



Ombudsman Commission
of Papua New Guinea



**INVESTIGATION INTO THE CONDUCT OF MR KEN
KAIAH, GOVERNMENT PRINTER OF GOVERNMENT
PRINTING OFFICE**

**FINAL REPORT
JUNE 2014**

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LIST OF ABBREVIATIONS

DPMNEC	-	Department of Prime Minister & National Executive Council
GoPNG	-	Government of Papua New Guinea
GPO	-	Government Printing Office
GPOTA	-	Government Printing Office Trust Account
IPA	-	Investment Promotion Authority
OLOC	-	Organic Law on the Ombudsman Commission
PFMA	-	Public Finance Management Act
PFMR	-	Public Finance Management Regulation
PSGO	-	Public Service General Orders
TMT	-	Top Management Team



CHRONOLOGY OF EVENTS

2008

- 06 May Jacks Investment Limited was incorporated and registered with IPA under company number: 1-63372. This is Ken Kaiah's family company. Ken Kaiah is both a Shareholder and Director of this company.
- 15 Dec Purchase Order No: 1080 was sent to Jacks Investment by GPO for the supply of A4 Copy Paper totaling K150, 480. Enquiries regarding the Purchase Order was to be directed to Mr Ken Kaiah.
- 17 Dec Jacks Investment Limited issued Invoice of K150, 480.00 to GPO.
- 17 Dec Payment Voucher was raised on Cheque No: 000106 for Jacks Investment Limited an amount of K150, 480.00. It was not checked by a Financial Delegate and yet approved for payment by Mr Ken Kaiah.
- 22 Dec Jacks Investment Limited obtained Pro-forma Invoice valued at US\$28,442.50 from an Australian Paper company that required Telegraphic Transfer before shipment to:

National Australia Bank Limited
271 Collins Street
Melbourne Victoria 3000
Australia

Account No. PAPAUUSD01
Account Name: Paper Australia Pty Ltd
Swift Code: NATAAU3303M

The above pro-forma invoice was valued K80, 159.72 at the exchange rate then at 0.355.

2009

- 07 Jan The Government Printer of GPO, Mr Ken Kaiah wrote to the Manager, International Branch, Westpac Bank, Boroko Branch confirming the engagement of a local supplier, Jacks Investment as a supplier of Reflex Photo copy paper for 2009. He requested the Bank to assist the company in facilitating the Telegraphic transfer without delay.
- 12 Jan Ms Geua Awo from the Accounts Section of GPO wrote to the Manager, West Bank PNG Limited confirming the payment of Cheque No. 000106 amount of K150, 480.00 as proper.



EXECUTIVE SUMMARY

Overview

This is the Final Report of an own initiative investigation by the Ombudsman Commission into the alleged misconduct by the Government Printer of the Government Printing Office (GPO), Mr Ken Kaiah who used his position and the office he holds for personal benefit.

Mr Kaiah with an entrusted responsibility as a Government Printer had conducted private business with the Government Printing Office. He had improperly engaged his family business company namely; Jacks Investment Limited to supply Reflex Photo copy paper to GPO on a quarterly basis in 2009. On 17 December 2008, Jacks Investment Limited was again improperly advanced full payment of K150, 480.00 from the GPO Trust Account prior to the delivery of goods.

Principle Findings

The main findings of the Report are:

- (1) In the opinion of the Ombudsman Commission, Mr Ken Kaiah the Government Printer of GPO had conflict of interest during the procurement process and the business dealings of GPO.
- (2) In the opinion of the Ombudsman Commission, the failure by Mr Ken Kaiah in not declaring or disclosing his interest was wrong.
- (3) In the opinion of the Ombudsman Commission the actions of Mr Ken Kaiah in engaging and approving payment to Jacks Investment Limited amounts to abuse of power for personal gain and is wrong.
- (4) In the opinion of the Ombudsman Commission, the actions of Mr Ken Kaiah had contravened provisions of the PFMA and breached relevant regulations and rules governing the government procurement and the conduct of government employees in the public service.

Irregularities

The main irregularities uncovered by this investigation are:

1. No declaration by the Government Printer of his interest in matters before him.
2. Utilization of official power and position for own benefit
3. Engaging of family business

4. No additional Section 32 officer for proper checks & balances of the finances of GPO.
5. Non compliance with Public Finance Management Act and Regulation

Findings of wrong conduct

The conducts of the following individual was wrong because of the above mentioned irregularities:

1. Mr Ken Kaiah

Recommendations

1. The Ombudsman Commission recommends that the Chief Secretary to the Government as the Senior Officer in the Public Service and the Secretary for the Department of Prime Minister and NEC should ensure that the Government Printer and the staff of GPO perform their duties and responsibilities in full compliance to all the laws governing the conduct of public servants and the business of the Government (GoPNG), as in this case the business operations of the Government Printing Office.
2. The Ombudsman Commission recommends that the Secretary for the Department of Prime Minister and NEC should ensure that the Government Printer and the staff of GPO do not compromise their loyalty in the public service and declare any conflict of interest that may arise in the business operations of the Government Printing Office.
3. The Ombudsman Commission recommends that the Secretary for the Department of Prime Minister and NEC should ensure that the Government Printer and the staff of GPO in the public service strictly comply with the Public Service Code of Conduct.
4. The Ombudsman Commission recommends that the Secretary for the Department of Prime Minister & NEC should ensure that the Government Printing Office fully comply with the Public Finance Management Act and Regulations and the rules governing the conduct of government employees in the public service.
5. The Ombudsman Commission recommends that the Chief Secretary to the Government and the Secretary for the Department of Prime Minister & NEC should take disciplinary actions against Mr Ken Kaiah and terminate his services as the Government Printer of the Government Printing Office.



1. JURISDICTION AND PURPOSE OF INVESTIGATION

[1.1] INTRODUCTION

This is an investigation by the Ombudsman Commission on its own initiative to establish whether or not there was any wrong conduct surrounding the allegations of engagement in private business by the Government Printer, Mr Ken Kaiah with the Government Printing Office (GPO).

A Notice was issued under Section 17(1) of the *Organic Law on the Ombudsman Commission* to the Acting Secretary of the Department of Prime Minister & National Executive Council, (DPMNEC) Ms Margaret Elias, MPS, MBE through our letter dated 13 August 2009 advising of the Commission's decision and intention to investigate the matter.

[1.2] JURISDICTION OF THE OMBUDSMAN COMMISSION

Sections 218(b) and (c) of the *Constitution* state that two of the purposes for establishing the Ombudsman Commission are:

- to help in the improvement of the work of the governmental bodies and the elimination of unfairness and discrimination by them; and
- to help in the elimination of unfair or otherwise defective legislation and practices affecting or administered by governmental bodies.

Section 219(1)(a)(ii) of the *Constitution* empowers the Ombudsman Commission to investigate on its own initiative or on complaint by a person affected any conduct on the part of any governmental body or an officer or employee of a governmental body in the exercise of a power or function vested in it, him or her by law in cases where the conduct is or may be wrong, taking into account, amongst other things, the National Goals and Directive Principles, the Basic Rights and the Basic Social Obligations.

Schedule 1.2(1) defines "governmental body" as:

- (a) **the National Government; or**
- (b) **a provincial government; or**
- (c) **an arm, department, agency or instrumentality of the National Government or a provincial government;**
- (d) **a body set up by statute or administrative act for government or official purposes.**

The Government Printing Office is a governmental body which is headed by the Government Printer pursuant to the *Printing of the Laws Act* (Chapter 333) and the *Interpretation Act* (Chapter 2). The Government Printing Office is an arm of the DPMNEC.

The Ombudsman Commission therefore has jurisdiction to inquire into the question of whether Mr Ken Kaiah, the Government Printer of Government Printing Office made an improper decision and action to conduct private business with GPO.

[1.3] PURPOSE OF THE INVESTIGATION

The purpose of this investigation is to determine whether any of the conduct under investigation was wrong and to determine whether any laws or administrative practices were defective in relation to the decision and actions of the Government Printer.

[1.4] METHOD OF INQUIRY

The Ombudsman Commission issued a Notice on 13 August 2009 under Section 17(1) of the *Organic Law on the Ombudsman Commission* to the Acting Secretary, Department of Prime Minister & NEC, advising of its intention to investigate the allegation.

Section 17(1) states:

Before investigating any matter within its jurisdiction, the Commission shall inform the responsible person of its intention to make the investigation.

The Ombudsman Commission obtained documents and other evidence from a number of sources and used its powers under Section 18 of the *Organic Law on the Ombudsman Commission* to require people to produce documents and information.

Section 18 states:

- (1) **Subject to the provisions of this Section and of Section 19, the Commission may from time to time require any person who in its opinion is able to give any information relating to any matter that is being investigated by the Commission to furnish to it that information and to produce any documents, papers or things that, in the opinion of the Commission, relate to any matter being investigated by it and that may be in the possession or control of that person.**

[1.5] PEOPLE WHO GAVE EVIDENCE BEFORE THE COMMISSION

The following people were called and gave evidence before the Commission:

	Name	Designation	Organization
1.	Mr Ken Kaiah	Government Printer	GPO
2.	Mr Magaru Riva	Finance Manager	Resigned from GPO
3.	Mr Mathew Yuangu	Director – COI Implementation Secretariat	Dept of PM & NEC
4.	Mr Wilfred Kopi	Para Legal	Westpac Bank - PNG Ltd
5.	Mr Kili Tambua	Head of Branch Network	Bank South Pacific
6.	Mr Edward Pelmann	Director, HRM	Dept of PM & NEC
7.	Mr Gabriel Yer	Secretary	Dept of Finance
8.	Ms Rotgerlyn Tapaua	Manager, Finance & Administration	GPO

9.	Ms Geua Awo	Executive Assistant	GPO
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[1.6] OMBUDSMAN COMMISSION NOT CONFINED TO REPORTING ON LEGALITY OF ADMINISTRATIVE CONDUCT

When the Ombudsman Commission conducts an investigation, it is not confined to reporting on whether or not there have been breaches of the law. The Commission's constitutional mandate is broader than this. It is authorized to report on what, in its opinion, is "wrong conduct", irrespective of whether that conduct has been in accordance with the law.

[1.7] DEFINING "WRONG CONDUCT"

The *Constitution* gives some guidance to the Commission when it is deciding whether a conduct is "wrong".

Section 219(2) of the *Constitution* states:

Subject to Subsections (3), (4) and (5), and without otherwise limiting the generality of the expression, for the purposes of Subsection (1)(a) conduct is wrong if it is-

- (a) contrary to law; or**
- (b) unreasonable, unjust, oppressive or improperly discriminatory, whether or not it is in accordance with the law or practice; or**
- (c) based wholly or partly on improper motives, irrelevant grounds or irrelevant considerations; or**
- (d) based wholly or partly on a mistake of law or of fact; or**
- (e) conduct for which reasons should be given but were not,**

whether or not the act was supposed to be done in the exercise of deliberate judgment within the meaning of Section 62 (decisions in "deliberate judgment").

The above list is not exhaustive. The phrase "and without otherwise limiting the generality of the expression" indicates that conduct which does not fit into any of the descriptions in paragraph (a) to (e) may still be regarded as wrong. The Ombudsman Commission is entitled to regard conduct as wrong, even if the conduct does not appear in the list of descriptions given in Section 219(2) of the *Constitution*.

[1.8] THE PROVISIONAL REPORT

When the Ombudsman Commission prepares a Report of this nature, it has a duty to observe procedural fairness. This duty is imposed by Section 17(4) of the OLOC.

Section 17(4) of the OLOC states:

Nothing in this Law compels the Commission to hold any hearing and no person is entitled as of right to be heard by the Commission except that –

- (a) Where a report of the Commission may affect a State Service, Provincial Government or statutory body, the Commission shall provide reasonable opportunity for the Permanent Head of that service or the statutory head of that body, as the case may be, to comment on the subject of the investigation; and
- (b) The Commission shall not make any comment in its report that is adverse to or derogatory of any person without –
- (i) Providing him with reasonable opportunity of being heard; and
 - (ii) Fairly setting out his defence in its report

In order to discharge its duty of procedural fairness, the Ombudsman Commission distributed a provisional report of this investigation on 27 August 2013.

A Provisional Report allows a person who may be affected by the investigation to respond to any adverse findings and correct any factual errors the Commission may have made.

The purpose of the Provisional Report is to state the Ombudsman Commission's preliminary findings of fact and preliminary views on the matter under consideration and to seek comments and submissions from those affected.

The following people were given a copy of the Provisional Report and were invited to respond to the Commission's preliminary findings:

- Sir Manasupe Zurenuoc, Kt, OBE
Chief Secretary to Government
Department of Prime Minister & National Executive Council
- Mr Veali Ilagi, MPS
Acting Secretary
Department of Prime Minister & National Executive Council
- Mr Ken Kaiah
Government Printer
Government Printing Office

The Commission has discharged its duty of procedural fairness and natural justice by giving the above persons the opportunity to respond to the Provisional Report within 21 days from the date of our letter.

The Office of the Chief Secretary to Government responded to the findings of the Ombudsman Commission's Provisional Report on 29 August 2013. The Department had agreed to the findings of the Commission's Provisional Report. The Letter of response reads:

Thank you for your letter of the 19 August 2013 providing me with a copy of the provisional report on the conduct of the government printer.

I have not [sic] corrections to make to the report.

The Office of the Government Printer of the Government Printing Office also responded to the findings of the Ombudsman Commission's Provisional Report on 28 August 2013. The Letter of response reads:

Your letter of 19 August 2013 relating to the Provisional Report on the Investigation into the Conduct of the Government Printer is hereby acknowledged and wish to sincerely thank you for a comprehensive conclusions of the report.

As admitted at the interview and after reading through your report I do not intend to further defend myself on the matter. I have pleaded guilty over my conduct and would accept any disciplinary course of action against me. I have learnt my lesson and pledged to abide by the rule of the Public Finance Management Act and the General Order.

Ever since I have continued to perform exceptionally well in managing the operation of the GPO in ensuring smooth transition of its commercial status. The entity (GPO) has now reached its climax as a competitive print stop shop, self-sustainable and is efficient with affordable price.

However, in whatever concluding decision you would intend to lay against me, please consider the following factor; (i) to assess the value of K150, 000.00 against the traded value of K540, 000 of the papers achieved by GPO with a net surplus of K389, 520.00, (ii) a substantial "Net-Worth" of K20 million achieved over the last twenty years. {Please refer to the attached unaudited statement of year 2012}.

My performance over the years speaks for itself. Whatever I have done was transparent, tangible and accountable as per the annual financial reports. If I was that bad my performance wouldn't look as good as you can see on the attached balance sheet. As a Papua New Guinean I pride myself for achieving such a remarkable achievement over the last twenty years. Not only on financial performance but a tangible state of Art Print Technology ever exists at the GPO.

The paper that is now the subject matter was bought and physically delivered on site. It was used for its good intention for two consecutive years; 2009 and 2010. It took three months to ship in to Papua New Guinea. Similarly, consumable items and other related print accessories also take three about months to process and delivered into the country, whether Australia, Singapore, Malaysia and other parts of the world.

I have been in the printing business for twenty years and I'm very familiar with the type of transactions that other commercial entity practiced. I have done work for the Electoral Commission for the two National elections which amounts to millions of Kina, I have also done work for the Department of Education for the last ten years which also amounts of millions of Kina and what is this K150, 480.00 which is sounding to be more important and sophisticated.

The whistle blower obviously pulled his trigger too soon. He had other ultra-motives which was only known to him and had no respect for the organization and its management. But however, I appreciate the fact that had the democratic liberty of expression. [sic] Similarly, I will also in my democratic rights seek legal means for

damages on my credibility and professions, where the papers under investigation though purchased, delivered and was used for its intention and purposes which your investigation report clearly fell short to report. Not only that but the whistle blower also ignorantly fell short to deny or acknowledged receipt of goods. And finally, the report failed to analyse the monetary gain of the traded goods.

I look forward to your decision in the not too distant future.

[1.8.1] COMMENTS

The Government Printer, Mr Ken Kaiah's reiteration of his admission and admitting guilty over the misconduct in office cannot be compromised by the performance of the Government Printing Office as a government entity. Mr Ken Kaiah with an entrusted responsibility as a Government Printer used his position and the office he holds for personal benefit against all set rules and regulations.



2. FINDINGS OF FACTS

[2.1] GENERAL

This Chapter discusses the facts relating to the issues of conflict of interest and the abuse of power by Mr Ken Kaiah in relation to his actions to engage his private family company – Jacks Investment Limited to supply Reflex Photo copy papers to GPO in January 2009 and making advanced payments prior to the delivering of goods.

Jacks Investment Limited is a company incorporated in May 2008 under the Companies Act 1997 to conduct business for profit. The company's principle directors are Mr Ken Kaiah and his wife, Monica Kaiah including their children.

In December 2008, the company received payment for supplying Reflex Papers to GPO. Details of the payment are set out below:

	Date	Cheque No.	Amount (K)	Purpose
1.	17/12/08	000106	150, 480.00	Supplying of Reflex Paper to GPO

[2.2] JACKS INVESTMENT LIMITED

Company records with Investment Promotion Authority (IPA) on Jacks Investment Ltd confirmed that there were six shareholders of the company. Records revealed that Mr Ken Kaiah was one of the Shareholders as displayed in the extract below.

Shareholders

Arlene Maira KAIHAH	Nationality: PAPUA NEW GUINEA	Date of Birth: 10-Feb-1986
Class	Number of Shares	Date
ORDINARY	1 (ISSUED)	6 May 2008
Residential Address	Postal Address	
SECTION 41	PO Box 271	
ALLOTMENT 12	GORDONS	
FLAT 6	NATIONAL CAPITAL DISTRICT	
BOROKO	PAPUA NEW GUINEA	
NATIONAL CAPITAL DISTRICT	Start Date: 6 May 2008	
PAPUA NEW GUINEA	End Date:	
Start Date: 6 May 2008		
End Date:		

Ben Kapou KAIHAH	Nationality: PAPUA NEW GUINEA	Date of Birth: 05-Oct-1983
Class	Number of Shares	Date
ORDINARY	1 (ISSUED)	6 May 2008
Residential Address	Postal Address	
SECTION 41	PO Box 271	
ALLOTMENT 12	GORDONS	
FLAT 6	NATIONAL CAPITAL DISTRICT	

BOROKO
NATIONAL CAPITAL DISTRICT
PAPUA NEW GUINEA
Start Date: 6 May 2008
End Date:

PAPUA NEW GUINEA
Start Date: 6 May 2008
End Date:

John Punariu KAIHAH **Nationality: PAPUA NEW GUINEA** **Date of Birth: 21-Sep-1987**
Class **Numbers of Shares** **Date**
ORDINARY **1(ISSUED)** **6 May 2008**
Residential Address **Post Address**
SECTION 41 **PO BOX 271**
ALLOTMENT 12 **GORDONS**
FLAT 6 **NATIONAL CAPITAL DISTRICT**
BOROKO **PAPUA NEW GUINEA**
NATIONAL CAPITAL DISTRICT **Start Date: 6 May 2008**
PAPUA NEW GUINEA **End Date:**
Start Date: 6 May 2008
End Date:

Ken KAIHAH **Nationality: PAPUA NEW GUINEA** **Date of Birth: 17-Jul-1958**
Class **Number of Shares** **Date**
ORDINARY **1 (ISSUED)** **6 May 2008**
Residential Address **Postal Address**
SECTION 41 **PO Box 271**
ALLOTMENT 12 **GORDONS**
FLAT 6 **NATIONAL CAPITAL DISTRICT**
BOROKO **PAPUA NEW GUINEA**
NATIONAL CAPITAL DISTRICT **Start Date: 6 May 2008**
PAPUA NEW GUINEA **End Date:**
Start Date: 6 May 2008
End Date:

Monica KAIHAH **Nationality: PAPUA NEW GUINEA** **Date of Birth: 22-Aug-1962**
Class **Number of Shares** **Date**
ORDINARY **1 (ISSUED)** **6 May 2008**
Residential Address **Postal Address**
SECTION 41 **GORDONS**
ALLOTMENT 12 **NATIONAL CAPITAL DISTRICT**
FLAT 6 **PAPUA NEW GUINEA**
BOROKO **Start Date: 6 May 2008**
NATIONAL CAPITAL DISTRICT **End Date:**
Start Date: 6 May 2008
End Date:

Samson LERI **Nationality: PAPUA NEW GUINEA** **Date of Birth: 16-May-1986**
Class **Number of Shares** **Date**
ORDINARY **1 (ISSUED)** **6 May 2008**
Residential Address **Postal Address**
SECTION 41 **PO Box 271**
ALLOTMENT 12 **GORDONS**
FLAT 6 **NATIONAL CAPITAL DISTRICT**
BOROKO **PAPUA NEW GUINEA**
NATIONAL CAPITAL DISTRICT **Start Date: 6 May 2008**
Start Date: 6 May 2008 **End Date:**
End Date:

The same Shareholders are company Directors with Mr Ken Kaihah and his wife, Monica Kaihah as first and second on the list followed by their family members as shown below.

Directors

Ken KAIHAH **Nationality: PAPUA NEW GUINEA** **Date of Birth: 17-Jul-1958**

Residential Address	Postal Address
SECTION 41	PO BOX 271
ALLOTMENT 12	GORDONS
FLAT 6	NATIONAL CAPITAL DISTRICT
BOROKO	PAPUA NEW GUINEA
NATIONAL CAPITAL DISTRICT	Start Date: 6 May 2008
PAPUA NEW GUINEA	End Date:
End Date:	

Monica KAI AH	Nationality: PAPUA NEW GUINEA	Date of Birth: 22-Aug-1962
Residential Address	Postal Address	
SECTION 41	PO BOX 271	
ALLOTMENT 12	GORDONS	
FLAT 6	NATIONAL CAPITAL DISTRICT	
BOROKO	PAPUA NEW GUINEA	
NATIONAL CAPITAL DISTRICT	Start Date: 6 May 2008	
PAPUA NEW GUINEA	End Date:	
Start Date: 6 May 2008		
End Date:		

Ben Kapou KAI AH	Nationality: PAPUA NEW GUINEA	Date of Birth: 05-Oct-1983
Residential Address	Postal Address	
SECTION 41	PO BOX 271	
ALLOTMENT 12	GORDONS	
FLAT 6	NATIONAL CAPITAL DISTRICT	
BOROKO	PAPUA NEW GUINEA	
NATIONAL CAPITAL DISTRICT	Start Date: 6 May 2008	
PAPUA NEW GUINEA	End Date:	
Start Date: 6 May 2008		
End Date:		

Arlene Maira KAI AH	Nationality: PAPUA NEW GUINEA	Date of Birth: 10-Feb-1986
Residential Address	Postal Address	
SECTION 41	PO BOX 271	
ALLOTMENT 12	GORDONS	
FLAT 6	NATIONAL CAPITAL DISTRICT	
BOROKO	PAPUA NEW GUINEA	
NATIONAL CAPITAL DISTRICT	Start Date: 6 May 2008	
PAPUA NEW GUINEA	End Date:	
Start Date: 6 May 2008		
End Date:		

Samson LERI	Nationality: PAPUA NEW GUINEA	Date of Birth: 16-May-1986
Residential Address	Postal Address	
SECTION 41	PO Box 271	
ALLOTMENT 12	GORDONS	
FLAT 6	NATIONAL CAPITAL DISTRICT	
BOROKO	PAPUA NEW GUINEA	
NATIONAL CAPITAL DISTRICT	Start Date: 6 May 2008	
PAPUA NEW GUINEA	End Date:	
Start Date: 6 May 2008		
End Date:		

John Punariu KAI AH	Nationality: PAPUA NEW GUINEA	Date of Birth: 21-Sep-1987
Residential Address	Postal Address	
SECTION 41	PO Box 271	
ALLOTMENT 12	GORDONS	
FLAT 6	NATIONAL CAPITAL DISTRICT	
BOROKO	PAPUA NEW GUINEA	
NATIONAL CAPITAL DISTRICT	Start Date: 6 May 2008	
PAPUA NEW GUINEA	End Date:	
Start Date: 6 May 2008		
End Date:		

The company conducted business with GPO after seven (7) months upon registration with Investment Promotion Authority (IPA) from May 2008 to December 2008.

Public Service General Orders GO No. 20.3 specifically discourages public servants from engaging in any business as principal or as agent or engage or continue in a private practice of any profession or trade. This provision emphasizes that:

Officers of the Public Service, shall not, other than with the permission of the Secretary, Department of Personnel Management, (however, this permission may be withdrawn at any time):

- (a) **Accept and or continue to hold an office in or under a Government of another Country or in or under any public or municipal corporation; and**
- (b) **Accept or continue to hold or discharge the duties or, be employed, in a paid office in connection with any banking, insurance, agricultural, mining, mercantile or other commercial business, whether carried out by a corporation, a firm or an individual;**
or,
- (c) **Engage in or undertake any such business as principal or as agent; or**
- (d) **Engage and or continue in a private practice of any profession, occupation or trade;**
or,
- (e) **Enter into any employment, whether remunerative or not with any person, company or firm who or which is so engaged; or**
- (f) **Accept or engage in any remunerative employment other than in connection with the duties of his office or offices in the Public Service.**

Mr Ken Kaiah whilst employed as the Government Printer is the Principal of Jacks Investment Limited and was actively engaged in business with GPO in the supply of Reflex Photo copy paper.

[2.3] PROCUREMENT PROCESS

[2.3.1] PURCHASE OF REFLEX PHOTO COPY PAPER

On 15 December 2008, Purchase Order No: 1080 was raised to the value of K150, 480.00 for the supply of A4 Copy Paper to GPO for year 2009 and enquiries regarding the Purchase Order were to be directed to Mr Ken Kaiah.

Two days later on 17 December 2008, Jacks Investment Limited issued an Invoice of K150, 480.00 to GPO. A payment voucher was then raised on Cheque No: 000106 from BSP GPO Trust Account valued at K150, 480.00 and the payment was made to Jacks Investment Limited on the same date.

On 22 December 2008, Jacks Investment Limited obtained Pro-forma Invoice valued at US\$28,442.50 from an Australian Paper company that required Telegraphic Transfer before shipment to:

National Australia Bank Limited
271 Collins Street
Melbourne Victoria 3000
Australia

Account No. PAPAUSD01
Account Name: Paper Australia Pty Ltd

Swift Code: NATAAU3303M

The above pro-forma invoice in US dollars was valued K80, 159.72 at the exchange rate then at 0.355 which meant that Purchase Order No: 1080 valued at K150.480.00 was excessive that led to an excess amount of profit margin of K70, 320.28.

On 07 January 2009, a letter bearing GPO letterhead from Mr Ken Kaiah, Government Printer of GPO was sent to Westpac Bank Limited advising on the engagement of Jacks Investment Limited by GPO as a supplier of Reflex Photo copy paper for 2009 and requested the bank to assist the company to facilitate payment requirements with the Australian based Paper Company.

According to Mr Magaru Riva, former Finance and Administration Manager, GPO had existing business partners as stated below:

“GPO has lasting business deals and has credit accounts with existing and renowned companies like BOINA Investment, Supreme Industries etc, for the supply of paper and other stationary goods. Since then and till to date GPO still owes monies to these companies for the supply of materials including paper of all sizes. Payment methods to those companies were done on installments unlike in this case, where one off payment was paid direct to a family company before delivery of goods. This practice is in direct contravention of normal procedures.”

[2.4] BREACH OF PUBLIC FINANCE (MANAGEMENT) ACT 1995

The provision under PFMA clearly emphasizes procurement and tender procedures. Mr Ken Kaiah in his deliberations had bypassed the proper procurement and tender procedures therein. The provisions in the PFMA and Public Finance (Management) Regulation 1996 (PFMR) emphasizes as follows:

PUBLIC FINANCE (MANAGEMENT) ACT 1995

Section 40 (1) and (2) of the *Public Finance (Management) Act 1995* reads:

40 TENDERS FOR PROPERTY, STORES, WORKS AND SERVICES

- (1) **Subject to –**
 (a) **this section; and**
 (b) **Section 41,**

Tenders shall be publicly invited and contracts let for the purchase or disposal of property or stores or the supply of works and services the estimated cost of which exceeds the prescribed amount.

- (2) **In relation to purchase or disposal of property and stores and the supply of works and services the estimated cost of which does not exceed the prescribed amount, the provisions of the Financial Instructions shall apply.**

Section 1 of the *Public Finance (Management) Regulation 1996* indicates the prescribed amount and it reads:

1. TENDERS FOR PROPERTY, STORES, WORKS AND SERVICES

For the purposes of Section 40(1) and (2) of the Act, the prescribed amount is K100, 000.00.

Evidently, Mr Ken Kaiah did not follow the normal procurement and tender procedures. Although, the Purchase Order exceeded the prescribed amount of K100, 000.00, Mr Kaiah using his position and powers hijacked all proper procedures and advanced his family company, Jacks Investment Limited an amount of K150, 480.00 prior to the delivery of goods to GPO.

It is obvious that Mr Kaiah contravened Section 40 (1) & (2) of the PFMA and PFMR by directly and indirectly involving himself with Jacks Investment Limited. He is a shareholder of the company Jacks Investment Limited in which he has direct involvement.

[2.5] GOVERNMENT PRINTER – MR KEN KAIHAH’S ADMISSION

Mr Ken Kaiah admitted and regretted what he did in engaging Jacks Investment Limited to conduct business with GPO. He stated that he will not take the decision again later if such events as in 2008 revisits him in the future. His response is quoted below:

“No, I regret what I did. And especially when you come to the end of it there is nothing – there was no benefit came about as a result of the transaction and I regret that committing that transaction and I will not repeat it. Now I have learned, I knew I have tainted credibility and reputation, especially with the success story of the Government Office, I have been invited in public forum about the transformation of Government Office. But what I’ve done has really destroyed my credibility and reputation in the public and especially for those people who have known me and it has not gone down well with them as well as my family.”

Part 11 of the *Public Financial Instructions*, outlines the procurement framework and principles while Division (1), Paragraph 1 of Part 11 provides the fundamental principles which are as follows:

The five fundamental principles in the GoPNG procurement system are:

1. “Value for money”,
2. Transparency,
3. Effective and competition
4. Fair and ethical dealing, and
5. Efficiency and Effectiveness.

Mr Ken Kaiah had failed to observe the above principles in the Government procurement system. In particular principles 1 to 4 were not observed.

Part 11 Division (1) Paragraph 5 of the *Public Financial Instructions*, in particular the Fair and Ethical Dealing states that:

The GoPNG in spending taxpayers and donor agency money has a special responsibility to avoid waste, act honestly and impartially, and be accountable for procurement actions.

The central principles underpinning fair and ethical dealing include:

- a. Treating potential and existing suppliers with equality and fairness,

- b. **Not seeking personal or family gain,**
- c. **Treating suppliers and potential suppliers information with respect and confidentiality, and**
- d. **Where conflict of interest occurs, it must be declared.**

The above principles are further explained in paragraph 6.8, p28 & p29 – Relevant Laws.

[2.6] COMMENTS

From closer examination of evidence, the Government procurement and tender procedures were not followed. Mr Ken Kaiah’s actions are found to be in breach of the PFMA.

The amount of K150, 480.00 exceeded K100, 000.00 that definitely required compliance with the tender procedures as stipulated in the PFMA. Mr Ken Kaiah however, knowingly had ignored the set procedures and engaged Jacks Investment Limited to be the supplier of A4 Copy Paper to GPO in 2009.

Mr Ken Kaiah had acted unfairly when he failed to give opportunity to potential existing suppliers and engaged his own private business Jacks Investment Limited for his own and family gain. Furthermore, he failed to declare his interest in the whole procurement process.

[2.7] MANIPULATION OF DUE PROCESS

The ownership of Jacks Investment Limited has been clarified in above. Jacks Investment Limited received an advanced payment for supplying of Reflex Papers to GPO in December 2008. Detail of the payment is set out below:

	Date	Cheque No.	Amount (K)	Purpose
1.	17/12/08	000106	150, 480.00	Supplying of Reflex Paper to GPO

According to evidence received, Mr Kaiah involved his Executive Assistant, Ms Geua Au to facilitate the business transaction with Jacks Investment Limited and GPO. Ms Au was fully aware of the payment made to the company from Government Printing Office Trust Account (GPOTA). Ms Au stated that she followed Mr Kaiah’s instruction to raise the payment voucher to Jacks Investment Limited. Her response is quoted below:

“Yes, I am aware of that but because he is the CEO and upon his footnotes and instructions given to me that I have to go ahead and raise the cheque and give it to the company.”

“...I am one of the signatories.... Like any invoices that come, I am one of the signatories, so but I don’t make the decisions he is the one who makes the – the management does the decision. And then like he on the invoices, footnote like he says “Please pay” and all that, I do that.”

Mr Ken Kaiah had also used his position and the GPO’s letter head to write to Westpac Bank Limited on 07 January 2009 advising on the engagement of Jacks Investment Limited by GPO and requested the bank to assist the company to facilitate payment requirements with an Australia based Paper Company. His request is stated below:

“I write to confirm that the Government Printing Office (GPO) has engaged a local supplier, Jacks Investment as a supplier of Reflex Photo copy paper for 2009. Jacks will supply GPO Reflex paper on a Quarterly basis.

To facilitate this arrangement, the management of GPO has agreed and advanced Jacks Investment in full payment of the first shipment to enable a smooth transition of the supplies which due by next week.

I would appreciate if you could assist the company in facilitating the Telegraphic transfer without delay. Should you require more information please do not hesitate to contact the Government Printer on 323 0767.”

Mr Ken Kaiah further used the office that he holds to direct Ms Geua Au to draw funds from the GPOTA to pay Jacks Investment Limited. This was confirmed by Ms Au’s response as follows:

“When he told me that they were papers for the budget printing - that’s what he told me so when he gave the invoice and all that, he said please pay ASAP. So I just went ahead and just raised the cheque and gave it to him.”

[2.8] PUBLIC SERVICE CODE OF CONDUCT

Part 3 of the *Public Service Code of Conduct*, outlines the Ethical Principles of Business Conduct. More in particular, the following principles were not taken into account by the Government Printer when he allowed his family company – Jacks Investment Limited to conduct business with GPO.

3. ETHICAL PRINCIPLES OF ACCEPTABLE BUSINESS CONDUCT

In fulfilling the purposes of the Code to combat corruption, the code requires that at all times each officer shall:

2. Uphold all the Laws, Regulations and General Orders which apply to his/her duties and conduct in the Public Service, and inform lawful authorities of wrongdoing by others.
3. Strive to achieve excellence in service to the Public Service and the State, and in doing so avoid conflicts of interest, deception, fraud and all other forms of corrupt behaviour for selfish gain, and be open, and transparent in all dealings.
4. Deal honestly with all State Institutions, with Government clients, suppliers and consultants, declare all private interests and reject all temptations to pursue private interests at the expense of, or to the detriment of the Public Service and the State.
8. Avoid all behaviour and all situations which may harm the integrity of the Public Service, and in which his/her presence and action may bring name into public disrepute and reflect badly on the Public Service.
11. Abide by the Code of Business Ethics and Conduct attached hereto, in all business and personal dealings, and thereby achieve all of the above objectives in the interest of the Papua New Guinea.

[2.9] DELIBERATE ACT BY GOVERNMENT PRINTER – MR KEN KAIHAH

Mr Ken Kaiah ignored all relevant laws governing the conduct of public servants and the business of the Government of PNG (GoPNG), as in this case the business operations of the Government Printing Office. He was very deliberate in his actions to conduct private business with GPO. During our interview with him, he regretted his own actions. His response is quoted below:

“No, I regret what I did. And especially when you come to the end of it there is nothing – there was no benefit came about as a result of the transaction and I regret that committing that transaction and I will

not repeat it. Now I have learned, I knew I have tainted credibility and reputation, especially with the success story of the Government Office, I have been invited in public forum about the transformation of Government Office. But what I’ve done has really destroyed my credibility and reputation in the public and especially for those people who have known me and it has not gone down well with them as well as my family.”

[2.10] COMMENTS

The Government Printer knowingly engaged his own private family business – Jacks Investment Limited to be the supplier of Reflex Photo Papers to GPO and by-passed tender and procurement processes. As the Government Printer of GPO and a Section 32 Officer he abused his office by allowing his family business company to conduct business with GPO without declaring his interest on the procurement. The procurement process at the outset is considered unfair and not transparent.



3. FINDINGS OF WRONG CONDUCT

[3.1] FINDINGS No.1

In the Opinion of the Ombudsman Commission Mr Ken Kaiah, the Government Printer had conflict of interest during the procurement process and the business dealings of GPO.

Reason(s)

- *General Order No. 20.3* prohibited officers of the Public Service from engaging in business whilst being employed by the State.
- It was found that the Government Printer, Mr Ken Kaiah is one of the Shareholders of Jacks Investment Limited.
- Jacks Investment Limited is owned by the Government Printer, Mr Ken Kaiah and his family.
- Examination of the IPA records revealed that Mrs Monica Kaiah, wife of Mr Ken Kaiah, Government Printer is also a Shareholder and Director of the company.
- IPA records further revealed that the Government Printer's children and family members namely; Arlene Maira Kaiah, Ben Kapou Kaiah, John Punariu Kaiah and Samson Leri are also Shareholders and Directors of the company.
- Part 11, Division 1, paragraph 5 of the *Public Financial Instructions*, states that in spending taxpayers and donor agency money, there is a special responsibility to avoid waste, act honestly and impartially, and be accountable for procurement process. One of the central principles underpinning fair and ethical dealing is not to seek personal or family gain.

Reference:

The facts relevant to this opinion are set out in paragraphs [2.2](#), [2.3](#) and [2.5](#).

[3.2] FINDINGS No.2

In the Opinion of the Ombudsman Commission, the failure of Mr Ken Kaiah in not declaring or disclosing his interest during the procurement process was wrong.

Reason(s)

- It was found that the Government Printer, Mr Ken Kaiah had failed to declare or disclose his interest in Jacks Investment Limited to GPO and the Department of Prime Minister & National Executive Council (DPMNEC) in a Top Management Team (TMT) meeting.
- Mr Ken Kaiah's failure to declare or disclose his interest in Jacks Investment Limited was intentionally deliberate to defraud the State when the value of the Supply Contract was only K80,159.72 (US \$ 28,442.50).
- Part 11, Division 1, paragraph 5 of the *Public Financial Instructions*, points out the central principles underpinning fair and ethical dealing; and one of them is where conflict of interest occurs, it must be declared.

Reference:

The facts relevant to this opinion are set out in paragraph 2.3, 2.3.1 and 2.5.

[3.3] FINDINGS No.3

In the Opinion of the Ombudsman Commission, the actions of Mr Ken Kaiah in engaging and approving payment to Jacks Investment Limited amounts to abuse of power for personal gain and is wrong.

Reason(s)

- Mr Kaiah with vested powers failed to disclose his interest and should not have taken part in the decision to engage family company – Jacks Investment Limited to do business with GPO.
- Examination of evidence revealed that Mr Kaiah had used his powers and position to issue directives to the Executive Assistant, Ms Geua Au to facilitate the payment to Jacks Investment.
- Part 3, paragraph 4 of the *Public Service Code of Conduct* talks about the Ethical Principles of Acceptable Business Conduct. In fulfilling the purpose of the Code to combat corruption, the code requires that at all times each officer shall strive to achieve excellence in service to the Public Service and the State, and in doing so avoid conflicts of interest, deception, fraud and all other forms of corrupt behaviour for selfish gain, and be open, and transparent in all dealings.

Reference:

The facts relevant to this opinion are set out in paragraph 2.7 and 2.8.

[3.4] FINDINGS No.4

In the Opinion of the Ombudsman Commission, the actions of Mr Kaiah had contravened provisions of the PFMA and breached relevant regulations and rules governing the government procurement and the conduct of government employees in the public service.

Reason(s)

- Section 40 (1) and (2) of the *Public Finance (Management) Act 1995*, states that Tenders shall be publicly invited and contracts let for the purchase or disposal of property or stores or the supply of works and services the estimated cost of which exceeds the prescribed amount.

In relation to purchase or disposal of property and stores and the supply of works and services estimated cost of which does not exceed the prescribed amount, the provisions of the Financial Instructions shall apply.

- Section 1 of the *Public Finance (Management) Regulation 1996*, states that for the purposes of Section 40(1) and (2) of the Act, the prescribed amount is K100,000.00. The purchase order for supply of A4 Copy Papers to GPO exceeded K100,000.00, however; no tenders were called and Jacks Investment Limited was engaged as a supplier.
- *Public Service General Order No. 20.3* prohibits officers in the public service from engaging in private business whilst employed by the State. Mr Ken Kaiah knowingly conducted private business with GPO thereby breached the provisions therein.
- Mr Kaiah had contravened the *Public Service Code of Conduct* in particular Part 3 – Ethical Principles of Acceptable Business Conduct.

Reference:

The facts relevant to this opinion are set out in paragraphs [2.2](#), [2.4](#), [2.6](#), [2.8](#), [2.9](#) and [2.10](#).



4. RECOMMENDATIONS

[4.1] CONSTITUTIONAL FRAMEWORK FOR MAKING RECOMMENDATIONS

As indicated in Chapter 1, the general purpose of this investigation is to determine whether any of the conduct under investigation was wrong, or whether any laws or administrative practices were defective.

The Commission is expressly authorized to form such opinions by Section 22(2) of the *Organic Law on the Ombudsman Commission*.

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

Section 22(2) OLOC:

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

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

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

In this chapter, recommendations are made based on the findings of wrong conduct and defective administration referred to earlier in the report.

Each recommendation is set out as follows:

- The recipients (i.e. the persons to whom the recommendations are directed) are identified.
- The main reason for making the recommendation, are stated.

[4.2] RECOMMENDATIONS CONCERNING PARTICULAR INDIVIDUALS

We recommend that some individuals have their continuing public employment carefully reviewed. The Ombudsman Commission is of the opinion that holders of public offices must continue at all times to be accountable for their actions, even if they have left the position in which they were found to have committed the wrong conduct and are occupying new positions.

[4.3] RECIPIENTS OF RECOMMENDATIONS

When we make recommendations we are obliged by Section 22(2) of the *Organic Law on the Ombudsman Commission* to identify the service, body, person or other appropriate authority who has to carry them out.

We are also obliged by Section 22(2) of the *Organic Law on the Ombudsman Commission* to report our recommendations to both the Minister and, if appropriate, the permanent or statutory head responsible for the service, body or person who has to carry out the recommendations.

In relation to each recommendation made in this Chapter, recipients of the recommendations are listed as follows:

- first, the service, body or person we are asking to do things is identified;
- secondly, the Minister responsible for that service, body or person is identified;
- thirdly, if appropriate, the permanent or statutory head responsible for that service, body or person is identified.

[4.4] RESPONSIBLE MINISTERS

Section 148 of the *Constitution* provides that each department, section, branch or function of government must be the political responsibility of a Minister. The Prime Minister has the power to determine the titles, portfolios and responsibilities of the Ministers.

At the time of the preparation of this report, the service, body or persons to whom specific recommendations are being directed were the responsibility of the Ministers set out in the table below.

[4.5] MINISTERS RESPONSIBLE FOR FOLLOWING UP IMPLEMENTATION OF RECOMMENDATIONS

- Minister for Public Service

In the event that the title or responsibilities of the Minister changes after the date of this report, the responsibility for notifying the Ombudsman Commission of the steps being taken to give effect to its recommendations will pass to the Minister who, from time to time, has political responsibility for the services, bodies or persons who received our recommendations.

[4.6] DUTIES OF RECIPIENTS OF RECOMMENDATIONS

The fact that our opinions on things to be done are expressed in the form of “recommendations” does not mean that recipients are entitled to ignore them.

Each recipient is required under Section 22(3) of the *Organic Law on the Ombudsman Commission* to notify the Ombudsman Commission in writing within 30 days after the day

of the service of the report, of the steps proposed to be taken to give effect to our recommendations.

Section 22(3) states:

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

Accordingly, there is a *duty* placed on each recipient of a recommendation to notify the Commission; and if it is proposed not to implement any recommendation, there is a further duty to give cogent and convincing reasons why the recommendations cannot or should not be implemented. These duties arise due to the combined effect of the *Constitution* and the *Organic Law on the Ombudsman Commission*.

A failure to comply with these duties may result in the Ombudsman Commission commencing enforcement proceedings in the National Court pursuant to Section 23 of the *Constitution*.

[4.7] RECOMMENDATIONS

Recommendation No 1

The Ombudsman Commission recommends that the Chief Secretary to the Government as the Senior Officer in the Public Service and the Secretary for the Department of Prime Minister and NEC should ensure that the Government Printer and the staff of GPO perform their duties and responsibilities in full compliance to all the laws governing the conduct of public servants and the business of the Government (GoPNG), as in this case the business operations of the Government Printing Office.

Recipients

- Minister for Public Service
- Chief Secretary to the Government
- Secretary for the Department of Prime Minister and NEC

Reasons

- General Order No. 20.3 that prohibited officers of the Public Service from engaging in business whilst being employed by the State.
- Mr Ken Kaiah, being employed by the State as the Government Printer had conducted business through the engagement of his own family business company – Jacks Investment Limited to do business with GPO.

Recommendation No 2

The Ombudsman Commission recommends that the Secretary for the Department of Prime Minister & NEC should ensure that the Government Printer and the staff of GPO do not compromise their loyalty in the public service and declare any conflict of interest that may arise in the business operations of the Government Printing Office.

Recipients

- Minister for Public Service
- Chief Secretary to the Government
- Secretary for the Department of Prime Minister and NEC

Reasons

- Part 11, Division 1, paragraph 5 of the *Public Financial Instructions*, points out the central principles underpinning fair and ethical dealing; and one of them is where conflict of interest occurs, it must be declared.
- Mr Ken Kaiaha, the Government Printer had failed to declare or disclose his interest in Jacks Investment Limited to GPO and the Department of Prime Minister & National Executive Council (DPMNEC) in a Top Management Team (TMT) meeting.

Recommendation No 3

The Ombudsman Commission recommends that the Secretary for the Department of Prime Minister and NEC should ensure that the Government Printer and the staff of GPO in the public service strictly comply with the Public Service Code of Conduct.

Recipients

- Minister for Public Service
- Chief Secretary to the Government
- Secretary for the Department of Prime Minister and NEC

Reasons

- .Para 3, paragraph 4 of the *Public Service code of Conduct* talks about the Ethical Principles of Acceptable Business Conduct. In fulfilling the purpose of the Code to combat corruption, the code requires that at all times each officer shall strive to achieve excellence in service to the Public Service the State, and in doing so avoid conflicts of interest, deception, fraud and all other forms of corrupt behaviour for selfish gain, and be open, and transparent in all dealings.

- Mr Kaiah with vested powers failed to disclose his interest and should not have taken part in the decision to engage family company – Jacks Investment Limited to do business with GPO.
- Mr Kaiah had used his powers and position to issue directives to the Executive Assistant, Ms Geua Au to facilitate the payment to Jacks Investment.

Recommendation No 4

The Ombudsman Commission recommends that the Secretary for the Department of Prime Minister & NEC should ensure that the Government Printing Office fully comply with the Public Finance Management Act and Regulations and the rules governing the conduct of government employees in the public service.

Recipients

- Minister for Public Service
- Chief Secretary to the Government
- Secretary for the Department of Prime Minister and NEC

Reasons

- Section 40(1) and (2) of the *Public Finance (Management) Act 1995*, states that Tenders shall be publicly invited and contracts let for the purchase or disposal of property or stores or the supply of works and services the estimated cost of which exceeds the prescribed amount.

In relation to purchase or disposal of property and stores and the supply of works and services estimated cost of which does not exceed the prescribed amount, the provisions of the Financial Instructions shall apply.

- Section 1 of the *Public Finance (Management) Regulation 1996*, states that for the purposes of Section 40(1) and (2) of the Act, the prescribed amount is K100,000.00. The purchase order for supply of A4 Copy Papers to GPO exceeded K100,000.00, however; no tenders were called and Jacks Investment Limited was engaged as a supplier.
- *Public Service General Order No. 20.3* prohibits officers in the public service from engaging in private business whilst employed by the State. Mr Ken Kaiah knowingly conducted private business with GPO thereby breached the provisions therein.
- Mr Kaiah had contravened the *Public Service Code of Conduct* in particular Part 3 – Ethical Principles of Acceptable Business Conduct.

Recommendation No 5

The Ombudsman Commission recommends that the Chief Secretary to the Government and the Secretary for the Department of Prime Minister & NEC should take disciplinary actions against Mr Ken Kaiah and terminate his services as the Government Printer of the Government Printing Office.

Recipients

- Minister for Public Service
- Chief Secretary to the Government
- Secretary for the Department of Prime Minister and NEC

Reasons

- Mr Ken Kaiah with vested powers and responsibilities as the Government Printer of the Government Printing Office had abused the public office for personal gain
- Mr Ken Kaiah had ignored all relevant laws governing the conduct of public servants in the public service and the business of the Government of PNG (GoPNG), as in this case the business operations of the Government Printing Office. He was very deliberate in his actions to conduct private business with GPO.
- Mr Ken Kaiah had contravened the provisions in the Public Finance Management Act, the Public Finance Management Regulation, the Public Financial Instructions, and Public Service Code of Conduct.



5. CONCLUSION

There are established laws and procedures that govern expenditure of public funds to procure goods and services for the purposes of Government Agencies. These laws and procedures are outlined in the PFMA, Public Finance Management Regulations, and Public Finance Instructions. Public officials who are responsible for making decisions on expenditure of public funds must carry out their duties and responsibilities in compliance with these established laws and procedures including Public Service General Order and Public Service Code of Ethics which deals with ethical and acceptable behaviour and conduct by Public Servants in the discharge of their roles and responsibilities in the Public Service.

This Report highlights the irregularities surrounding the expenditure of public funds and procurement of goods/services and the financial management process in Government Printing Office. The Report also highlights misconduct by the Government Printer, Mr Ken Kaiah as a government employee conducting private business with the engagement of his family business company – Jacks Investment Limited to do business with GPO.

The actions and decisions made by the Government Printer of the Government Printing Office (GPO), Mr Ken Kaiah were in breach of all laws governing the use of public funds for procurement of goods and services and the conduct of public servants in carrying out business of the Government (GoPNG), as in this case the business operations of the Government Printing Office. He used his position and power bestowed on him, and the office he holds for personal benefit.

The leaders to whom the Ombudsman Commission directs the recommendation are asked to carefully consider the recommendations and implement them.

.....
RIGO LUA, OBE
CHIEF OMBUDSMAN

.....
PHOEBE SANGETARI, LLB, LLM
OMBUDSMAN



6. RELEVANT LAWS

The following Legislation is relevant to this particular case. They are consulted when putting this report together.

- *Constitution*
- *Printing of the Laws Act* (Chapter 333)
- *Interpretation Act* (Chapter 2)
- *Public Service General Order*
- *Public Service Code of Conduct*
- *Public Finance (Management) Act 1995*
- *Public Finance (Management) Regulation 1996*
- *Public Financial Instructions*

[6.1] CONSTITUTION OF THE INDEPENDENT STATE OF PAPUA NEW GUINEA

The Government Printer is a government body under the meaning Schedule 1.2 of the *Constitution* which states:

“governmental body” means-

- (a) the National Government; or
- (b) a provincial government; or
- (c) an arm, department, agency or instrumentality of the National Government; or
- (d) a body set up by statute or administrative act for governmental or official purposes;

Section 219 of the *Constitution* lists the functions of the Ombudsman Commission. The first of these functions is:

- (a) to investigate, on its own initiative or on complaint made by a person affected, any conduct on the part of-

... (any governmental body or an officer or employee of any such body)

specified by or under an Organic Law in the exercise of a power or function vested in it or him by law in cases when the conduct is or may be wrong, taking into account amongst other things, the National Goals and Directive Principles...

[6.2] PRINTING OF THE LAWS ACT (CHAPTER 333)

SECTION 1. INTERPRETATION.

In this Act, unless the contrary intention appears—

"the Government Printer" means the holder (substantive or other) of the Public Service office of that name;

SECTION 2 – PRINTING OF LAWS BY THE GOVERNMENT PRINTER

- (1) The Government Printer shall print each law in pamphlet form as soon as practicable after it is passed or made.
- (2) The Government Printer may reprint any law in pamphlet form.
- (3) The Government Printer may, in respect of each year, reprint in a volume all the legislation of importance passed or made during that year or, where the First Legislative Counsel requests that a reprint of laws be prepared in respect of any other period, the Government Printer may reprint in a volume all the legislation of importance passed or made during that Period.

[6.3] INTERPRETATION ACT (CHAPTER 2)

SECTION 3 – INTERPRETATION OF TERMS

- (1)“Government Printer” includes a person printing or purporting to print for, or by the authority of, the State;

[6.4] PUBLIC SERVICE GENERAL ORDER

20.3 Officers of the Public Service, shall not, other than with the permission of the Secretary, Department of Personnel Management, (however, this permission may be withdrawn at any time):

- (a) Accept and or continue to hold an office in or under a Government of another Country or in or under any public or municipal corporation; and
- (b) Accept or continue to hold or discharge the duties or, be employed, in a paid office in connection with any banking, insurance, agricultural, mining, mercantile or other commercial business, whether carried out by a corporation, a firm or an individual; or,
- (c) Engage in or undertake any such business as principal or as agent; or
- (d) Engage and or continue in a private practice of any profession, occupation or trade; or,
- (e) Enter into any employment, whether remunerative or not with any person, company or firm who or which is so engaged; or
- (f) Accept or engage in any remunerative employment other than in connection with the duties of his office or offices in the Public Service.

[6.5] PUBLIC SERVICE CODE OF CONDUCT

3. ETHICAL PRINCIPLES OF ACCEPTABLE BUSINESS CONDUCT

In fulfilling the purpose of the Code to combat corruption, the code requires that at all times each officer shall:

2. Uphold all the Laws, Regulations and General Orders which apply to his/her duties and conduct in the Public Service, and inform lawful authorities of wrongdoing by others.
3. Strive to achieve excellence in service to the Public Service and the State, and in doing so avoid conflicts of interest, deception, fraud and all other forms of corrupt behaviour for selfish gain, and be open, and transparent in all dealings.
4. Deal honestly with all State Institutions, with Government clients, suppliers and consultants, declare all private interests and reject all temptations to pursue private interests at the expense of, or to the detriment of the Public Service and the State.
8. Avoid all behaviour and all situations which may harm the integrity of the Public Service, and in which his/her presence and action may bring name into public disrepute and reflect badly on the Public Service.

11. Abide by the Code of Business Ethics and Conduct attached hereto, in all business and personal dealings, and thereby achieve all of the above objectives in the interest of Papua New Guinea.

[6.6] PUBLIC FINANCE (MANAGEMENT) ACT 1995

40 TENDERS FOR PROPERTY, STORES, WORKS AND SERVICES

- (1) Subject to –
 - (a) this section; and
 - (b) Section 41,

Tenders shall be publicly invited and contracts let for the purchase or disposal of property or stores or the supply of works and services the estimated cost of which exceeds the prescribed amount.

- (2) In relation to purchase or disposal of property and stores and the supply of works and services the estimated cost of which does not exceed the prescribed amount, the provisions of the Financial Instructions shall apply.

[6.7] PUBLIC FINANCE (MANAGEMENT) REGULATION 1996

1. TENDERS FOR PROPERTY, STORES, WORKS AND SERVICES

For the purposes of Section 40(1) and (2) of the Act, the prescribed amount is K100, 000.00.

[6.8] PUBLIC FINANCIAL INSTRUCTIONS

The *Financial Instructions* contains several sections relevant to this particular investigation.

PART 11 – PROCUREMENT – FRAMEWORK AND PRINCIPLES

Division 1 – Fundamental Principles, paragraph 2 states:

2. “Value for money”

“Value for money” involves obtaining goods and services that best meet the government’s need at the lowest total cost.

The main objective of GoPNG procurement is to obtain “value for money” in the acquisition of goods and services using ethical, transparent processes whilst promoting open and effective competition.

All decision makers in the procurement process must satisfy themselves that a proposed contract will make effective use of taxpayers or donor agency funds.

Division 1 – Fundamental Principles, paragraph 3 states:

- 3 Transparency

Transparency involves the clear and public documentation of procurement processes and decisions. All processes used and decisions made should be able to withstand independent review and scrutiny.

It is the responsibility of all GoPNG staff involved in procurements to act in a transparent manner.

Division 1 – Fundamental Principles, paragraph 4 states:

4. Effective Competition

Effective competition is a key operating principle that must be applied if “Value for money” is to be achieved.

Competition that is effective will see a number of *independent* companies bidding to provide goods and services to the GoPNG, through the procurement process. Creating effective competition involves publicly requesting tenders and quotes from suppliers, providing timely and adequate information to suppliers, and ensuring that new entrants and small suppliers are able to participate.

Division 1 – Fundamental Principles, paragraph 5 states:

5. Fair and Ethical Dealing

The GoPNG in spending taxpayers and donor agency money has a special responsibility to avoid waste, act honestly and impartially, and be accountable for procurement actions.

The central principles underpinning fair and ethical dealing include:

- a. Treating potential and existing suppliers with equality and fairness
- b. Not seeking personal or family gain
- c. Treating suppliers and potential suppliers information with respect and confidentiality;
- d. Where conflict of interest occurs, it must be declared

It is important not only that all staff involved in major procurements follow these principles; but also that they be seen at all times to follow these principles. Failure to do so undermines the credibility of the whole GoPNG procurement process

