public Accounts Committee has taken care to recognise and extend to all witnesses the statutory privileges and protection extended by the ***Public Finances (Management) Act 1995*** and the ***Permanent Parliamentary Committees Act 1994*** and the ***Parliamentary Powers and Privileges Act 1964***.

14. RELEVANT STATUTES

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

15. PUBLIC FINANCES (MANAGEMENT) ACT 1995.

15.1. The ***Public Finances (Management) Act*** prescribes the applicable methods and standards for the administration of and accounting for public monies, public properties and assets by State entities in Papua New Guinea.

15.2. Further, the Act imposes certain obligations on Public Servants for collection of State revenue and disposal and sale of State property.

15.3. Relevant sections of the Act which were considered by the Public Accounts Committee during the course of the Inquiry into the National Museum and Art Gallery are:

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

This Section prescribes the duties, powers and obligations of 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 Accounts Committee. In particular, the Committee was required to consider Section 86 (A) – power to refer officers of the Department 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 and property.

(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.***

(vi) ***Part VIII – State Tenders and Contracts***

This Part prescribes the processes for, inter alia, selling or disposing of State property. These procedures apply to both the National Museum and Art Gallery and to State property as constituted by War Surplus Materials.

16. FINANCIAL INSTRUCTIONS

16.1. Section 117 of the ***Public Finances (Management) Act*** enables the promulgation of certain Financial Instructions which establish detailed procedures for the handling, collection, expenditure, disposal and accounting for public monies, property and stores.

16.2. The Public Accounts Committee had regard to these Financial Instructions or Directives when considering the performance of the National Museum and Art Gallery and its relevant responsible Officers.

16.3. In particular, the Committee had regard to **Part 6 Division 1 Para. 2.1– Accountable Officers.** That paragraph reads, in part:

"…..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".

16.4 The Committee also had regard to Appendix 3 entitled ***"Guidelines for Procurement of Stores or Supply of Capital Works and Disposal of Government Stores and Property"***, Part 9 entitled ***"State Tenders"*** Part 10 entitled ***"Government Contracts"*** and Parts 25 and 26.

17. INVESTMENT PROMOTION AUTHORITY ACT

17.1 The Committee had regard to the Sections of this Act which deal with the registration and certification of foreign enterprises which carry on business in Papua New Guinea.

18. AUDIT ACT

18.1 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 National Museum & Art Gallery.

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

19. WAR SURPLUS MATERIALS ACT 1953

19.1 This Act was first passed in 1953 to control the salvage and export of war surplus material.

19.2 The administration of this Act is of the core of this Inquiry.

19.3 The Committee has had particular regard to Section 2 – **Ownership of War Surplus Material**. This Section deems all War Surplus Material be the absolute property of the State.

19.4 The Committee also had regard to Section 3 **– Determination of War Surplus Material.** This Section states that in any civil proceedings to which the State is a party and in any criminal proceedings in which the question arises as to whether property is or is not War Surplus Material, the property shall, until the contrary is proved, be deemed to be War Surplus Material.

19.5 This Section then establishes that all War Surplus Material – including the Swamp Ghost and all other aircraft wrecks – were the absolute property of the Independent State of Papua New Guinea – and remain so.

19.6 Section 4 was considered by the Committee **– Search etc by Officer.** This Section provides that an Officer or person "…..***authorized in writing by the Head of State acting on advice….”*** (our emphasis) to do so may search for, collect and remove War Surplus Materials the property of the State.

19.7 Particularly pertinent to this Inquiry was Section 5 – **Search etc by Purchaser.** This Section provides that subject to any conditions imposed by the Head of State acting on advice, a purchaser may upon written notice to the occupier of the land, search for, collect and remove from any land War Surplus Material in which he has acquired a right, Title of interest entitling him to its possession.

19.8 The position and entitlements of Landowners are addressed by Section 7 – **Compensation by the State.** This Section provides that a claim by any owner or occupier of land who suffers loss or damage as a result of the exercise of any of the powers conferred by the Act, shall receive compensation from the State.

19.9 This Inquiry was concerned with the effect of Section 10 – **Delegation** This Section provides that the Head of the State acting on advice, may, by notice in the National Gazette,***"….delegate to an Officer all or any of his powers under this Act…."*** (our emphasis)

19.10 This Section may have enabled the Museum to approve the collection and removal of the Swamp Ghost and other War Surplus Material, if a delegation had ever been made.

19.11 However, it would not have entitled the Museum to have sold State Property as it purported to do.

19.12 This Committee could not identify a delegation or authorization and neither did the Museum claim the benefit of one.

20. NATIONAL MUSEUM & ART GALLERY ACT 1992:

20.1 The Committee had regard to Section 3 which charges the National Museum & Art Gallery with its responsibilities and duties. Amongst those duties are to:

- Protect and conserve cultural heritage;
- Administer the ***War Surplus Materials Act***; The Committee gave close consideration to this section and its meaning.
- Identify, document and monitor the condition of objects of National Cultural significance and record their proclamation as a national cultural property and keep a register of cultural property;
- Monitor the collection and export of artifacts, issuing permits under ***National Cultural Property (Preservation) Act***;
- Manage and preserve objects of cultural significance as required by the ***National Cultural Property (Preservation) Act***;

20.2. The Committee considered Section 15 – **Vesting of Property.** This Section provides that the Minister may

transfer to Trustees any exhibit that is the property of the State. This word "exhibit" includes "specimen" which is defined as including war relics. The Committee sought legal advice on the effect of this term.

20.3. Subsection 2 of this Section provides that the Trustees may **"…with the approval of the Minister…."** the objects. However, no such power had been given and it would not apply to War Surplus Materials in any event.

20.4. Section 24 provides that the ***Public Finances (Management) Act*** applies to the Museum in accordance with Schedule 1 of this Act.

21. NATIONAL CULTURAL PROPERTY (PRESERVATION) ACT CHAPTER NO. 156.

21.1 The relevant Sections of this Act are

21.2 Section 1 – Defines "National Cultural Property" to include any thing, object or thing of a class declared to be national cultural property under Section 4.

21.3 Section 4 states that the Head of State may declare by notice in the National Gazette any thing or object to be National Cultural property. There is evidence that this was not done for the Swamp Ghost or any other wartime aircraft wreck.

21.4 Section 5 – The Head of State may after receiving advice from the Council declare in the National Gazette any national cultural property to be proclaimed cultural property. There is evidence that this has not been done in the case of the Swamp Ghost or any other wartime aircraft wreck.

21.5 This Act might allow the sale of the Swamp Ghost if it had ever been declared a piece of national cultural property. The National Museum & Art Gallery does not rely on this Act and it does not seem to validate the actions of the National Museum & Art Gallery which in any event can only sell State property in accordance with the ***Public Finances (Management) Act***

22. THE SWAMP GHOST - BACKGROUND FACTS.

22.1 The Committee finds the following facts:.

- On the 23rd February 1942 - B17 E 41-2446 crashed in Agiambo Swamp, Oro Province

- In 1953 the wreck is declared to be property of the State by the ***War Surplus Materials Act.***

- In 1972 the wreck is rediscovered by the RAAF

- In 1997 the National Museum & Art Gallery decided to draw and consider Guidelines for considering applications for salvage, sale, export and restoration of War Surplus Material.

- In 1992 the National Museum & Art Gallery pronounces a moratorium on all salvaging and export of War Surplus Material

- In 1996 the Board of Trustees directs that Guidelines for the Consideration of applications for the salvage, removal, export and restoration of war surplus material be prepared

- In 1997 the Board of Trustees again directs that Guidelines for the consideration of applications to deal with War Surplus Material be promulgated.

- On the 19th November 1997 – The State Solicitor's Office advises the National Museum & Art Gallery that the proposed Guidelines do comply with requirements of law **<u>but</u>** the ***National Museum & Art Gallery Act*** applies the ***Public Finances (Management) Act 1995*** to the Board of Trustees – subject to a few modifications which are not relevant to this Inquiry

  The State Solicitor further correctly pointed out that disposal of State property can only be made by the Museum in accordance with the terms of the ***Public Finance (Management) Act*** – Section 40. This

Section basically requires a full public tender for the sale of the property.

The State Solicitor further, correctly, pointed out that contracts of salvage and restoration(and, the Committee finds, of sale) must be made pursuant to Section 61 of the ***Public Finances (Management) Act*** – but that this could be bypassed by the Minister certifying that such a public tender was impractical or inexpedient.

Further, the State Solicitor, correctly, pointed out that any money received as a result of the sale of State property belongs to the State. The State – through the Department of Finance – is responsible for paying compensation to landowners pursuant to ***War Surplus Material Act*** and that the proceeds of any sale should be deposited in an approved Trust Account.

Pursuant to Section 15 and 17 of the ***Public Finances (Management) Act*** such monies cannot be dealt with by the National Museum & Art Gallery as its own money.

- ***Comprehensive Guidelines for the Consideration of Applications to Deal In and With War Surplus Material*** were promulgated by the Museum.

- In the period 1999 until 2005, the National Museum and Art Gallery entered into a series of agreements with foreign interests permitting the removal and export of wartime aircraft wrecks.

- Those agreements were made with:

Historic Aircraft Restoration Society (HARS) – a group of aircraft enthusiasts and collectors based in Sydney.

This entity is represented by Mr. Robert Greinert who personally salvages aircraft in Papua New Guinea and who allowed his or HARS permit to be used by Aero

Archaeology LLC to remove and export the Swamp Ghost.

Mr Greinert appeared at the Inquiry but did not answer adequately or at all, queries put to him both at the Inquiry or at a later date in writing.

The Committee finds that HARS and Mr. Greinert have acted as agents and facilitators for wealthy foreign collectors and that the demarcation between Greinert's personal interests and HARS are unclear.

75th Flying Squadron Museum, based in Victoria, Australia. Despite its name, this entity has no links with any Defence Force interests that the Committee could identify.

Indeed the museum does not seem to exist at all. It is not a registered company or a legal entity in Australia or PNG, so far as the searches of the Committee could identify.

The Committee could not identify any premises, history of collection, actual collection of aircraft or restoration or capacity to restore or curate aircraft.

The two Australian individuals representing this entity are Mr Bruno Carnovale and Mr Ian Whitney. The Museum seems to be nothing more than a facilitator for wealthy American collectors and, the Committee finds, has illegally on-sold War Surplus Materials removed from PNG with no regard to the ownership of the State and in breach of its own Agreement with the Museum.

The Committee wrote requesting information and co-operation 75th Flying Squadron Museum, but that entity presented no evidence,was not represented at the Inquiry and did not provide any information sought by the Committee.

Classic Jets Museum in South Australia. This entity seems to be a genuine Museum, the management of which were helpful to the Committee. The Committee makes no adverse findings against this organization.

- There appears to be competition with these entities to obtain wrecks and each clearly regards PNG as its own hunting ground.

- In 1999, upon a date uncertain, a Memorandum of Agreement was entered into between **Military Aircraft Restoration Corporation ("MARC")** a Californian based company, and the National Museum & Art Gallery for the sale and purchase of the Swamp Ghost, its removal to the United States of America and certain attendant matters.
  Relevant parts of that Agreement were:

  - Clause 2 – acknowledges that the Independent State of Papua New Guinea is the sole owner of the wreck;

  - Clause 3 – The State gives MARC approval to remove and

    "… the assignment and conveyance of merchantable title"…

    to the aircraft on condition that:

    (i) **MARC** pays all costs; and

    (ii) The State may be represented at the removal of the aircraft, should it wish;

  - Clause 3 - renders the Contract valid for 5 years and automatically renews the contract for another 5 years, unless it is earlier terminated;

  - Clause 5 - the primary goal of removal and export is stated to be for the purpose of display in or outside USA;

  - Clause 8 – **MARC** agrees to pay US$50,000 to the National Museum & Art Gallery and US$50,000 to landowners. This would appear to be the purchase price for 100% ownership of the wreck;

- Clause 11 - the Title to the aircraft conveys to and vests in **MARC** at the date of the signing of the Agreement;

- The Memorandum of Agreement was signed by the then Director of the National Museum & Art Gallery and a representative of MARC.

- The Director clearly assumed the right to unilaterally decide to sell the aircraft to a buyer of his choosing.

- Apparently the Tourism Development Corporation objected to the removal of the Swamp Ghost and the aircraft remained at Agiambo Swamp. There was some dispute as to the bona fides of the certain officers of **MARC.** Permission to sell and export was denied .

- In November 2001 the National Museum & Art Gallery claimed to have received a proposal from a company called **"Aero Archaeology LLC"**, a company registered in Pennsylvania. The Committee asked for a copy of that proposal, but it was not produced by the National Museum.

- On or about the 2nd November 2001 the entire contract and thereby (if the original Agreement with MARC was lawful) ownership of Swamp Ghost was assigned by **MARC** to **Aero Archaeology LLC.**

- On the 20th February 2002 Trustees of the Museum gave approval for the sale, removal and export of the Swamp Ghost to **Aero Archaeology LLC.** Upon what basis the Trustees considered this matter or gave those approval is wholly unclear.

- 22 August 2003 – A submission was made to the National Executive Council by the Minister for Tourism Hon. Nick Kuman MP seeking approval to sell and export the aircraft

- On the 24th October 2005 a company named **Aero Archaeology Limited** was incorporated in Papua New Guinea. No certification to carry on business in

Papua New Guinea was obtained from the Investment Promotion Authority.

- A valuation of the Swamp Ghost aircraft was made in 2004 and presented by the Director to the Trustees of the Museum as an independent valuation. It was, in fact, made by a shareholder of Aero Archaeology Limited and the agent of that company, Mr. Robert Greinert. The value of the wreck was estimated at USD 12,000 and, unsurprisingly, Greinert commended the offer of Aero Archaeology LLC as fair and reasonable.

- On the 10th November 2005 – Mr. Simon Poraituk signed and issued Export Permit No. 05007 to one Mr Fred Hagan to export B17 E Aircraft Serial No. 41-2446

- On the 28 April 2006 – A Sub-committee of the present Board of Trustees of the National Museum & Art Gallery purported to endorse the decision of an earlier Board of Trustees that the Swamp Ghost be sold and its export be permitted.

- Contrary to the terms of the Memorandum of Agreement, **MARC** deposited a sum of US$160,000 in an escrow account at Westpac Bank in Port Moresby. The National Museum & Art Gallery advises this Committee that that money represented the purchase price of the B17 Aircraft and was to be divided between the State (50%), Oro Provincial Government (25%) and the landowners (25%).

- Upon an unknown date, **Aero Archaeology LLC** deposited US$100,000 in an escrow operating account at Westpac Bank in its Port Moresby Branch. Fifty-Percent was to be paid to the State and the remaining half was to be divided equally between the Oro Provincial Government and the local landowning clan at the site where the aircraft was wrecked.

  Why the National Museum & Art Gallery settled for less than the amount deposited by MARC, is unknown, but was presumably based upon the

"valuation" of Robert Greinert – that is to say, the valuation of the buyer or its agent.

- On the 19th May 2006 the National Museum & Art Gallery wrote to the exporter directing that the Swamp Ghost not be exported until after the Inquiry by the Public Accounts Committee.

- On the 23rd May 2006 the National Museum & Art Gallery wrote to the Commissioner General Internal Revenue Commission agreeing that the aircraft should not be exported pending the outcome of the Inquiry by the PAC.

- In early 2006 the aircraft had already been lifted from Agiambo swamp and is currently in Lae.

- The Public Accounts Committee instructed the Office of the Attorney General to take such action as it deemed appropriate to restrain the export of the aircraft.

- On 26 May 2006 a letter was received from the Acting Attorney General seeking further instructions. These instructions were given by letter from the PAC on 7 June 2006, but no action was commenced for at least six months.

- The Public Accounts Committee has written to the Controller of Customs and the National Museum & Art Gallery seeking to prevent the export of the aircraft pending the resolution of this Inquiry.

- The aircraft remains in Lae.

23. LEGALITY OF THE SALE, REMOVAL AND ATTEMPTED EXPORT OF THE SWAMP GHOST.

23.1 The principal issue for the Public Accounts Committee is whether the National Museum and Art Gallery can, of its own volition, act as an agent of the State or, in its own right, sell and approve the export of State property in the form of War Surplus Materials without complying with the

terms of the ***Public Finances (Management) Act –*** or at all.

23.2 The Committee met for two days and received sworn oral evidence from the Acting Director of the National Museum and Art Gallery Mr. Simon Poraituk, the Chairman National Cultural Commission, Mr. Robert Greinert, the Acting Attorney General Mr Fred Tomo, the Investment Promotion Authority and Mr. Justin Taylan, an American citizen who made his own way to Papua New Guinea to attend the hearings of the Committee.

23.3 Mr Taylan has maintained an interest in wartime aircraft wrecks salvaged from Papua New Guinea and the Swamp Ghost in general and his evidence was of great assistance to the Committee.

23.4 The Committee received into evidence a number of documents. They were:

- A short Brief on the salvage of the American B17 E Flying Fortress Bomber Aircraft (Swamp Ghost) dated the 17th of May 2006 from the Acting Director - PNG National Museum & Art Gallery;

- Letter from the Auditor General's Office dated the 3rd of July 2006;

- A Status Report on the salvage of the Swamp Ghost dated the 24th of May 2006 being a Policy Submission to the National Executive Counsel by the Minister of Culture & Tourism and attached documentation under cover of letter from the PNG National Museum & Art Gallery dated the 19th of June 2006;

- Information Paper for the Right Honorable the Prime Minister concerning the salvage and export of World War II aircraft relics by 75th Squadron Flying Museum from the Minister for Culture & Tourism dated the 28th of July 2005;

- Research Report on the Swamp Ghost Aircraft by Justin Taylan;

- A valuation or report on the Swamp Ghost aircraft by Robert Greinert and/or HARS

- Letter from Robert Greinert to the Public Accounts Committee dated the 23rd of June 2006;

- File of Correspondence from the Public Accounts Committee to various addressees and witnesses and interested parties.

- A letter from Narokobi Lawyers to the Public Accounts Committee dated the 11th of August 2006;

- Facsimile Transmission from Robert Greinert to the Public Accounts Committee undated but received on the 12th July 2006;

- All documents produced by the PNG National Museum & Art Gallery in response to Notices to Produce issued and served from the Public Accounts Committee;

- Minutes of Meetings of the Board of Trustees of the PNG National Museum & Art Gallery;

- Search of Historical Aircraft Restoration Society from the Australian Securities & Investment Commission;

- Search of 75th Flying Squadron Museum from the Australian Securities & Investment Commission;

- Submission to the Public Accounts Committee on behalf of landowners concerning the Swamp Ghost;

- Review and Internal Audit of the PNG National Museum & Art Gallery by Mal Nuka, August 2005;

- Reports on the activities of 75th Squadron Flying Museum;

- Statement by Mark Katakumb.

- Letters from Narokobi Lawyers.

- Legal opinion from O'Briens Lawyers on the legality of the sale and proposed export of the Swamp Ghost aircraft.

24. THE FIRST DAY OF THE INQUIRY:

24.1 Sworn oral evidence was received from Mr. Simon Poraituk, then the Acting Director of the National Museum and Art Gallery (now confirmed in that position).

24.2 The Committee was concerned to establish from Mr. Poraituk, the precise legal basis for the Museum to sell, approve the removal of and grant an Export Permit for the Swamp Ghost aircraft.

24.3 The Committee was concerned to identify the precise source of the legal power in the Museum, to sell State property in apparent breach of the ***Public Finances (Management) Act***. The Committee asked for submissions and assistance from the Museum on this matter, but received no conclusive material on this central issue.

24.4 The relevant evidence from Mr Poraituk is summarized below:

- Mr Poraituk was appointed as Acting Director of the NMAG in September 2005.

- No delegation under the ***War Surplus Materials Act*** had been given to the Museum or its management to permit the sale or removal of the Swamp Ghost aircraft from Agiembo Swamp. This is a crucial concession.

- Mr. Poraituk could not identify any statutory power in the Museum to sell the Swamp Ghost aircraft, but relied upon the ***War Surplus Materials Act*** as the source of his power to approve removal of the wreck. He was, however, unable to direct the Committee to any particular Section of that Act which granted such power.

- When asked about the precise source of power to sell and approve export Mr Poraituk gave conflicting evidence. He clearly did not know and had not considered the matter.

- When questioned about the seeming reservation of power to approve removal of War Surplus Materials to the Head of State acting on advice, Mr Poraituk testified that the Board of Trustees were the Head of State – a novel proposition not accepted by this Committee.

- Mr Simon Poraituk, the Acting Director of the National Museum & Art Gallery, gave oral evidence that he was familiar with the terms of the ***War Surplus Materials Act***, the ***National Museum & Art Gallery Act*** and the ***National Cultural Commission Act***. He also stated that he was familiar with the terms of the ***Public Finance (Management) Act*** and the ***Financial Instructions*** promulgated under that Act.

- This Committee considers that, on his own evidence, Mr Poraituk understood generally the specific provisions of the ***Public Finances (Management) Act*** relating to the disposal or sale of unwanted property, the payment of money into established Trust Accounts and the requirements for accounting for monies received, but could not tell the Committee specific statutory requirements.

- On the 9th of June 2006 a Notice to Produce was issued and sent to Mr Poraituk seeking, inter alia, to obtain copies of any delegation given to Officers of the Museum which would permit the Museum to approve the removal, sale and export of the Swamp Ghost. He was also asked whether there were any conditions imposed by the Head of State on the sale on collection and removal of the Swamp Ghost.

  Mr Poraituk did not know of any such delegation and did not claim that any delegation had been made.

  Evidence given on this subject was as follows:

"Honourable Acting Chairman –

Just hold it it Mr Poraituk. We have asked you to write to us and tell us what Statutory provisions and power the Board of Trustees? Under which Act? What I am saying is that you didn't tell us what provisions of the Act."

Mr Simon Poraituk

It's the National Museum & Art Gallery Act of 1992.

Acting Chairman:

But what Statutory provisions that we ask? You've not complied. Is it true you didn't comply? Just say yes or no.

Mr Simon Poraituk

No

…….

Acting Chairman;

Is there any delegation from the Head of State relied upon by the Museum for the export of the Swamp Ghost? Did the Head of State authorize you to do so?

Mr Simon Poraituk;

No sir

…….

Acting Chairman

"In paragraph 13 – 14 can you also conclude that you didn't put any public tender for the wreck of the Swamp Ghost?

Mr Simon Poraituk

No sir."

- Mr Poraituk stated that the Swamp Ghost aircraft was not transferred to the NMAG, nor was it declared as national cultural property. Therefore, no power over the wreck was given under the ***National Cultural Property Preservation Act***

- The witness failed to produce and did not rely on any Ministerial authority to sell or export the wreck, nor could he produce any statement of reasons or conclusions by the Board of Trustees approving the sale and removal.

- Mr. Poraituk could not produce and did not rely on any decision or directive from any authoritative quarter permitting or directing the sale of the Swamp Ghost aircraft.

- Mr Poraituk could not direct the Committee to any statutory basis for the issue by him of an Export Permit to Aero Archaeology LLC for the Swamp Ghost aircraft, neither was the Schedule to the Permit issued by him ever produced to the Committee despite a Directive that it be produced. It is notable that the Permit itself states that it is issued under an Act and a Section which no longer exist – and did not exist at the time of the issue of the Permit.

- Mr Poraituk stated that the Museum had sold the State's ownership of the Swamp Ghost aircraft by the Agreement with MARC, later assigned to Aero Archaeology LLC but told the Committee that no public tender (as required by the ***Public Finances (Management) Act***) was called for the wreck as …***" we do not do that".***

- Mr Poraituk was unable to direct the Committee to any legal basis for the National Museum and Art Gallery to act as an agent for or on behalf of the State in the sale of the Swamp Ghost aircraft.

- Mr Poraituk stated that the National Museum and Art Gallery was subject to the terms of the ***Public Finances (Management) Act***, but clearly did not understand the process of disposal of unwanted or obsolete State property under that Act and the Financial Instructions. He was unable to tell the Committee what a Board of Survey was or whether any assessment had ever been performed by such a Board before the Swamp Ghost aircraft was "sold".

- Mr Poraituk continually referred to the foreign exporters with which the Museum dealt as ***"clients"*** and the Committee concludes that in this terminology lies the truth of the export of a great deal of the wartime history of Papua New Guinea. Clearly management of the Museum (both past and present) saw the Museum as being engaged in a business of exporting State property and , in the case of the Swamp Ghost, of selling it for reward - not the State but to the Museum for the use of its staff.

- The Committee extended time to Mr Poraituk and every other interested person including the legal advisers to Aero Archaeology LLC to show how and from where the Museum derived the power to dispose of State property other than in accordance with the ***Public Finances (Management***) ***Act*** and the source of the power in the Museum to act as it had in its dealings with the Swamp Ghost. No assistance or submission was received. Indeed, Aero Archaeology LLC and Mr. Fred Hagen through their Lawyers, refused to assist the Committee.

- Mr. Poraituk could give no explanation for ignoring the advice given by the Office of the State Solicitor to the NMAG on the 19th November 1997 concerning the applicability of the ***Public Finances (Management) Act*** to the sale, salvage and removal of wartime aircraft wrecks.

- Mr. Poraituk could not direct the Committee to any decision of the State to sell or dispose of the Swamp Ghost

- Mr Poraituk was questioned by the Committee on the detail of payments by salvors and exporters including Aero Archaeology LLC, the maintenance of Trust Accounts, the accounting for and handling of monies received, dealings with the Landowners and other peripheral but important matters attending the sale of the Swamp Ghost aircraft.

- The Committee derived virtually no assistance from the Director in these matters and the clear conclusion was that Mr Poraituk had not directed his mind to the legality of the attempted sale and export, the receipt of monies therefrom or his actions in facilitating that transaction. On the best view of the evidence, he assumed power to so act, because that was what his predecessor had done.

- The Director could not explain why the National Museum and Art Gallery accepted or accepted as independent, a valuation of the Swamp Ghost from a person who was a shareholder of the purchasing company <u>and</u> the salvor acting for and at the direction of the purchaser.

- Mr Poraituk could not explain why this "valuation" was put to the Board of Trustees or why he relied upon it at all, while no attempt was made at all to obtain an independent valuation or show the Trustees a truly independent Report and evaluation of the Swamp Ghost which was in the possession of the Museum.

24.5 Mr Poraituk was questioned about conflicting representations concerning the Swamp Ghost made in submissions to this Committee, the Office of the Prime Minister and the National Executive Council.

24.6 Those documents were written by him, but were contradictory between themselves and, in some cases, self contradictory. Mr Poraituk was unable to explain representations that the Committee concludes were false and designed to mislead.

24.7 Examples of these misleading representations are:

- A statement to the Board of Trustees that the aircraft would, after export, be jointly owned by the State and Aero Archaeology LLC. Clearly this was known to be false as the witness had acknowleged that the contract sold all the States right, title and interest. There could be no joint ownership.

- In a Submission to the NEC dated the 24th May 2006 it was falsely stated in Para 4.8:

  "..... Trustees further noted that upon completion of the restoration, the ownership of the B17 E should be shared between Aero Archaeology and the Independent State of Papua New Guinea"....

- Mr. Poraituk prepared this document and could not explain how ownership could be shared if the ownership of the State had been sold.

  - By Para 4.8 of the same document, the Minister stated:

    "The locations of display be worked out at the National Museum and March Field Museum in California over an agreed period of time".

    Mr Poraituk prepared this document, but the representation was entirely false.

    The Committee checked with March Field Museum and was informed that there was, to the knowledge of its Management, no such arrangement. Management of March Field Museum had never heard of the Swamp Ghost or Aero Archaeology LLC.

    Mr Poraituk could not explain why he had not made any similar checks and could not tell the Committee where the aircraft was actually going, where it would be stored, if, when or where it would be restored, where it would be exhibited or anything at all about the future of this valuable piece of State property. Nor did the Museum management seem to have any interest in the matter.

Further, the aircraft had been sold. The State had no interest or involvement in the wreck and and no power or right to "work out" anything at all in relation to the Swamp Ghost.

- By Para. 78, Options 2 and 3 of the same Submission, the NEC is told that either the wreck should not leave Papua New Guinea or that both parties are to agree to restore and display the wreck in Papua New Guinea and the United States.

  This is clearly untrue. The State has lost all rights and interest in the aircraft. There were no such options for the NEC to consider.

- By Para. 7 (j) of the same submission, the NEC were to be advised that:

  "The aircraft presumably remains the property of the United States Air Force"

  The NEC was not told the true situation, viz. that the wreck was the property of the State of Papua New Guinea or that it had been sold. Co-incidentally, the Trustees were similarly not informed.

  Mr Poraituk prepared this document but could not explain how or why these material and basic misrepresentations were made.

  The Committee considers that the statements were made to conceal the fact that the aircraft had been sold.

- By the same Submission, in Para 7 Option 3 (a) the NEC were advised:

  " It will require substantial financial support to enable a traveling exhibition for both countries through the Tourism Inc.(sic) ***although the tourism impact will be great."***

and further:

"It can be self financing through exhibitions however will require logistical support and initial cost to generate funds".

and further

".... both countries must be prepared to meet costs associated with those arrangements such as insurance cover and others depending on a new legally binding MOA."

This incomprehensible submission was prepared by Mr Poraituk for the NEC. He was unable to explain its meaning or purpose to the Committee. There was no "arrangement" as suggested in these paragraphs and that fact was well known to the National Museum and Art Gallery.

These representations were made with the intention of obscuring the fact that the wreck had been sold and that the State no longer had any ownership of the aircraft.

The only reason which would explain such conduct is that the Museum management knew, but had ignored the fact, that they had no power to sell State property and wished to hide its actions.

- The same submission falsely states that there were several Options open to the Independent State of Papua New Guinea insofar as the future of the Swamp Ghost was concerned. Each of those involved active participation of the State as an owner or co-owner of the aircraft.

  Mr. Poraituk was unable to explain how this statement could be correct when the Museum had apparently sold ownership of the aircraft or why the NEC was given such advice.

- By Para 8.2 of the same submission, it is stated:

  " The aircraft should be leased for 99 years as soon as it leaves the shores of Papua New Guinea".

Mr Poraituk was unable to explain what this statement meant and how it was possible for the State to negotiate a lease over an aircraft wreck that it did not own or why the new owner would give any consideration to such an arrangement.

- Further, in the same submission at Para 8.3, it was stated:

  " The Government should stress only that the completed aircraft should not be sold and the ownership remains the sole property of the State of Papua New Guinea"

  This statement is a clear untruth. The aircraft had been sold. The State had no interest or right in the wreck at all, yet the NEC was being led to believe the contrary. Misleading the NEC in this way is a very serious matter.

- Further, at Para 3.6 of the Submission, the Minister states:

  " ….the actions of the Board of Trustees were within the legal framework consistent with the National Museum and Art Gallery Act 1992 and the War Surplus Materials Act Chapter 331 of 1952 as amended"….

  and further

  "….the approval granted to Aero Archaeology to purchase, salvage, export and restore the B17 aircraft must be treated as legal and binding".

  This statement is false and in making it the Museum ignored advice received from the Office of the State Solicitor which correctly stated that the ***Public Finances (Management) Act*** applied to the Museum and to the disposal, salvage or sale of War Surplus Materials.

  Mr Poraituk told this Committee that no legal advice was sought on the transaction. How an assurance of

legal compliance could be given to the NEC in such circumstances is unclear.

It is further notable that at the end of this submission, the Minister acknowledges that the Swamp Ghost was sold – which contradicts other statements put to the NEC which suggest that ownership remains with the State.

24.8 The Committee concludes that these submissions are a few examples of many deliberate, intentional but false statements designed to obscure the true effect of the Agreement with Aero Archaeology LLC and to obtain whatever consent was required irrespective of the truth of information and advice tendered.

24.9 The Committee questioned Mr Poraituk as to whether the NMAG, in approving the sale and removal of the Swamp Ghost, complied with its own Guidelines for considering such applications.

24.10 The Guidelines require:

- **The Salvors must be of good repute.**

  The evidence showed that no inquiries were made and no reports were produced in this regard.

- **Wherever possible, the proposal should involve restoration within Papua New Guinea or repatriation of objects to Papua New Guinea after restoration;**

  Upon the evidence no such proposal was required or made.

- **Wherever possible, agreement for restoration or export should preserve State ownership;**

  No attempt was made to explore this requirement. The NMAG actively participated in the sale of the State's interest with no attempt to consider alternatives.

- **The price of sale of an artifact should be at least 50% of the value of the item <u>after</u> restoration;**

No attempt was made to ascertain the restored value. The Committee notes that its own inquiries suggested a current value between USD 3 – 5 million and the purchaser is now threatening to sue the State for USD 14 – 25 million – presumably representing the post-restoration value of the aircraft This claimed loss was stated in the evidence of the Acting Attorney General to the Committee.

Clearly the NMAG has failed to comply with this requirement.

Indeed the Committee notes that the State (as opposed to the Museum) was to receive nothing for the aircraft wreck.

- **Proceeds of sale should go to a facility for restoring war surplus material and other objects.**

  This requirement conflicts with the ***Public Finances (Management) Act*** – as the Museum had been advised by the Office of the State Solicitor.

  Mr Poraituk was unable to assure the Committee that any money received would be used for this purpose. In light of the clear misuse of monies received from earlier sales of War Surplus Materials discovered by the Committee, there can be no confidence that the National Museum and Art Gallery would comply.

  Mr Poraituk was granted 48 hours to produce relevant evidence, but nothing was delivered to the Committee.

- **The application should be addressed to the Director of the National Museum.**

  The Committee granted 48 hours for the document to be produced. No proposal was produced

- **The application should contain at least:**

  (i) A clear statement of the number and types of objects for which permission to salvage and export is being sought; and

(ii) A clear statement of the location of the objects in question;

(iii) Information about the Organisation which is seeking to salvage and export the war surplus material including annual reports, audited financial statements, bank statements to verify the Organisation's financial capacity to carry out the work, articles of association or incorporation, a list of current members and employees of the organization and descriptions of previous salvage and restoration project in which the Organisation has been involved;

(iv) A list of people including names, addresses and facsimile numbers who can provide character reference;

(v) The name of a recognized scientific organization in the applicant's country of origin which is willing to comment on the applicant and the proposal;

(vi) Name and address of the nearest Police Station to the applicant's residence or place of employment;

(vii) The benefits to the Independent State of Papua New Guinea; and

(viii) The benefits to the people on whose land the objects are located.

No such material was produced despite the Committee being told that it did exist and extending 48 hours for production.

- **The application should be accompanied by a fee of K1,000.00. That fee is non-refundable.**

The fee was paid.

- **The application is lodged with the Chief Curator; and**

- **The Chief Curator writes to the referees to obtain references.**

So far as the Committee can deduce, there were no such Inquiries made.

- **The Chief Curator writes to obtain a Police Reference.**

This Guideline was not complied with. The Committee granted 48 hours for the production of the document, but nothing was received.

- **The application is viewed by the Director and the Assistant Director for Science and Research; and then**

- **If the Director and Assistant Director are satisfied with the supporting material, a compulsory meeting is held with the Director, Assistant Director for Science and Research, the Chief Curator of Modern History and the applicant. The purpose of this meeting is to discuss the application and clarify any issues which are not clear.**

The Committee cannot establish if these Guidelines were complied with.

- **Within two months of that meeting, Officers from the Department of Modern History will visit the area where the item is located to assess the feasibility of the proposal, to clarify who owns the land on which the objects are located and to hold preliminary discussions with the landowners**

- **Under no circumstances will the applicant make direct contact with the landowners or enter into direct negotiations with them concerning the**

War Surplus Materials which are the property of the State.

- **If the applicant wishes to visit the area, he or she must be accompanied by Officers from the Department of Modern History at the applicant's cost.**

The Committee is satisfied that visits did occur, but the Landowners were also contacted directly by the purchaser or its representatives.

- **Within two weeks of the site visit the Officers from the Department of Modern History will produce a report on the visit including their views on the feasibility of the proposal and the expressed concerns of the people on whose land the war surplus materials are located; and**

- **Following the site visit and completion of the report by Officers from the Department of Modern History, the application will again be reviewed by the Director, the Assistant Director for Science and Research, the Chief Curator of Modern History and Officers of the Department of Modern History who have carried out the site visit. That review will take place within one month of the completion of the site visit. The purpose of this meeting is to recommend to the Board of Trustees that the application be approved or rejected; and**

- **A formal submission including the recommendation will then be prepared for the Board of Trustees by the Chief Curator of Modern History; and**

- **If there is a need, and within the resources of the National Museum, a physical inspection of the applicant's facilities may be required; and**

- **The submission from the Chief Curator of Modern History will be included in the agenda of the next meeting of the Board of Trustees; a**

The evidence shows that these reports were either not made or were sparse and inadequate. Mr. Poraituk stated to the Committee that the material was not placed before the Board of Trustees on any occasion. This evidence was corroborated by the Trustees to the Committee.

- **The decision of the Board of Trustees is communicated to the applicant.**

This was apparently done.

- **All applications are to be registered by the Chief Curator of Modern History in a Register Book.**

The Committee gave the NMAG 48 hours to produce the Register Book, but it was not produced.

24.11 At the end of the first day of evidence, it was clear that Mr. Poraituk had assumed an authority to sell State property that he did not have and could not justify. Equally clearly, foreign dealers in and salvors of aircraft wrecks encouraged this assumption.

24.12 The Committee heard evidence from the Board of Trustees of the National Museum and Art Gallery.

24.13 Members of that Board gave frank and helpful evidence.

24.14 That Board were clearly of the view that the Swamp Ghost aircraft was still owned by the State and that, in some unspecified way, Aero Archaeology LLC were lessees or were trustees of the aircraft on behalf of the State. They were (quite incorrectly) told this by the Management of the Museum.

24.15 The Trustees were not informed that Aero Archaeology LLC was not a Museum or capable of storing or restoring the aircraft. Neither were they told that the company is owned

by a foreign individual with no experience, ability or expertise in aircraft restoration.

24.16 Further the Trustees were not told that Aero Archaeology LLC, HARS and Mr. Robert Greinert were not certified to carry on business in Papua New Guinea.

24.17 Indeed, neither the Trustees nor the Museum management carried out any competent inquiries or assessment of the buyer at all. They should have done so.

24.18 The Trustees were clearly not properly briefed by the Director and were presented with an incorrect version of the facts upon which to make their decision.

24.19 Further, the Trustees neither sought nor received any independent legal opinion, nor were they ever told of the legal basis upon which the transaction was supposedly based or by which they were required to approve the transaction.

24.20 The evidence clearly showed that the Trustees were overborne as a result of threats made to them by or on behalf of the buyer and/or by its agent Mr. Robert Greinert to the effect that unless the export of the Swamp Ghost was approved, litigation would be commenced against the Trustees personally.

24.21 This type of threat by foreigners to a statutory Board of Trustees is utterly unacceptable and was clearly intended to intimidate the Board. The evidence from Board Members showed that the threat was effective. It robbed the Trustees of the opportunity for any independent deliberation and decision.

24.22 The Trustees were asked by this Committee whether they would have made the same decision if they had known the true nature of the Contract with Aero Archaeology LLC and/or the true requirements of Law concerning the sale of obsolete State property.

24.23 The Trustees unanimously advised the Committee that they would not have approved either the export or sale of the aircraft had they been so advised.

24.24 The Committee finds that the misleading facts placed before the Trustees were deliberate and were intended to mislead and to force a decision favourable to the buyers.

24.25 Further, the Trustees were mislead by omission of information, as much as by positive assertions of fact made by the Director and the agents of Aero Archaeology LLC.

24.26 The Management of the Museum had a duty to advise the Board of Trustees fully, honestly and correctly. Certainly the Museum Director could advise a certain course of action to the Trustees, but not fabricate, obfuscate and mislead to obtain a particular decision or course of action.

24.27 Further, this Committee finds that the Trustees had no power or need to consider or approve the sale and export of the aircraft. As we have stated (supra) the sale of State property is a matter governed by the ***Public Finances (Management) Act*** and ***Financial Instructions*** and does not require the approval of the Trustees of the Museum.

24.28 So far as this Committee can ascertain, the removal and salvage of War Surplus Materials remains a matter for decision by the Head of State acting on advice – not the Museum and therefore, not the Board of Trustees of the Museum.

24.29 The Public Accounts Committee gave Directives to the Museum to co-operate with its Board of Trustees – particularly in the area of budgeting and preparation of Budget Statements. There appears to be very clear conflict between Management of the Museum and the current Board of Trustees.

24.30 This Committee concludes the current Board of Trustees are intent on reforming the National Museum & Art Gallery and in ensuring that the Management of the Museum acts in all respects, in accordance with law.

24.31 The Management of the Museum seem to have no clear idea of the role of the Board of Trustees – and the Board also seems to have a little idea of its powers, immunities or responsibilities.

24.32 This Committee concludes that the Board of Trustees should retain expert legal advice in order that it can learn the true nature of its role, which, like all Trustees, carries onerous duties of care.

24.33 The Committee issued a number of Directives at the conclusion of the first day of the Inquiry. These were designed to preserve the Swamp Ghost aircraft in Papua New Guinea and to discover the extent of dealings with War Surplus Materials by the Museum.

25 . THE SECOND DAY OF THE INQUIRY

25.1 The Committee reconvened this Inquiry on the 12th day of September 2006.

25.2 The Committee had sought further information from the National Museum and Art Gallery by Notice to Produce dated the 27th June 2006 and the 9th July 2006

25.3 The Museum cooperated by producing some records and documents but there was still no evidence on which the Committee could find that the Museum had any power to sell State property – or approve the removal or export of War Surplus Materials at all.

25.4 At the conclusion of the first day of the Inquiry, the Committee had received no assistance from any witness in establishing the precise legal basis upon which the Museum sold, approved the removal of and approved the export of the Swamp Ghost Aircraft.

25.5 Further, the Committee had received evidence of a large number of other aircraft wrecks and parts exported from Papua New Guinea over a very long period, with the full assistance of the Museum.

25.6 A very few of these aircraft went to reputable restorers for the purpose of restoration and return to Papua New Guinea. This Committee has identified four aircraft in that category.

25.7 Overwhelmingly, they passed into private hands and are worth a considerable amount of money. The Committee has

identified another 85 aircraft and parts which have ended up in private hands – sometimes resold a number of times after they had been exported from Papua New Guinea.

25.8 The Committee continued its attempt to find the legal basis for the Museum to sell the Swamp Ghost and to approve the export and removal of this and other aircraft from Papua New Guinea.

25.9 To this end, the Committee sought and received independent legal advice concerning the Agreement with Aero Archaeology LLC, the power in the Museum to sell State property and the effect and validity of that agreement from Messrs O'Briens Lawyers.

25.10 The following advice was received:

(i) The Swamp Ghost aircraft was and remains the property of the Independent State of Papua New Guinea.

(ii) The Agreement with Aero Archaeology LLC was intended to be a Contract for the sale of the Swamp Ghost and to provide evidence of transfer of title to the aircraft.

(iii) The Agreement with Aero Archaeology LLC is not effective as a contract of sale or to pass title to the aircraft, for the following reasons:

a) The Museum does not have contractual authority to bind the State. The Museum is established pursuant to the ***National Museum and Art Gallery Act 1992***. Section 7 of that Act provides that the Museum is a corporation. Accordingly it has a legal personality separate from the State; and

b) The Swamp Ghost is the property of the State and not the Museum; and

c) The Museum can acquire things described as "exhibits" which are defined as including ***"antiquities, utilitarian objects, natural***

history specimens, objects of antiquity or works of art".

A specimen can include a ***"war relic"*** within the meaning of the ***War Surplus Materials Act Ch. 331***". No such thing as a ***"war relic"*** is known under the ***War Surplus Materials Act*** so that part of the definition of ***"specimen"*** is a nonsense.

Further, if War Surplus Material can be established as constituting an ***"exhibit"*** under Section 15 of the ***National Museum and Art Gallery Act 1992***, the Minister may ***"transfer to the Trustees any exhibit that is the property of the State and the exhibit vests in the Trustees."***

The Committee requested the Museum to produce a statement of all Ministerial transfers of items formerly owned by the State but which were now vested in the Museum or the Trustees. No such material was produced and Mr. Poraituk gave evidence that no such transfers had occurred.

Therefore, upon the evidence before this Committee, the Swamp Ghost was and still is, the property of the State.

(iv) The Museum is not an agent of the State.

Section 247 of the ***Constitution of the Independent State of Papua New Guinea*** provides that the State may hold, dispose of and contract in accordance with an Act of Parliament.

The **Public Finances (Management) Act** and the delegated legislation which goes with that Act, is the Act implementing Section 247.

That Act requires that State property can only be sold in a particular manner – and then by public tender unless exemption is given. Further, a contract for the sale of the aircraft, if the value was less than USD 5 million, requires Ministerial approval by the Minister for Finance.

The contract records that the aircraft is the property of the State, but it is signed in the name of the Museum, by the former Director, Mr. Seroe Eoe.

The Museum had no proprietary interest in the aircraft and no power, right or entitlement to sell it – and therefore, nothing to sell. It follows that, as a seller can give no better title or more perfect interest to a buyer than it has at law, the Contract with Aero Archaeology LLC is ineffective and unlawful. Aero Archaeology LLC has no enforceable contract at all.

(v) The Contract is further ineffective because it is not dated. The Contract records that title to the aircraft will pass on the date of execution, but no such date exists. Title would not and could not pass to the buyer.

(vi) The fact of Assignment of the Contract from MARC to Aero Archaeology LLC is ineffective to change the position of either the State or the buyer. MARC had an unenforceable and ineffective contract and Aero Archaeology LLC has received the same by assignment.

(vii) Further, there is no consideration expressed in the Contract to support the document as a Contract of Sale. It can be challenged on that ground alone. The attempted sale would give nothing to the State at all.

(viii) The Agreement provides for the giving of a donation to the Museum and for that institution to receive further monies as a Constructive Trustee for the Landowners of the Agiembo Swamp, the disbursement of that money is to be managed by the Museum.

The Museum has no power to act as a paying agent for the buyer and has, in signing this Contract, acted ultra vires the ***National Museum and Art Gallery Act 1992.***

Further, the Agreement breaches the provisions of the ***War Surplus Materials Act*** in that the Museum has no right or power to reimburse the Landowners for the

removal of War Surplus Materials. That role is the exclusive province of the Department of Finance – and then only for actual damage or waste occurring as a result of the removal process.

25.11 The advice from O'Briens Lawyers concurred with the research by and advice received by the PAC. The legal advice is accepted by the Committee and was not contradicted or changed by any evidence received.

25.12 The Committee sought further assistance from Legislative Counsel, the Government Printers archives and the Office of the Governor General to identify any delegation pursuant to Section 10 of the ***War Surplus Materials Act*** to the Museum or any other entity.

25.13 Despite the fact that the Authorised Reports show that a delegation had been made to the Secretary for Finance, neither this Committee nor any other entity, could identify any such Instrument or Gazettal Notice.

25.14 Therefore, in the absence of any empowering delegation to the Museum, the situation appeared to the PAC to be:

(a) The Director National Museum and Art Gallery had no power to act as it did in signing the Agreement with MARC or consenting to the Assignment to Aero Archaeology LLC; and

(b) The purported "sale" of the Swamp Ghost aircraft was illegal and ultra vires the power of the Museum because:

(i) that power apparently remained with the Head of State; and

(ii) the power of approval had not been delegated; and

(iii) even if a delegation had been made, the ***Public Finances (Management) Act*** and the ***Financial Instructions*** prescribing the method of disposing of State property applied; and

(c) The Museum had been advised to this effect in 1998 by the State Solicitor, but ignored the advice; and

(d) The entire process of approval from Trustees was unnecessary and unlawful. The Trustees had no power or right to consider and approve the "sale"; and

(e) The purported approval to remove and export the Swamp Ghost aircraft was illegal and ultra vires the power of the Museum; and

(f) The process of submission of the proposal to the Trustees of the Museum was inadequate, intentionally misleading and designed to force a particular decision from the Trustees; and

(g) The submissions to the NEC, this Committee and the Office of the Prime Minister were, in material matters, intentionally misleading and intended to hide the true nature of the Agreement; and

(h) The Museum acted in breach of the ***Public Finances Management Act*** in that the Agreement required the Museum to receive and allocate money as a Trustee; and

(i) That the Museum appeared to have been attempting to give away State property for no benefit to the State, with no public tender and in breach of the requirements of the ***Public Finances (Management) Act*** with no power so to do; and

(j) That the Museum had issued an "Export Permit" with no power to do so and on no apparent legal basis; and

(k) That the Museum failed to assess or investigate either the Agreement or the Buyer at all and thereby failed to protect State ownership and State property; and

(l) That the Museum did not know and did not care that March Field Museum had no arrangement with the buyer of the Swamp Ghost as claimed by the buyer and as put to the NEC and the Trustees by the Museum; and

(m) Neither the Acting Director or his Management Team had any interest in the future of the Swamp Ghost but were only interested in obliging the "buyer"; and

(n) That State property, described by the Museum and its Minister as "unique and priceless" was given away with no benefit to the State; and

(o) The Museum "sold" State property to foreigners who were not holders of any permit to remove under the War Surplus Materials Act and which were not certified to carry on business in Papua New Guinea; and

(p) That the Board of Trustees had ratified an illegal Contract as a result of threats and duress; and

(q) Neither the Acting Director of the Museum nor the Trustees (or any other person) could or would assist the Committee to find the legal basis for the "sale" and approved export of the aircraft.

25.15 The Committee commenced the second day of the Inquiry with grave concerns as to the actions and motivation of the Museum Management and staff in their dealings with War Surplus Materials and thereby State property– particularly the Acting Director Mr. Simon Poraituk.

25.16 The Committee were also concerned at the apparent influence wielded by foreigner salvors and dealers within the National Museum and Art Gallery. These concerns were not mitigated by the refusal of each of the companies or individuals concerned to assist the Committee.

25.17 The Committee again sought by written communication and questioning, to identify the legal basis for the actions of the Museum. The Committee gave all parties and any persons who could assist, the right to be heard on this issue.

25.18 Before the commencement of the second day of the Inquiry, written requests for assistance were sent to Aero Archaeology LLC, the lawyers of that company, HARS, 75th Squadron Museum, Mr Robert Greinert, Mr Fred Hagen, Classic Jets Museum and every collector and museum known to be in possession of War Surplus Materials from Papua New Guinea. All those interested parties were provided with the opportunity to make submissions or answer allegations from the Committee.

25.19 With the exception of Classic Jets Museum and Pioneer Aero-Restorations (a New Zealand company) no response was received.

25.20 In particular, Aero Archaeology LLC declined to assist the Committee at all either directly or through its lawyers. Instead it resorted to threats that it would remove the aircraft apparently regardless of the Inquiry or the law.

25.21 The Committee does not understand this reluctance. Information from that company or its Lawyers might have been of considerable assistance to the Committee in understanding the legality of the proposed sale.

25.22 During the second day of the Inquiry, oral evidence was again received from the Acting Director Mr. Simon Poraituk and the Trustees. Despite still being subject to a Summons to Appear, Mr Robert Greinert did not attend the Second Day of the Inquiry.

25.23 On the Second Day of the Inquiry the Committee asked Mr Poraituk the following question:

Acting Chairman:

"The Export Permit for the Swamp Ghost, signed by you, recites that:

"I Simon Poraituk, as an Officer delegated by the Board of Trustees of the Papua New Guinea National Museum & Art Gallery ..."

When was that delegation given? We have asked for a copy of all delegations but we have not received any. Where is it and why have you not given it to us? Is it a written delegation? What power is delegated and what Statute gives the Trustees or yourself the power in the first place?

25.24 Mr Poraituk was unable to tell the Committee what was meant by the recitation and was unable to produce any delegation.

25.25 The Committee further asked Mr Poraituk the following questions:

"Acting Chairman:

In the Papers before us you have said:

... Officers of the Museum other than the Director have power to make on the spot decisions to export licences or otherwise authorize salvage operations ..

Where is that power found?"

25.26 Mr Poraituk was unable to tell the Committee what was meant by that Statement or where such a power was located or what Statute gave the power to Officers of the Museum.

25.27 The Committee further asked Mr Poraituk the following question:

Deputy Chairman:

"Mr Poraituk, in the Brief to the Prime Minister written by you on the 12th June 2003 at paragraph 1.3 you say:

Legal authority to issue permits for salvage and export of war relics invested in the Museum for the Trustees.

We ask you again where is that power found? We cannot locate any such power at all."

25.28 Once again, Mr Poraituk was unable to tell the Committee where this power was to be found. On the Second Day of the Inquiry the Committee asked Mr Poraituk on five separate occasions to identify the legal power in the Museum to sell State owned property such as the Swamp Ghost or to permit the removal and export of other war surplus material. The Committee could not obtain any or responsive answer to those questions.

25.29 The Committee had requested Mr Poraituk to produce records of all other aircraft exported from Papua New Guinea with the approval of the Museum in the last thirty years.

25.30 Information had been received by the Committee that Mr. Poraituk was intending to accuse a Member of the Public Accounts Committee of involvement in the illegal export of an aircraft from Papua New Guinea without producing relevant documents as he had been ordered to do.

25.31 The Committee had already investigated this matter and found the allegations against the Member to be completely untrue and groundless.

25.32 The aircraft concerned was not a wartime aircraft, did not belong to Papua New Guinea, had been donated by the Australian Government to a Technical College, was exported for the purpose of restoration at an Australian Defence Force Museum at Oakey in Queensland and, ironically, was exported with the full approval of the Attorney General of Papua New Guinea and the National Museum & Art Gallery.

25.33 The Committee found that the allegation was a concerted attempt by the Director and Management to discredit this Committee by deliberately hiding and refusing to produce records and files to the Committee - despite being directed to do so. The material was withheld to be used at a time of the Museums choosing, for the purpose of frustrating this Inquiry.

25.34 In this regard, the Committee made the following comments in its Interim Findings:

"***We are concerned at the recalcitrant attitude of Management of the National Museum. Trustees directives are ignored, illegal transactions are carried on and it appears to us that the Museum serves the interests of foreign salvors of dubious background and intentions over and above their charter – which is to protect the cultural heritage of the nation.***

We can properly conclude that this institution is the worst and most incompetently run of any that has been before us. To compound the illegality that we have detected, the Management has acted in a devious and squalid manner before this Committee.

Yesterday the Management of the Museum made very serious allegations against a Member of this Committee – clearly in an attempt to compromise this Committee.

We had directed that all such material be produced to this Committee, but this information was deliberately held back.

This Committee finds the allegations to be baseless and false. We will refer the Managers involved for full investigation and prosecution. We will also send a copy of these findings to the relevant Ministers with a recommendation that the Management of the Museum involved in this matter be removed immediately."

25.35 This conduct well illustrates the contemptuous and dismissive attitude demonstrated by the Museum staff and its Acting Director toward this Committee, its Inquiry and the Law in general.

25.36 The evidence of the Second day of the Inquiry did not resolve the issue of the legal basis for the Museum to sell and export State owned property.

25.37 The Committee was left in a position where it could not find any evidence of delegation of power to the Museum or any other legal basis for the Museums actions.

25.38 The Managing Director of the Investment Promotion Authority, Mr. Ivan Pomelau attended the Public Accounts Committee Inquiry and gave evidence and produced documents.

25.39 This Authority and its Management were extremely helpful and prompt in their response to all requests from the Public Accounts Committee.

25.40 This Committee commends the Investment Promotion Authority and its Director Mr Ivan Pomaleu for the prompt and extremely efficient response and clear and balanced evidence in this Inquiry.

25.41 The Investment Promotion Authority records (which were taken into evidence) showed that although Aero Archaeology Ltd. was a registered company in Papua New Guinea, it was not certified to carry on business in accordance with Section 28 of the ***Investment Promotion Authority Act.***

25.42 Further, neither Robert Greinert, Fred Hagen, HARS, Aero Archaeology LLC, 75 Squadron Flying Museum, Ian Whitney, Bruno Carnovale or any entity known to be operating on their behalf in removing and exporting aircraft wrecks from Papua New Guinea were certified to carry on business in this country.

25.43 The evidence of Mr. Pomelau in a letter to the Committee of the 6th September 2006 was:

> ***" Further we conducted a search on our Certification database under the Investment Promotion Act. We confirm that all the names of entities and persons requested under your Notice to Produce of 31st August 2006, do not appear on our certification database as approved, cancelled or exempt foreign enterprises.***
>
> ***Under the circumstances, we must further assume that they have not applied for certification permitting them to carry on business in the relevant business activity, and location.***
>
> ***Therefore, if they are indeed carrying on or attempting to carry on business in the specific activity and location, they would be doing so without proper certification under Section 28 of the Investment Promotion Act 1992".***

25.44 Accordingly, the Committee found sufficient evidence to justify a referral of this matter to the Investment Promotion Authority for investigation.

25.45 The Committee received oral evidence from Mr Justin Taylan, an American citizen. This witness was clearly something of an expert on wartime aircraft both in and originating from Papua New Guinea.

25.46 Mr Taylan had no apparent personal interest in the fate of the Swamp Ghost or any other aircraft exported from this country. The Committee finds him to be a truly independent and quite possibly an expert witness in the subject of military aircraft in Papua New Guinea and the removal of those wrecks from this country.

25.47 Mr. Taylan maintains a website called "Pacific Wrecks" and has, single handedly, managed to trace and locate almost every aircraft ever removed from this country and was able to give this Committee very valuable advice as to the whereabouts of individual aircraft, wrecks or parts and the means by which those aircraft were passed from the exporters to new "owners".

25.48 The Committee found Mr Taylans evidence as to the extent of the removal of these aircraft over the last decade and the complicity of the Museum to be of great assistance.

25.49 In particular, Mr. Taylan testified that the premises of Aero Archaeology LLC in Philadelphia USA. That premises was, apparently, the residence (or business) of Mr. Fred Hagen and not a Museum or aircraft facility of any sort.

25.50 This confirmed evidence and information gathered by the Committee.

25.51 Mr. Taylan also gave evidence that the Swamp Ghost aircraft was an artifact of very considerable financial value and that the aircraft was not bound for March Field Museum as the buyer had claimed.

25.52 The Second Day of the Inquiry was largely occupied by evidence concerning the removal of other aircraft from Papua New Guinea. We will address this later in this Report.

25.53 At the conclusion of the Second day of the Inquiry, the Committee was able to deliver an Interim Finding on the Swamp Ghost sale and we record those Findings thus:

PUBLIC ACCOUNTS COMMITTEE

SALE AND EXPORT OF THE SWAMP GHOST

AIRCRAFT AND WAR SURPLUS MATERIALS

INTERIM FINDINGS

1. ***The Public Accounts Committee finds that the on all the evidence before it, the Contract between Aero Archaeology LLC and the PNG National Museum & Art Gallery is intended to be a Contract of Sale of a B 17 aircraft known as the Swamp Ghost.***

2. ***The effect of that contract is to pass title of the Swamp Ghost Aircraft to a foreign buyer. 100% of the State's ownership of this aircraft wreck has been sold by the PNG National Museum & Art Gallery.***

3. ***The Public Accounts Committee finds that the PNG National Museum & Art Gallery has no power to sell the Swamp Ghost Aircraft, or deal with War Surplus Materials.***

4. ***The PNG National Museum & Art Gallery cannot enter Contracts to bind the State. It is a Corporation in its own right but is not an agent of or representative of the State – particularly in respect of the sale, salvage, removal or export of State-owned property.***

5. ***The State of Papua New Guinea still owns the Swamp Ghost and no effective Contract of Sale, salvage, removal or export has been formed nor could the Museum do so.***

6. ***Any purported contract between MARC and the PNG National Museum & Art Gallery to purchase and remove the Swamp Ghost Aircraft was illegal, unenforceable and invalid.***

7. ***We also find that a previous attempt to export the aircraft was refused by the Government of the day.***

8. ***The assignment of that contract from MARC to Aero Archaeology LLC may or may not have been valid, but certainly the Museum had no power to approve the assignment.***

9. ***The assignment of the benefit of the Contract from MARC to Aero Archaeology Limited has not affected in any way the position of the State of Papua New Guinea.***

10. ***It still owns the Swamp Ghost Aircraft and the PNG National Museum & Art Gallery have no power at all to deal with, sell, approve the removal or export or in any way to make any decision affecting the Swamp Ghost Aircraft without the appropriate delegation – which, so far as this Committee can discover, does not exist. Nor is it claimed by the Museum.***

11. ***The Swamp Ghost Aircraft should be immediately seized by the State and protected and preserved until a decision can be made as to its future.***

12. ***A full refund of all monies paid to the PNG National Museum & Art Gallery should be made to MARC and/or the lawyers representing Mr Fred Hagen and/or Aero Archaeology Limited.***

13. ***The property of the State can only be disposed or sold in accordance with the terms of the Public Finance (Management) Act and/or Financial Instructions promulgated thereon.***

14. ***The State Solicitor, in 1998, quite correctly pointed out this fact to the PNG National Museum & Art Gallery which, in its dealing with Aero Archaeology Limited, it completely ignored.***

15. ***The Solicitor General rightly advised the PNG National Museum & Art Gallery that a primary decision to sell or dispose of State property must be made, followed by a process of writing off after inspection by a Board of Survey and, unless exempted, sale by Public Tender and placement of proceeds received in an approved Trust Account.***

16. ***Certainly, for State property which the Museum itself described as "unique" and "priceless" the tender process is completely appropriate. Attempts have***

been made by the Acting Director of the PNG National Museum & Art Gallery to show that the Museum is exempt from the terms of the Public Finance (Management) Act and its requirements, but this Committee does not accept the justification or the reasoning advanced by the Museum.

17. This Committee has very carefully considered a large number of documents placed before this Committee dealing with the export of the Swamp Ghost Aircraft.

18. The Committee has reached the view that, on all the evidence, there has been a concerted attempt to illegally obtain State property by virtually any representation, promise or undertaking which the parties deems it expedient to give it any particular time.

19. The export of this aircraft has been the subject of three Submissions. Two were to the National Executive Council and one was a Briefing Paper to the Prime Minister. A further Briefing Paper to the Minister has been delivered to this Committee. Each of those documents is contradictory and, in some cases, self-contradictory. Whatever representation seemed to be capable of attracting political favour from a decision-maker or to obscure the facts, was given quite irrespective of the truth.

20. That course of conduct continued before the current Board of Trustees who, so far as we can ascertain, acted in good faith but under personal and quite improper duress when approving the sale and export – which they have no power to do in any event.

21. Many of those Statements originated from the individuals working for or on behalf of Aero Archaeology Limited, but many were also the product of the Deputy Director of the Museum and the Museum staff.

22. So far as this Committee can ascertain, the fact that the State property had been sold was <u>never</u> made known to the Minister, the Board of Trustees, the

NEC or the Prime Minister. This failure is inexplicable.

23. The Board of Trustees of the Museum both past and current approved the actions of Management in selling the Swamp Ghost and permitting its export. The Trustees have no apparent power to do so.

24. This Committee has ascertained that the Board of Trustees were never told that the Contract was one of sale, never sighted the contract or the Agreement, knew nothing of the purchaser, were actively misled as to the intentions of the purchaser, were not told of an independent valuation, were told that there was no alternative to the export, were never told that the export of the aircraft had previously been refused, were led to believe that the aircraft remained the property of the State and would either be returned to Papua New Guinea or would be under the control of the Government of Papua New Guinea and that they could dictate certain preconditions to the export and/or the terms upon which the purchaser would hold the aircraft.

25. The fact that the Board of Trustees was deliberately left in such ignorance by Management is a matter of very serious concern.

26. Further, the current Board of Trustees were threatened with personal litigation by the purchaser unless they agreed to approve the sale and export. That foreigners can affect the decision of the Board of Trustees in such a way is a matter of very great concern to this Committee. It shows contempt for the Law of Papua New Guinea and for a Board of Trustees of a scientific institution.

27. It has become apparent to the Committee that the Museum failed even to comply with its own Guidelines in agreeing to the sale, salvage and export of the Swamp Ghost Aircraft. We can find no inquiries of either MARC or Aero Archaeology LLC which begin to satisfy the requirements of the Guidelines.

28. The Museum failed to detect at least the following matters:

- ***The Purchaser had never owned an aircraft;***
- ***The purchaser had exported one aircraft from PNG without holding ant permit or approval;***
- ***The purchaser had used a third party as an agent to obtain aircraft from PNG;***
- ***The Purchaser had no history of aircraft restoration or;***
- ***The Purchaser had no facility or exhibition capability;***
- ***The Purchaser had no ability to restore;***
- ***The Purchaser had never restored an aircraft;***
- ***The Purchaser had no history in the aviation industry;***
- ***The purchaser had no apparent plans for the aircraft other than to obtain it;***
- ***The Museum had no power to approve an assignment of the contract;***
- ***The Museum had no power to act as an agent of the State or to sell State property;***
- ***The Purchaser as a foreign enterprise, was not certified to do business in this country;***
- ***The Purchaser had no salvage permit or authority from the Museum or anywhere else;***
- ***The Purchaser actively misled the Museum and thereby the Minister, the NEC, the Prime Minister and this Committee into believing that***

the aircraft would be housed and restored at March Field Museum in California;

- ***No Police clearances or reference material was obtained by the Museum;***

- ***The purchaser dealt directly with the Landowners in contravention of the War Surplus Act;***

- ***No competent or coherent proposal for the aircraft was put to the Museum by the Purchaser;***

- ***The proposals for the aircraft changed according to the person or office to which they were made;***

- ***The Purchaser's co-shareholder and salvor of the aircraft was the individual who performed the "independent" valuation relied on by the PNG National Museum & Art Gallery when fixing a value to the Swamp Ghost;***

- ***There was no transparency to the transaction;***

- ***The Museum had no information at all on comparative sales or valuations nor did it seek any;***

- ***The Museum ignored advice from the Solicitor General and failed to comply with the Public Finances (Management) Act and Financial Instructions;***

- ***Legal advice was not given to or sought by the Trustees;***

- ***The Museum had no power to deal with the purchaser at all and no power to enter any transactions;***

- ***The Trustees had no power to consider or approve the transaction;***

- ***No delegation had ever been given – nor was claimed by the Museum to empower it to sell State property – or even to approve salvage or removal;***

- ***The Museum had acted ultra vires its own Act;***

- ***The contract was illegal and unenforceable;***

- ***Consideration was inadequate or non-existent;***

- ***That 100% of the State's ownership was sold;***

- ***State approval for export of the Swamp Ghost had already been refused for MARC – the original contracting party – a fact not made known to the Board of Trustees.***

29. Had the Museum made even basic inquiries it would have discovered that the Purchaser did not begin to satisfy the Museum Guidelines, was not a Museum or entity which had any capacity at all to restore or deal with such a valuable artifact.

30. Further, the Museum commissioned an independent valuation of the Swamp Ghost Aircraft. That valuation was prepared by Mr Greinert – himself a salvager and the salvager used by the Purchaser of the Swamp Ghost Aircraft. As we have already said, he is a shareholder of Aero Archaeology Ltd.

31. Curiously, the valuation coincided with the amount paid by Aero Archaeology LLC. Further, the Agreement with Aero Archaeology Limited contains no consideration for the sale of the aircraft. Legal advice received by this Committee is that the Contract would fail for that reason alone.

32. Further, Mr Greinert had a history of salvaging for, with or on behalf of Mr Fred Hagen quite irrespective of the fact that the State of Papua New Guinea owns all War Surplus Material which he was salvaging and exporting for HARS. HARS and/or Mr Greinert appear

to be acting as agents for wealthy collectors irrespective of the terms of their agreements with the Museum.

33. Further, the copy of the contract given to the Committee is undated. Title to the aircraft passes when the contract is executed but in the absence of any date of execution, title has not passed.

34. In summary, the actions of the Museum in selling the Swamp Ghost is unlawful. The Museum has been given ample opportunity to show the Committee how it has power to sell State property, but has failed to assist us. The purchaser has been given the same opportunity but has refused to assist the Committee.

35. The entire transaction was facilitated by worthless documentation and threats to the Trustees.

36. The Contract is disallowed. The Swamp Ghost was, is and should remain State property.

37. What happens to the aircraft is a matter for Government – not the Museum.

38. Ultimately it may be that this aircraft is to be sold by the State. That decision must be made by Government and activated in accordance with the Public Finance (Management) Act and Financial Instructions.

39. This is a significant historical artifact worth many millions of US dollars.

40. If a decision is made to sell and if all steps are taken under the Public Finances Management Act to write off and offer for sale, a Public Tender is a thoroughly appropriate method of fixing a valuation to the aircraft.

41. However, it is the recommendation of this Committee that the Independent State of Papua New Guinea <u>never</u> dispose of ownership of this aircraft to

any degree – and certainly not to a private individual or collector.

25.54 The Committee has no cause to change its findings or conclusions.

26. OTHER AIRCRAFT WRECKS EXPORTED FROM PAPUA NEW GUINEA

26.1 The Swamp Ghost Aircraft is the only aircraft which, to the knowledge of this Committee, has been "sold" by the Museum.

26.2 However, the Committee during the course of this Inquiry, has identified approximately 89 other aircraft or parts of aircraft that have been salvaged and exported from Papua New Guinea with the full complicity of the National Museum & Art Gallery.

26.3 Ownership of all that material remains with the State of Papua New Guinea. Further, the Committee cannot establish any legal basis for the Museum to approve the removal or export of these items. That power seems to remain with the Head of State pursuant to the terms of the ***War Surplus Materials Act***.

26.4 Neither Mr. Poraituk nor any other witness, party or other person or entity could or would assist the Committee to identify the legal basis upon which these aircraft were taken from this country.

26.5 A number of those aircraft are now in the custody of various collectors or private collectors or Museums. How that occurred is not known in every case, but the Committee received uncontradicted evidence that 75th Squadron Flying Museum and Robert Greinert have actively engaged in on-sale, donation, trading, lending or otherwise dealt with this State Property as if it was their own.

26.6 This Committee finds that there has been an ongoing international trade in aircraft wrecks and parts illegally obtained and removed from Papua New Guinea, with the full connivance of the Museum.

26.7 This has been done by approved salvors and exporters in breach of their own Agreements with the Museum – which recite that the exported material is them property of the State of Papua New Guinea.

26.8 If the evidence of on-selling and trading is true, these exporters have acted with complete disdain for and disregard of the Law of Papua New Guinea and with apparent impunity and immunity. Certainly they had nothing to fear from the National Museum and Art Gallery.

26.9 Further, the Museum has actually participated in the selling and trade of this State property. The only step taken by the Museum when it learned of this trade was to demand a cut of the profits – which were then used to fund a trip overseas for the Minister and Museum staff.

26.10 Almost all of these aircraft, so far as this Committee can discover, were given away with no return to the State (as opposed to the Museum and its Management).

26.11 The selling of an item with no title or right, may be a criminal conversion and it is the intention of this Committee to refer every one of these transactions and the responsible salvors or exporters who sold or parted with war surplus material belonging to the State, to the Royal Papua New Guinea Constabulary, Foreign Police Forces and International Law Enforcement Agencies for a full and complete investigation with a recommendation that criminal charges be laid should there be sufficient evidence.

26.12 Information and evidence before the Committee suggests that at least the following aircraft have been exported from Papua New Guinea. Where appropriate, we indicate the possible whereabouts of the aircraft:

LIST OF AIRCRAFT SALVAGED.

1960's. Total – 5.

- A6M2 Zero 51553 (salvaged 1967, later sold to USAF Museum. Restored to static display 2004).

- P-47 “Sweetwater Swatter” 42-8066 (salvaged 1969, sold to MOTAT 1970, sold to Robert Greinert 1991).

- Ki-61 Tony 379 (salvaged 1960s, sold by PNG Museum in 1980s to USA, Weeks Museum)

- Ki-43 Oscar (salvaged 1960s, moved to PNG Museum, exported in 2001. Exact whereabouts unknown.)

- A6M2 Zero 3471 (salvaged 1968 to Canada. Used in restorations. Remainder resold and in storage)

1970s – TOTAL: 25

- A6M5 4323 (salvaged 1971, sold to San Diego Aerospace Museum. Destroyed in arson fire)

- A6M2 two seat Zero (salvaged 1972. Sold to Tokyo Science Museum)

- D3A2 –Val 3105 (salvaged 1973. Displayed unrestored at Nimitz Museum)

- A6M2 Zero 5784 (salvaged 1973. Restored by the RAAF to static display at Australian War Memorial)

- P-4ON 42-104961 (salvaged 1973. In storage in USA ever since)

- P-39N 42-18811, 42-11408 (salvaged 1973. Whereabouts unknown)

- P-39K 42-4351 (parts only) (salvaged 1973.Whereabouts unknown)

- P-39Q 42-18403 (salvaged 1973. .Whereabouts unknown)

- Spitfire Mark Vc A58-146 (salvaged 1974. Restored to static condition and displayed)

- PP-40E 41-36166 (salvaged 1974 to PNG Museum, removed by Robert Geinert in 2001)

- A-20 43-21627 (salvaged 1975, stored in Chino. Presently being restored at PIMA Museum

- P-39Q 42-19993 (salvaged 1975. Restored to static and displayed in museum. Restored to fly 2004)

- P-39Q 42-19995 (salvaged 1975. Whereabouts unknown)

- P-39N 42-19027 (salvaged 1975. Restored to static display at Planes of Fame)
- P-40N A29-448 (salvaged 1975. Restored to flying condition in New Zealand, 2000)

- P40N 42-105915 (salvaged 1975. Restored to flying condition in Australia, 2002)

- P-40N A29-405 (salvaged 1975. Owned by several owners, currently in NZ)
- P-40N 42-105951 (salvaged 1975.Wings in New Zealand, fuselage in USA all in storage)

- Beaufort A9-13 (salvaged 1975. Sold to Australian Army Flying Museum and displayed unrestored)

- Beaufort A9-557 (salvaged 1975 to USA. Resold to Australian War Memorial. Restored to static display 2003)

- Beaufort A9-559 (salvaged 1975. Resold and used in UK Beaufort restoration)

- Beaufort A9-226 (salvaged 1974.Presently with Beaufort Restoration Group)

- P-39N 42-8740 (salvaged 1975. Restored by several groups, restored to static display at Yanks Museum)

- P-39Q 42-19991 (salvaged 1975. Whereabouts unknown)

- P-39Q 42-20339 (salvaged 1975. Whereabouts unknown)

- P-40N A29-556 (salvaged 1975. In storage in Chino, CA ever since)

- Boomerang A46-174 (salvaged 1975.Sold to Weeks Museum)
- Spitfire Mark Vc A58-149 (salvaged 1977?)
- Spitfire Mark Vc A58-178 (salvaged 1977)
- Spitfire mark Vc A58-213 (salvaged 1977)
- P-38 42-1264 (salvaged 1978 to PNG Museum. Half remains removed by Robert Greinert 2001)

1980s – TOTAL: 14

- P-39K 42-4312 (salvaged 1982 to Australia. Under restoration)
- Ki-61 Tony 640 (salvaged 1984 to PNG Museum. Removed by Robert Greinert 2004)
- A-20G "Hell 'N Pelican" 42-86786 (salvaged 1984. Restored to static display by RAAF. In storage)
- DB-7 "J is for Jessica" A28-8 (salvaged 1984.Restored to static display for RAAF Museum)
- A-20G 42-86615 (salvaged 1985.In RAAF storage)
- A-20G 43-9401 (salvaged 1985. In RAAF storage)

- A-20G 43-9491 (salvaged 1985. In RAAF storage)

- A-20G 9629 (salvaged in 1985. In RAAF storage)

- A-20G "Lady Constance" 43-9628 (salvaged 1985. In RAAF storage)
- A-20G "Big Nig" 43-9436 (salvaged 1985. In RAAF storage. Transferred to Precision Aerospace)

- Ki-61 Tony 299 (salvaged 1984 to PNG Museum. Removed by Robert Greinert 2002)

- K1-43 Oscar 5465 (salvaged 1984 to AWM Museum. Static display and in storage)

- Ki-61 Tony 640 (salvaged 1984 to PNG Museum. Under restoration at Precision Aerospace)

- P-400 Ap 335 (salvaged 1984 to USA. Whereabouts unknown)

1990s – TOTAL: 10

- P-40E A29-7 (salvaged 1990. Whereabouts unknown)

- P-40N "Suzy" 42-105820 (salvaged 1991. Whereabouts unknown)

- P-40E (salvaged 1991.Whereabouts unknown)

- P-38H 42-66841 (1992 to Australia Classic Jets.Under static restoration)

- B-24D "Flying Wolf" 42-41091 (1990s wings only to Werribee B-24 Restoration. Static restoration)

- P-40N "The Carolina Belle" 42-104947 (1997 to Classic Jets, today Precision Aerospace restoration)

- Ki-61 292 (1999 to Classic Jets. Static display)

- P-47D 42-27608 (1999 Robert Greinert to Australia. Under restoration)

- P-40K A29-183 (1999 transferred from Robert Greinert to Graham Orphan in New Zealand)
- P-40K Unidentified (1999 Robert Greinert sold to PIMA Museum

2000s – TOTAL: 18 AS OF 2006

- P-40K "Swing It" 42-45981 (Removed 2000 by Greinert sold to PIMA Museum)

- P-38H "Japanese Sandman II" 42-66905 –(2000 tail & booms only removed by Greinert, to Precision Aerospace)

- P-39D 41-38351 (2000 tail section taken from PNG Museum by Greinert to Australia. In storage)

- Beaufort A9-622 (2000 tail section by Greinert for AWM restoration)

- P-39F 41-7191 (2000 tail recovered by Greinert, taken by 75 Squadron to Australia)

- P-40N "Come In Suckers" A29-414 (salvaged 2001 by Greinert. Sold to New Zealand)

- P-47D 42-8130 (2001 removed from PNG Museum by Greinert and donated to PIMA Museum)

- F54 Lightning 42-13084 (2001 removed from PNG Museum by Greinert)

- P-47D "Fiery Ginger IV" 42-22668 (2003 tail & weapon removed by Greinert donated to USAF)

- P-38H 42-66538 (2002 tail & booms salvaged, location unknown)

- Hudson A16-36 (2002 tail fin recovered by Greinert for AWM)

- P-38G "Dumbo!" 42-12847 (2002 salvaged by Greinert to Australia, Precision Aerospace)

- P-38H 42-66534 (2003 salvaged by Jarret. Now with Classic Jets)

- P-40E A29-43 (2003 pieces salvaged by Greinert for use as an template)

- P-40E "The Spoddessape" 41-25178 (2003 salvaged by Greinert/Cockayne to Australia)

- P-40N 42-104986 (2004 salvaged by Greinert/Griffith to Precision Aerospace)

- P-47D 42-2268 (2004 salvaged by Greinert/Hagen to Australia – now claimed as the property of Hagen.)

- P-40N "Punkins" 42-104977 (2005 salvaged by Greinert, resold to Warbird Adventures)

Of the above, only three have been restored.

Salvaged Aircraft Restored to Flying Condition

- P-390 42-19993 (salvaged 1975 restored to static and displayed in Museum, restored to fly 2004)
- P-40N A29-448 (salvaged 1975, restored to flying condition in New Zealand 2000

- P-40N 42-105915 (salvaged 1975, restored to flying condition in Australia, 2002)

26.13 A list of approximately 30 of these aircraft were given to Mr. Greinert for comment. He denied knowing anything of a number of these aircraft. The Committee does not accept this evidence.

26.14 It is clear from the salvage records and Memorandums of Agreement maintained by the National Museum & Art Gallery that he was the exporter concerned. This Committee found his evidence self serving and evasive in this regard.

26.15 On the Second Day of the Inquiry the Committee requested Mr Robert Greinert to provide the Committee with a Statement of his plans or proposals to repatriate all aircraft and parts to Papua New Guinea or to recover all aircraft and parts which he may have exported but on-sold or given away. Mr. Greinert was given seven days to produce the Statement. Nothing has been received.

26.16 The Public Accounts Committee further directed Mr. Greinert to provide a full and complete Statement of all and every payment, donation, political donation, gift, consideration or reward including payments to staff or officers of the Museum or payments of per diems, travel expenses, accommodation or meals for or to staff or officers of the Museum. Nothing has been received.

26.17 It is noted by the Committee that the Museum management seemingly had no knowledge of these aircraft or any concern

or understanding that these very valuable artifacts were owned by the State. Rather, the Museum had clearly cooperated in the export of these aircraft and did not care that they were onsold to no profit to the State – indeed, to the loss of the State.

26.18 This Committee intensively questioned Mr. Poraituk concerning any action taken by the Museum to recover or reassert the ownership of the State over these aircraft.

26.19 Neither Mr. Poraituk nor the rest of the Museum staff showed the slightest interest in doing anything to trace these aircraft or to protect the interest of the State.

26.20 This Committee, by two hours of on line inquiry, located many of these aircraft and established the fact that the exporters from Papua New Guinea had sold these aircraft contrary to the terms of their Memorandums of Agreement with the Museum.

26.21 Yet the National Museum and Art Gallery, the very institution charged with protecting the nations heritage and which (quite illegally) has assumed the right to sell or give away these pieces of State property, cannot and will not do anything to trace and protect the States ownership of these valuable aircraft.

26.22 In December 2006 and January 2007, the Committee called on Mr. Poraituk to state the actions taken by him to trace and

recover or assert ownership over the aircraft exported from this country.

26.23 No action had been taken by him or any other member of the staff of the Museum.

26.24 Mr Poraituk blamed lack of funding for his inability to trace these exported aircraft. This Committee does not accept this excuse. Researchers located these aircraft in a few hours on the internet with no assistance or records from the Museum.

26.25 With the contacts and records held by the National Museum, it should be short work to locate and commence the process of recovery.

26.26 This Committee concludes that neither Mr. Poraituk nor Museum senior management will do anything which might interfere with a lucrative trade in this nations war relics – a trade from which the State receives no benefit at all, but loses all its right and title to the aircraft through the illegal activities of its own Museum.

26.27 As we have already found, there are three main exporters of War Surplus Materials. There seems to be intense rivalry between these entities.

26.28 Considering the evidence that the Museum has participated in the onselling of exported War Surplus Materials, this Committee can only conclude the Museum has completely lost

sight of its purpose and function which, inter alia, is to protect and preserve State ownership of cultural and historical items.

26.29 Any money received for sale must now be accounted for – as must the legality of any sale, the current ownership and what right "salvors" had to sell, give away or otherwise deal with these pieces of State property.

26.30 The Committee made inquiries to establish the precise amount of money received by the Museum from salvors and exporters.

26.31 The evidence was as follows:

- On the 18th June 2003 75th Flying Squadron Museum gave the National Museum & Art Gallery K55,000 which was suppose to be deposited into the IBD designated to the Boston Bomber Hanger Trust Account.

- These monies were, apparently, proceeds of sale of aircraft and parts removed by 75th Flying Squadron Museum from Papua New Guinea.

- That sale was made in complete contravention of the Memorandum of Agreement between the 75th Flying Squadron Museum and the National Museum and Art Gallery – which records that the property was and remains that of the State of Papua New Guinea.

- The Committee has asked the Office of the Auditor General to trace those funds.

- The evidence before this Committee suggest that that money was used by the relevant Minister for the payment of travel expenses and was <u>not</u> applied to the purpose which it was paid into the Trust Account. Depending upon the Report of the Auditor General, this Committee

will consider referring the then Director and Management of the Museum for misapplication of those funds.

- 75th Flying Squadron Museum has also donated the following items:

    - Computer to the Administration Office – K8,500
    - Computer to the Department of Modern History – K8,500
    - 1 Digital Camera – K1,200
    - Supply and installation of phone/fax machine – K1,800
    - Stationery – K890
    - Repair and servicing of airconditioners – K3,000
    - Erection of fence to the Modern History Section – K15,000
    - Travelling expenses – K4,644

26.32 The Committee has also requested the Office of the Auditor General to make inquiries as to the acquittal of and accounting for these items.

26.33 The Committee has established that Historical Aircraft Restoration Society gave to the Museum the following:

- 4 x 4 Toyota Hilux – K33,000
- Refrigerator – K1,400
- Lap Top Computer – K5,000
- Stationery and computer equipment
- Software – K1,200

26.34 The Committee has requested the Office of the Auditor General to consider the treatment of these gifts and payments.

26.35 The Committee has been advised that HARS paid an additional K10,300 for travel expenses of Museum Officers and USD27,000 as a gift to the Museum from Mr Robert Greinert. Mr Greinert alleges that this money was stolen.

26.36 The Committee has sought a full Report from the Office of the Auditor General on these allegations.

26.37 This Committee has written to identified receivers or buyers of aircraft, seeking information and assistance. With two exceptions, we have received no reply – and the two replies which were received were self serving and evasive. Both refused to identify the person or company from which they had "purchased" the aircraft in their possession – which were originally exported from Papua New Guinea.

26.38 The Committee has called for submissions from the three major exporters mentioned earlier in this Report, concerning the current whereabouts of aircraft that they have removed from Papua New Guinea. We have received no reply.

26.39 Clearly the Museum is unwilling to carry out any tracing exercise unless coerced to do so by Government.

26.40 The Committee will recommend to the Parliament that steps be taken to obtain assistance from Law Enforcement agencies both domestic and international to trace and assert ownership over the aircraft.

26.41 At the end of the second day of the Inquiry this Committee were able to make the following Interim Findings concerning the export of aircraft from Papua New Guinea and the trade in these wrecks after they had left the country:

" PUBLIC ACCOUNTS COMMITTEE

INQUIRY INTO THE NATIONAL MUSEUM AND ART GALLERY

INTERIM FINDINGS

SALVAGE AND EXPORT OF WAR SURPLUS MATERIALS

1. ***The Swamp Ghost Aircraft is the only aircraft which, to the knowledge of this Committee has been "sold" by the Museum.***

2. ***However, the Committee has identified approximately 82 other aircraft or parts of aircraft that have been salvaged and exported from Papua New Guinea with the full complicity of the PNG National Museum & Art Gallery.***

3. ***Ownership of all that material remains with the State of Papua New Guinea. This Committee finds that there are 4 major salvagers that have been operating in Papua New Guinea with the assistance of the PNG National Museum & Art Gallery.***

4. ***This Committee finds that the PNG National Museum & Art Gallery had now power at all to action or permit salvage, removal or export of War Surplus Materials pursuant to the War Surplus Materials Act. There is no delegation given to the Museum and neither the Museum nor any other party could or would assist this Committee to identify any statutory head of power enabling the Museum to deal with aircraft wrecks and other War Surplus.***

5. ***It is this Committee's tentative finding that the War Surplus Materials Act, while it is administered by the***

Museum, still codifies the method by which the State permits the salvage, removal and export of War Surplus Materials.

6. ***That power is given to the Head of State acting on advice. As that term is used, we understand to mean the Governor General acting on the advice of the NEC.***

7. ***This Committee finds that there has been an ongoing international trade in War Surplus Material illegally obtained and exported from Papua New Guinea with the full connivance of the Museum.***

8. ***We find that 2 and possibly 3 of the salvors operating in this country have engaged in conduct which is unlawful and have dealt in State property by on selling it to their own profit and with no regard at all to the terms of their Memorandum of Agreement with the Museum (which is probably unenforceable and illegal) or the War Surplus Materials Act.***

9. ***This Committee has traced a very large number of aircraft into private hands, Museums and collectors. All those materials are the property of the Independent State of Papua New Guinea.***

10. ***Some of that material has been sold on the open market by salvagers and it is the intention of this Committee to refer those transactions and the salvagers or their agents or the vendors of the War Surplus Material to the Royal Papua New Guinea Constabulary, Foreign Police Forces and International Law Enforcement Agencies for full and complete investigation.***

11. ***We will also intend refer all Management and Officers of the PNG National Museum & Art Gallery who have been engaged in facilitating this export of State property for investigation and prosecution – if any breach of the Criminal Law is detected.***

12. ***It is the recommendation of this Committee that the Board of Trustees and Management of the Museum immediately obtain expert legal advice as to their position. All existing Memorandums of Agreement for the***

sale, export, removal or salvage of War Surplus Materials should immediately be suspended as illegal and unenforceable.

13. ***We are concerned at the recalcitrant attitude of Management of the National Museum. Trustees directives are ignored, illegal transactions are carried on and it appears to us that the Museum serves the interests of foreign salvors of dubious background and intentions over and above their charter – which is to protect the cultural heritage of the nation.***

14. ***We can properly conclude that this institution is the worst and most incompetently run of any that has been before us. To compound the illegality that we have detected, the Management has acted in a devious and squalid manner before this Committee.***

15. ***Yesterday the Management of the Museum made very serious allegations against a Member of this Committee – clearly in an attempt to compromise this Committee.***

16. ***We had directed that all such material be produced to this Committee, but this information was deliberately held back.***

17. ***This Committee finds the allegations to be baseless and false. We will refer the Managers involved for full investigation and prosecution. We will also send a copy of these findings to the relevant Ministers with a recommendation that the Management of the Museum involved in this matter be removed immediately.***

18. ***There should be no more sale, salvage, removal or export of War Surplus Material until the Government has had the opportunity to establish firm policy and to amend the legislation as required. We ask the Board of Trustees to note this finding.***

19. ***Further, to assist the remainder of this Inquiry, we strongly recommend that the Trustees engage an independent audit of all specimens, exhibits, art, collections in the Museums possession since Independence to establish where those things now are.***

20. ***This Committee recommends that the Government of Papua New Guinea immediately elicit assistance from the Australian High Commission, the United States Government, the New Zealand Government, UNESCO, International Law Enforcement Agencies and domestic and foreign law enforcement agencies to trace each and every piece of War Surplus Material that has been exported from Papua New Guinea and reassert the ownership of the State in perpetuity.***

21. ***It does appear to this Committee that salvagers of War Surplus Material from Papua New Guinea may have onsold material to buyers who purchased in good faith.***

22. ***The Government of Papua New Guinea should, when reasserting its ownership of aircraft, or aircraft parts or any War Surplus, take into account the fact that Papua New Guinea cannot house, exhibit or maintain such material at the present time and that innocent buyers may have expended considerable money in restoring and exhibiting aircraft.***

23. ***State ownership, in this sense, may require long term arrangements with collectors or Museums to enable those entities to recoup their expense but always protecting the ownership of the State of Papua New Guinea of these war relics.***

24. ***This Committee finds that the salvagers are not certified to carry out business under the Investment Promotion Act. Whether their activities constitute a breach of that Act is a matter for the IPA and a referral will be made in this regard.***

25. ***Further, the Public Accounts Committee has sought assistance from the Office of the Attorney General and the Office of the Solicitor General to preserve the Swamp Ghost in Papua New Guinea until this Committee had completed its Inquiry. We received no assistance whatsoever.***

26. ***This Committee will refer the Acting Attorney General and the Acting Solicitor General to the Ombudsman, to the***

Department of Personnel Management and to the Papua New Guinea Law Society for full and complete investigation of this failure.

27. ***We extend 7 days to various parties to show cause why this Committee should not make referrals or take certain enforcement steps. A fuller and more complete report will be provided to the Parliament by this Committee in the near future.***

28. ***It is also the recommendation of this Committee that henceforth all War Surplus Material should only be allowed to leave Papua New Guinea to pass into the hands of reputable, state-approved Museums capable of restoring and in circumstances where the ownership of the Independent State of Papua New Guinea remains completely protected for all time.***

29. ***Neither the State nor the Museum should ever again sell or give State property to persons or entities of dubious background and uncertain intentions. At the very least recognition of and compliance with the Laws of Papua New Guinea should be insisted on and full and complete investigation of the foreign interest should be made.***

30. ***It is the recommendation of this Committee that the PNG National Museum & Art Gallery immediately cease all and any dealings with foreign salvagers – or indeed any salvagers – until a political decision is made concerning the export of War Surplus.***

31. ***We also recommend that the War Surplus Materials Act be immediately updated to effect full protection to this part of our heritage and to prevent the Museum ever dealing with this material again..***

32. ***The only exception to these comments is a Museum called Classic Jets Museum. That private institution has been extremely helpful to this Committee and appears to be an entity of good repute.***

33. ***Finally, the degree of influence wielded by foreigners in the Museum is a matter of concern. Clearly the sale of war surplus is big business.***

34. This Committee has heard extraordinary evidence of the conduct of foreign salvors including threats to a Board of Trustees, assault and misrepresentation."

26.42 The Committee makes recommendations and referrals later in this Report.

27. FISCAL RESPONSIBILITIES OF THE GOVERNMENT

27.1 The Government of Papua New Guinea is obliged to adequately fund and resource the National Museum and Art Gallery.

27.2 The Public Accounts Committee made no inquiry into the adequacy of that funding, but notes sworn testimony of the Director of the Museum to the effect that the Government did not adequately fund the Museum. The Committee is of the opinion that, considering the fact that the Museum had not been audited at all for six years, Mr. Poraituk was lucky to receive funding at all.

27.3 However, evidence from Trustees that the Museum had no electricity, no light bulbs, no phones, was closed to the public and that staff families were living in the building suggests that there may be a real funding problem.

27.4 As we have stated earlier in this Report, there is evidence of abuse of Trust Monies within the Museum and this Committee intends to scrutinize the financial management of the Museum in 2007.

27.5 In the meantime, this Committee will make recommendations to Government to fund the tracing of State property in the form of wartime aircraft and the circumstances of their sale or trade to third parties.

27.6 This Committee will also recommend that the relevant Ministers seek advice and assessment as to the immediate financial needs of the Museum.

28. RESPONSIBILITES OF THE AUDITOR GENERAL

28.1 The Auditor General is a Constitutional Office Holder and the duties and responsibilities of that Office are contained in the ***Audit Act 1989.***

28.2 This Committee was concerned to hear evidence that the Museum had not been audited for six years because the staff and management of that institution had no co-operated with the Auditor General. Evidence showed that Museum staff refused to allow the Auditor General to enter Museum premises for the purpose of audit.

28.3 This evidence is totally unacceptable. The Office of the Auditor General failed to carry out its lawful duty and this Committee censures that Office for that failure.

28.4 More particularly, the Committee condemns, in the strongest possible terms, the failure of the Museum and its Director to co-operate with the Auditor General and to produce Reports and accounting records as it was bound to do.

28.5 The Committee will consider the Reports of the Auditor General in due course and reconvene this Inquiry for that purpose at a later date.

29. OBLIGATIONS OF THE NATIONAL MUSEUM AND ART GALLERY TOWARD THE PUBLIC ACCOUNTS COMMITTEE

29.1 The Director, Managers and Trustees of the National Museum and Art Gallery are charged, by Section 5 of the ***Public Finances (Management) Act***, with the responsibility to ensure that information required by the Public Accounts Committee is submitted to that Committee accurately and promptly – (Section 5 (1) (j)).

29.2 The responsibility of that Departmental Head is not derogated from or reduced by reason of any delegation of functions by him to another person.

29.3 The Committee concludes that the Director and management of the Museum conspired to discredit this Committee by withholding what they thought were incriminating documents against one Member of this Committee

29.4 This Committee finds that the Director, by this action and other failures revealed in the evidence should be referred for full investigation by the Constabulary, the Public Service Commission and the Department of Personnel Management and the Ombudsman with a view to establishing whether there has been any breach of the ***Public Service Code of Conduct***, the ***Leadership Code*** or the ***Criminal Code Act*** or any other Act of Parliament.

30. DUTIES OF THE DIRECTOR AND MANAGEMENT OF THE MUSEUM

30.1 At this point, the Committee states that the obligations imposed on a Director or Departmental Head are onerous. He takes, in some cases, personal responsibility for the failures of either himself or his Officers and a Departmental Head may be responsible for a very large and varied Department.

30.2 It is the Committee's opinion that the duties of the National Museum and Art Gallery are clearly set forth in the ***National Museum and Art Gallery Act*** and do not include any power or responsibility for the sale of War Surplus Materials or any other State owned property either at all or otherwise than in accordance with the terms of the ***Public Finance (Management) Act*** or the ***Financial Instructions***.

30.3 The Museum does administer the War Surplus Materials Act, but the Committee could identify no delegation to the Director or any other person, empowering him or it to sell State property in the form of War Surplus Materials.

30.4 The ***Public Finances (Management) Act*** does prescribe duties of the Director to maintain adequate and proper accounts and records of all dealings both financial and with State property under the control of the Museum.

30.5 Senior Officers of that Museum are long-serving and could be expected to know their duties and the limits to their powers. .

30.6 Moreover, the Director of the National Museum and Art Gallery gave sworn evidence to the effect that he understood the statutory obligations imposed on him by the ***Public Finances (Management) Act, the National Museum and Art Gallery Act*** and the ***Financial Instructions.***

30.7 The Committee concludes that the Director and the Managers of the National Museum may have acted in breach of the ***Public Finances (Management) Act*** in the sale of the Swamp Ghost aircraft, in failing to maintain control over and records of State property, in their dealings with State property in the form of other aircraft wrecks, in dealing with and accounting for monies and "gifts" made to the Museum by foreign exporters of these aircraft and in failing to keep track of all aircraft exported and by their complicity in the illegal on-sale of aircraft after they had been exported.

30.8 Accordingly, the Committee will make referrals and recommendations of these persons and failings to the appropriate Law Enforcement agencies for further and deeper investigation.

31. LOSS TO THE STATE

31.1 The Committee concludes that the State has been deprived of ownership of War Surplus Materials by the illegal dealings in this property by the Museum and has received no benefit for that loss.

31.2 More particularly, the Museum would, but for the involvement of this Committee, have sold the States ownership of the Swamp Ghost to foreigners for no return at all to the State.

31.3 This aircraft is worth millions of kina and the Museum took no steps to protect the property of the citizens of Papua New Guinea, but rather actively engaged the in illegal "sale" of the aircraft with complete disregard to that ownership.

31.4 Moreover, the aircraft represents more than just money. It is an historical artifact that reminds us of our people and those from foreign lands struggled, suffered and died here. It is this cultural aspect that the Museum is charged with protecting, as well as the monetary value of the wreck.

31.5 The "buyer" of the aircraft has threatened to sue the State for USD 14 - 25 million unless the aircraft is exported.

31.6 The Committee has advice that the Contract with Aero Archaeology LLC is unenforceable and void. No action will therefore lie against the State.

31.7 Further, if that sum represents the loss to the "buyer" the loss to the State by the unlawful conduct of the Museum is enormous.

31.8 The evidence shows the modus operandi of Aero Archaeology LLC is to threaten litigation against all possible parties unless the company gets what it wants – irrespective of the Law of Papua New Guinea. This was evident from the evidence of the Board of Trustees, Mr. Poraituk and the Acting Attorney General to this Committee.

31.9 Indeed, after the Interim Report of this Committee was made, Aero Archaeology commenced action in the Supreme Court to prevent this Committee presenting this Report to the Parliament. The Court refused to make such orders.

31.10 The loss to the State from the export of 89 aircraft identified and traced by this Committee is very considerable. State property has been illegally taken and will not be returned or the fact of ownership asserted, unless the Government takes steps to force these issues.

31.11 This Committee disallows the Contract and the purported sale to Aero Archaeology LLC and strongly recommends that any litigation commenced by Aero Archaeology LLC be vigorously defended by competent counsel.

32. REPORTING OF THIS INQUIRY BY HANSARD

32.1 All inquiries conducted by the Public Accounts Committee are recorded and transcribed by the Hansard Service of the National Parliament.

32.2 The quality of transcription by Hansard is extremely poor. In this particular Inquiry four complete tapes have been found to be inaudible and the transcript that was produced is virtually unintelligible and of very limited use.

32.3 This is not the first time this Committee has experienced such problems. In two Inquiries in the last three years, no transcript has been produced at all due to inaudible or missing tapes.

32.4 It is the recommendation of this Committee that Public Accounts Committee should have its own "in house" Transcription Service to provide prompt Transcripts of evidence.

32.5 The Transcript of Evidence is a fundamentally important record of the proceedings of the Committee and the performance of the Parliamentary Hansard has been less than adequate.

33. RESOLUTIONS OF THE COMMITTEE

33.1 The following Resolutions were made unanimously by the Public Accounts Committee:

1. The Committee will make a Report to Parliament under Section 86 (1) (c) and (d) **Public Finances (Management) Act 1995** with its findings and recommendations concerning the National Museum and Art Gallery, the attempted "sale" of the Swamp Ghost and the export and apparent loss of a number of other wartime aircraft which were and remain the property of the State.

2. That the Government immediately commence the process of tracing and recovering all war Surplus Materials exported from Papua New Guinea – or at least asserting State ownership over same.

3. That the Government immediately cancel all Agreements and Contracts with any and all foreign or domestic companies and exporters which sell, permit export or removal of War Surplus Materials.

4. That the Government declare an immediate moratorium on the removal, export, sale or other dealings whatsoever with War Surplus Materials unless:

   (i) The War Surplus Material is loaned or sent to a Museum or restoration facility that is recognized by both the State of Papua New Guinea and the State in which that facility or Museum operates; <u>and</u>

(ii) Ownership by the State of Papua New Guinea is recognized, protected and maintained at all times; and

(iii) The War Surplus Material the subject of loan or restoration is to be returned to Papua New Guinea within a definite time frame and on definite conditions; and

(iv) That no War Surplus Materials be sold at all.

5. That the State immediately call for a full account of all War Surplus Materials removed from Papua New Guinea from all persons and companies "authorized" by the National Museum and Art Gallery at any time in the last thirty years.

6. That, in particular, the State call for an immediate account of the whereabouts of all War Surplus Materials removed from Papua New Guinea by Robert Greinert, Fred Hagen, Ian Whitney, Bruno Carnovale, 75 Flying Squadron Museum, Pioneer Aviation, Historic Aircraft Restoration Society, Aero Archaeology LLC and from all collectors and Museums known to have been or to be in possession of War Surplus Materials removed from or originating in Papua New Guinea.

7. That a copy of these Findings will be delivered to the Minister for Culture & Tourism, the Minister for Finance and the Office of the Prime Minister with a recommendation from the Public Accounts Committee that the National Executive Council and relevant Ministers decide the future of the Swamp Ghost Aircraft as soon as possible. This Committee recommends that, if the Swamp Ghost Aircraft is to be exported it should only be loaned to a Museum or institution which is recognized or certified by a State and by the Independent State of Papua New Guinea as a capable, qualified organization of good repute capable of restoring and exhibiting the Swamp Ghost Aircraft in circumstances where the ownership of the Independent State of Papua New Guinea is preserved and protected for at all time.

8. The Director of the National Museum & Art Gallery and his Management Team should be censured for ignoring advice from the State Solicitor to the effect that the ***Public Finances (Management) Act*** applied to the Museum and to the sale or disposal of War Surplus Material.

9. To endorse and accept the findings set forth in Para. 34 herein.

10. To accept and endorse the referrals set forth in Para. 35 herein.

34. FINDINGS:

34.1 As to performance of the National Museum and Art Gallery in the sale of the Swamp Ghost aircraft and the removal and export of all other War Surplus Materials, the Committee makes the following findings:

1. The Committee, on all the evidence before it, finds that the National Museum and Art Gallery has:

a) failed to protect the State against loss of property and revenue through failure to obey the terms of the ***Public Finances (Management) Act*** and by "selling" State owned property with no power to do so and for no revenue to the State. The loss to the State in the attempted sale of the Swamp Ghost is very significant; and

b) Failed to protect the State against loss of property and revenue through failure to obey the terms of the ***Public Finances (Management) Act*** and by permitting the removal and export of War Surplus Materials worth millions of Kina, by foreigners who themselves onsold the materials; and

c) Failed to protect State ownership of exported War Surplus Materials; and

d) Failed to trace or keep any records of the whereabouts of War Surplus Materials removed and exported from Papua New Guinea to the loss of the State; and

e) Failed to meet its basic obligations to protect or preserve State owned property of cultural and heritage significance; and

f) Acted ultra vires the terms of the ***National Museum and Art Gallery Act***; and

g) Failed to apply its own Guidelines for the Consideration or Applications to Export War Surplus Materials adequately or at all both in the attempted sale of the Swamp Ghost and the removal and export of other War Surplus Materials; and

h) Failed to act in a lawful and responsible manner when assuming (unlawfully) the power to approve the sale of State owned property; and

i) Acted in the interests of foreign dealers and agents and not in the interest of the State, as its charter requires; and

j) Intentionally misled the Board of Trustees, the NEC and the Office of the Prime Minister as to the true nature of the transaction with Aero Archaeology LLC concerning the Swamp Ghost; and

k) Failed to make Reports and maintain accounts as required by the ***Public Finances (Management) Act***; and

l) Conspired to falsely accuse a Member of the Public Accounts Committee of illegal conduct and thereby to discredit the PAC; and

m) Failed to produce documents and records as and when they were sought b y the Public Accounts Committee; and

n) Allowed the Museum, the Board of Trustees and its staff to be threatened (and, in one case ,assaulted) by foreigners intent on taking State property in the form of War Surplus Materials and thereby failed to act independently to fulfil the duty of the Museum to protect and preserve items of cultural and historic value; and

o) Failed to account properly or legally for "gifts" and "donations" made by foreigners engaged in the business of illegally acquiring and exporting State owned property; and

p) failed to take any or any adequate steps to protect the State and its property from fraudulent, illegal or improper dealings both within and without Papua New Guinea; and

q) failed to maintain adequate internal controls and systems to ensure that the Museum and its management were not controlled by foreigners and that it fulfilled its duty to manage competently and lawfully State owned property; and

r) failed to action in a timely fashion or at all, recommendations or directions of the Public Accounts Committee, to the continuing loss and detriment of the State; and

s) failed to seek or obtain independent legal advice in the transaction with Aero Archaeology LLC; and

t) failed to take any or any adequate steps to protect the interest of the State or to protect the State against liability arising from illegal dealings by Museum Officers of which the Director and Museum management was or should have been aware; and

u) promoted foreign private interests over those of the State and its citizens; and

v) subsumed its charter and the interests of the State to that of foreigners; and

w) actively tolerated collusion and corrupt practices by its own staff; and

x) negligently and unlawfully allowed the possession of State property to pass to foreign private hands; and

y) failed to manage properly or at all agreements with foreign "exporters" of War Surplus Materials (which Agreements were, in any event, illegal); and

z) caused loss to the State by failing to ensure independent, accurate and transparent valuations were sought and received for the Swamp Ghost; and

aa) failed to establish and maintain a competent system of management and accountability; and

bb) failed to properly and adequately account for public funds, dealings with State owned property and State revenue; and

cc)failed to implement systems to comply with the terms of the ***Public Finance (Management) Act*** – particularly Section 5 thereof; and

dd) gave valuable State owned property to foreign, private speculators unlawfully and at no or no proper cost or price, thereby depriving the State of money and assets; and

ee) generally become a, disorganized and chaotic Institution incapable of and disinterested in performing its functions; and

ff) that the Director and his management actively engaged in unlawful sale of State property with no basis in law and for no benefit to the State; and

gg) The Museum staff actively participated in the sale of already exported War Surplus Materials in that they demanded and accepted money from the sellers contrary to Law, contrary to the ***Public Finances (Management) Act*** and contrary to the terms of Agreements between the National Museum and Art Gallery and the foreign "exporters" and contrary to the interest of the State.

2. That these failures (or any of them) have deprived the State of valuable property, deprived the Museum of exhibits and exposed historic State owned property for sale – not to the highest bidder, but to foreigners who had sway over the Museum management at any particular time; and

3. It became obvious to the Committee that the Acting Director of the NMAG, Mr. Simon Poraituk neither knew nor cared that the Museum had acted in an unlawful fashion in the sale of the Swamp Ghost and other wartime aircraft.

4. In light of the attitude displayed by witnesses and considering all the evidence in the Inquiry, the Committee concluded that the National Museum and Art Gallery had some very serious, deep and fundamental problems that will not be solved without Governmental coercion to do so.

5. That, as a result of mismanagement and malpractice by the Museum and by the foreigners engaged in dealings with the Museum, the State has been deprived of revenue and assets.

6. The Management of the Museum demonstrated no comprehension of the relevant Law – even though the State Solicitor has given detailed and correct advice to the Museum concerning the dealings with State owned property and the handling of proceeds therefrom.

7. The Committee concludes that the National Museum and Art Gallery are in such a state of failure, that a recommendation should move to the Parliament to remove the Director and the management team and their replacement with competent senior management or a senior management team charged with beginning the process of rebuilding the Museum and, in particular, the tracing and recovery of exported War Surplus Materials which are the property of the State – wherever they may now be.

8. Under no circumstances should the National Museum and Art Gallery be permitted to deal with or have any

responsibility for War Surplus Materials pending the appointment of a new Management team.

9. Under no circumstances should the State through any of its agencies, arms or Departments again deal with Robert Greinert, Fred Hagen, HARS, Aero Archaeology LLC, Aero Archaeology Ltd. 75th Flying Squadron Museum, Bruno Carnovale or Ian Whitney in the sale, removal, export or on-sale of War Surplus Materials.

10. A moratorium should be immediately declared on the export of any War Surplus Materials until the NEC can approve policy and directives for such dealings.

35. REFERRALS

35.1 The Committee having considered the evidence and the power of Referral, made the following referrals to the appropriate Agencies for further investigation of individuals or companies involved with or in the sale, removal and export of the Swamp Ghost Aircraft.

1. The former Director, the current Acting Director and Management of the PNG National Museum & Art Gallery in any way involved with the signing of the Contract of Sale of the Swamp Ghost Aircraft or its removal from Agiembo Swamp and the issuing of a document entitled "Export Permit No. 05/007" are referred to the Royal Papua New Guinea Constabulary for complete and full investigation of the circumstances leading to the sale, approval of the sale by a past and current Board of Trustees, the issue of an Export Permit and the physical removal of the Swamp Ghost Aircraft from Agiembo Swamp with particular emphasis on establishing whether or not there is any breach of the Criminal Law – in particular of the laws of conspiracy - to unlawfully acquire State property.

2. Mr Fred Hagen or Mr Robert Greinert are referred to the Royal Papua New Guinea Constabulary for full and complete investigation of their role in the sale, removal and export of the Swamp Ghost Aircraft and, in particular, in their dealings with the staff and Management of the PNG National Museum & Art Gallery and in respect of representations made by them to the PNG National Museum & Art Gallery concerning or

leading to the sale, removal and export of the Swamp Ghost Aircraft.

3. The Acting Director of the PNG National Museum & Art Gallery is referred to the Office of the Ombudsman for full and complete investigation of his role in the approval for sale, the actual physical removal of the Swamp Ghost from Agiembo Swamp and the representation made to the Office of the Prime Minister, the National Executive Council and the Minister for Culture & Tourism in respect of the sale and export of the Swamp Ghost Aircraft to establish whether there is any breach of the Leadership Code or any other duty imposed on the Director of the PNG National Museum & Art Gallery.

4. That the Office of the Attorney General and the Solicitor General be referred to the Ombudsman for investigation in respect of a failure to comply with instructions received from the Public Accounts Committee and failure to co-operate with the Public Accounts Committee in its inquiry into the sale, salvage and export of the Swamp Ghost Aircraft.

5. That the Office of the Attorney General and the Office of the Solicitor General be referred to the Minister for Justice with a full explanation from the Public Accounts Committee of the failure of those Offices to comply with instructions of the Public Accounts Committee to preserve the Swamp Ghost Aircraft pending the completion of the Committee inquiry.

6. That the entire transaction leading to the sale and removal of the Swamp Ghost Aircraft be referred to the Ombudsman for investigation with a recommendation that if any person is found to have acted unlawfully or in any manner so as to constitute a breach of the Leadership Code, that those persons be prosecuted.

7. The Public Accounts Committee disallows the Contract of Sale of the Swamp Ghost Aircraft and recommends that any cost to the State be surcharged to Officers of the PNG National Museum & Art Gallery responsible for the sale and removal of the aircraft wreck.

8. That Aero Archaeology Limited, Mr Robert Greinert and Mr Alfred Hagen, Bruno Carnovale, Ian Whitney, 75th Squadron

and Historical Aircraft Restoration Society be referred to the Managing Director of the Investment Promotion Authority for full investigation to establish whether, as foreign enterprises, any or all of those persons or company were conducting business in Papua New Guinea without a proper and lawful certification.

9. That Mr Robert Greinert, Precision Aerospace Ltd, Historical Aircraft Restoration Society, 75th Flying Squadron Museum, Mr. Bruno Carnovale and Mr Ian Whitney be referred to the Royal Papua New Guinea Constabulary and the Australian Federal Police and/or relevant State Police Forces for investigation of any and all sales by them of War Surplus Materials exported from Papua New Guinea with a view to establishing whether there has been any breach of the Criminal Law in that sale or conversion of State property.

10. That the Office of the Attorney General and the Office of the Solicitor General be referred to the Papua New Guinea Law Society to investigation for failure to comply with instructions given by the Public Accounts Committee to protect and preserve the Swamp Ghost Aircraft pending completion of the Committee inquiry.

11. That a copy of these Findings be sent to Controller of Customs with a recommendation that no export authority or permit be given by Customs and for or in respect of the Swamp Ghost Aircraft and for or in respect of Alfred Hagen, Fred Hagen or Aero Archaeology LLC or Aero Archaeology Limited – or any other person or entity.

12. That the Swamp Ghost Aircraft be removed by the State to a place of safety and security pending a decision as to its future.

13. That this Committee will refer these findings to law Enforcement agencies in jurisdictions where any War Surplus Material removed from Papua New Guinea is located, with a request that the items be identified and the facts of their acquisition be investigated with a view to asserting the ownership rights of Papua New Guinea and establishing whether there has been a breach of the Criminal or any other Law in that acquisition.

14. The export and on-selling of aircraft parts and wrecks should be referred to a full investigation to the Royal Papua New Guinea Constabulary, the Australian Federal Police, United States Law Enforcement Authorities, South African Law Enforcement Authorities, the New Zealand Police Force, Interpol and every agency or entity which has power to trace and investigate the on-selling of the property owned by the State of Papua New Guinea and to investigate Committee on how that property changed hands once it has left Papua New Guinea. In particular, this Committee recommends that if any Brief to the Criminal Law in any jurisdiction is identified, but prosecutions be made.

15. That the Acting Director of the Museum and other managers involved in the allegations against Hon. Malcolm Smith-Kela be referred to the Police for a full and complete investigation and possible prosecution.

16. That the statement of Mr. Mark Katakumb be referred to the Police for a full investigation of the allegations of assault made by him against Mr. Robert Greinert.

36. RECOMMENDATIONS;

36.1 This Committee recommends:

36.2 That the National Museum & Art Gallery requires a thorough investigation and restructuring by Government. This Committee detects no willingness in the Management of the National Museum and Art Gallery to effect any change at all, without Government coercion to do so.

36.3 That expertise should be sourced from Aid Donors or internationally on a commercial basis to effect the restructure of the Museum in order that Papua New Guinea my have a modern, responsive, responsible and effective institution to safeguard its cultural and national heritage.

36.4 If the Committee is correct in this finding, the State of Papua New Guinea is the owner of a very large Aviation Museums – irrespective of where those aircraft may now be. It is very important that State ownership of those aircraft be reasserted to the benefit of the State of Papua New Guinea and its people.

36.5 This Committee recommends that all surplus material should not be exported from Papua New Guinea until the Government of the day has had the opportunity to establish firm policies and to modernize the relevant legislation.

36.6 The Swamp Ghost aircraft should not leave Papua New Guinea.

36.7 The Swamp Ghost aircraft should not be sold by the Independent State of Papua New Guinea.

36.8 The Swamp Ghost aircraft should be fully restored and preserved within Papua New Guinea or, if that process of restoration cannot be performed in this country, the aircraft should be sent to a State run or recognized Institution capable of restoring and preserving the aircraft and immediately returned to Papua New Guinea after that restoration process is complete.

36.9 The Board of Trustees of the National Museum & Art Gallery need to receive expert counsel in their role, function, jurisdiction and responsibilities.

36.10 The Management of the Museum need immediate expert legal advice on their role, responsibilities, powers and limitations.

36.11 A dedicated legal officer to the Museum should be appointed and properly funded.

36.12 The National Museum & Art Gallery should be brought to account for the loss of all State property through the permitted export of war surplus materials.

36.13 The Director of Management Team of the National Museum & Art Gallery are incapable and unwilling to trace exported and onsold aircraft parts and thereby assert State ownership. An independent Body or entity should be charged with that responsibility and should be adequately funded.

36.14 The Contract of Sale of the Swamp Ghost Aircraft with MARC and/or Aero Archaeology Limited is illegal, unenforceable and of no effect.

36.15 Threats by Aero Archaeology LLC to pursue the State of Papua New Guinea if approval is not given to export the Swamp Ghost, should be noted by Government and such litigation should be vigorously opposed.

36.16 The National Museum & Art Gallery should never again deal with persons or entities outside the established State Museums or State recognized Museums. In particular, the National Museum & Art Gallery should never again deal with Mr Robert Greinert, Mr Fred Hagen, Mr Bruno Carnovale, Mr Ian Whitney, 75 Squadron Flying Museum, Aero Archaeology LLC, HARS or MARC.

36.17 By Solicitor General and the Office of the Attorney General should be given immediate instructions to commence proceedings against the Museum, exporters and receivers of War Surplus Material removed from Papua New Guinea for a full account of all that material and profits made from the sale or any other commercial activity concerning or involving that war surplus material.

36.18 The Office of the Attorney General and the Solicitor General should be commissioned to generally report on the loss to the State, by both in terms of the actual War Surplus Material removed from Papua New Guinea and its monetary value should be surcharged to responsible officers of the National Museum & Art Gallery.

36.19 The National Government should properly and full fund the National Museum and Art Gallery to enable it to properly house and maintain items of National cultural and historical importance.

36.20 The National Museum & Art Gallery should have no power whatsoever over the removal, sale or dealings with war surplus material. That material should remain within the control of the Minister for Finance until a competent and professional Management Team is appointed to the National Museum & Art Gallery. Even then the National Museum & Art Gallery should have no power to approve any dealing whatsoever in respect of War Surplus Material.