



**OMBUDSMAN COMMISSION OF
PAPUA NEW GUINEA**

**INVESTIGATION REPORT INTO THE
APPOINTMENT AND CONDUCT OF
HAMISH SHARP IN THE NATIONAL
MARITIME SAFETY AUTHORITY BOARD**

**FINAL REPORT
SEPTEMBER 2009**

TABLE OF CONTENTS

ABBREVIATIONS.....	III
EXECUTIVE SUMMARY.....	IV
<u>1</u> <u>JURISDICTION AND PURPOSE OF THE INVESTIGATION</u>	1
<u>[1.1] INTRODUCTION</u>	1
<u>[1.2] JURISDICTION</u>	1
<u>[1.3] PURPOSE OF INVESTIGATION</u>	2
<u>[1.4] METHOD OF INVESTIGATION</u>	2
<u>[1.5] INTERVIEWS CONDUCTED DURING THE INVESTIGATION</u>	2
<u>[1.6] LEGALITY OF ADMINISTRATIVE CONDUCT</u>	2
<u>[1.7] DEFINING “WRONG CONDUCT”</u>	3
<u>[1.8] THE PRELIMINARY REPORT</u>	3
<u>2</u> <u>FINDINGS OF FACTS – APPOINTMENT PROCESS</u>	5
<u>[2.1] GENERAL</u>	5
<u>[2.2] BACKGROUND</u>	5
<u>[2.3] ESTABLISHMENT OF NMSA</u>	5
<u>[2.4] PURPOSE OF NMSA</u>	5
<u>[2.5] NMSA BOARD</u>	5
<u>[2.6] THE FIRST NMSA BOARD MEMBERS</u>	6
<u>[2.7] REPRESENTATION OF COASTAL REGIONS</u>	6
<u>[2.8] THE PROPOSAL TO APPOINT HAMISH SHARP AS BOARD CHAIRMAN</u>	9
<u>[2.9] ABOUT BRIEFING THE PRIME MINISTER</u>	9
<u>[2.10] MEETING WITH THE PRIME MINISTER</u>	10
<u>[2.11] REPLACING MR. MICHAEL KASI WITH MR. HAMISH SHARP</u>	10
<u>[2.12] ATTEMPT TO REVOKE MR. MICHAEL KASI’S APPOINTMENT</u>	11
<u>[2.13] MR. MICHAEL KASI APPEALED AGAINST HIS TERMINATION</u>	11
<u>[2.14] ATTEMPT TO APPOINT MR. HAMISH SHARP TO THE BOARD</u>	13
<u>[2.15] FIRST NEC SUBMISSION</u>	13
<u>[2.16] SCREENING CANDIDATES BY THE PUBLIC SERVICE COMMISSION</u>	13
<u>[2.17] THE PUBLIC SERVICE COMMISSION GIVES CLEARANCE</u>	13
<u>[2.18] THE INSTRUCTION TO EXPEDITE THE APPOINTMENT PROCESS</u>	14
<u>[2.19] THE PRIME MINISTER’S FOLLOW UP LETTER</u>	14
<u>[2.20] MR. PARAKEI’S INSTRUCTIONS RESULTING FROM THE PRIME MINISTER’S LETTER</u>	14
<u>[2.21] MR. MICHAEL KASI RESIGNS</u>	15
<u>[2.22] THE SECOND NEC SUBMISSION</u>	15
<u>[2.23] SUBMISSION DELIVERED TO NEC</u>	15
<u>[2.24] NEC DECISION</u>	15
<u>[2.25] MR. HAMISH SHARP APPOINTED AS CHAIRMAN OF NMSA BOARD</u>	16
<u>[2.26] NOMINATION LETTERS FROM REGIONS</u>	16
<u>[2.27] POLICY GUIDING APPOINTMENT OF REGIONAL REPRESENTATIVE</u>	16
<u>[2.28] COMPLIANCE WITH SECTION 7, SUBSECTION 7(A) AND (B) OF THE NMSA ACT</u>	17
<u>[2.29] GENERAL COMMENTS – HON. DON POLYE</u>	18

3	<u>FINDINGS OF FACTS – CONFLICT OF INTEREST</u>	19
[3.1]	<u>GENERAL</u>	19
[3.2]	<u>MR. HAMISH SHARP’S BACKGROUND</u>	19
[3.3]	<u>MV SEALARK</u>	19
[3.4]	<u>NMSA INVESTIGATION REPORT</u>	19
[3.5]	<u>LEGAL ACTIONS AGAINST NMSA</u>	20
[3.6]	<u>CONFLICT OF INTEREST IN BOARD MEETINGS</u>	20
[3.7]	<u>HAMISH SHARP HAVING A CONFLICT OF INTEREST – MV SEALARK</u>	20
[3.8]	<u>NMSA BOARD MEETINGS</u>	21
[3.9]	<u>LEGAL ACTIONS AGAINST NMSA</u>	21
[3.10]	<u>GENERAL COMMENTS – HON. DON POLYE</u>	22
4	<u>FINDINGS OF WRONG CONDUCT</u>	23
[4.1]	<u>STATUS OF FINDINGS</u>	23
[4.2]	<u>FINDING NO.1</u>	23
[4.3]	<u>FINDING NO.2</u>	24
[4.4]	<u>FINDING NO.3</u>	24
[4.5]	<u>FINDING NO.4</u>	24
[4.6]	<u>FINDING NO.5</u>	25
5	<u>RECOMMENDATIONS</u>	26
[5.1]	<u>LEGAL FRAMEWORK FOR MAKING RECOMMENDATIONS</u>	26
[5.2]	<u>RECIPIENTS OF RECOMMENDATIONS</u>	26
[5.3]	<u>RESPONSIBLE MINISTERS</u>	27
[5.4]	<u>MINISTER RESPONSIBLE FOR FOLLOWING UP IMPLEMENTATION OF RECOMMENDATIONS</u>	27
[5.5]	<u>DUTIES OF RECIPIENTS OF RECOMMENDATIONS</u>	27
[5.6]	<u>RECOMMENDATIONS</u>	28
6	<u>CONCLUSION</u>	32
7	<u>RELEVANT LAWS</u>	33
[7.1]	<u>CONSTITUTION OF THE INDEPENDENT STATE OF PAPUA NEW GUINEA</u>	33
[7.2]	<u>NATIONAL MARITIME SAFETY AUTHORITY ACT</u>	35

LIST OF ABBREVIATIONS

NMSA Act	National Maritime Safety Authority Act
NEC	National Executive Council
OC	Ombudsman Commission
CO	Chief Ombudsman
OLOC	Organic Law on the Ombudsman Commission
MP	Member of Parliament
GM	General Manager
CEO	Chief Executive Officer
NMSA	National Maritime Safety Authority
MWIU	Maritime Workers Industrial Union
IMO	International Maritime Organization
MPP	Marine Pollution Prevention
SR	Search & Rescue
MTD	Maritime Transport Division
DOT	Department of Transport
IMC	International Maritime Conventions
PNG	Papua New Guinea

Executive Summary

This is a Final Report of an investigation conducted by the Ombudsman Commission into the appointment of Mr. Hamish Sharp to the National Maritime Safety Authority (NMSA) Board and the conduct of Mr. Hamish Sharp in the NMSA Board Meetings.

It was alleged that the then Minister for Transport Honourable Don Polye did not comply with the appointment procedures set out in the *National Maritime Safety Authority Act* in the appointment of Mr. Hamish Sharp to the NMSA Board. It was further alleged that Mr. Sharp's conduct as a Board Member was improper in terms of matters pertaining to his sunken vessel the MV Sealark.

The following allegations were investigated:

1. That; the then Minister for Transport Honourable Don Polye did not comply with the dismissal requirements provided by the NMSA Act when he attempted to terminate the appointment of former Board Member Mr. Michael Kasi;
2. That; the then Minister for Transport Honourable Don Polye did not comply with the appointment provisions provided by the NMSA Act when he appointed Mr. Hamish Sharp as a Board Member;
3. That; the appointment of Mr. Hamish Sharp as a NMSA Board Member was politically motivated;
4. That; Mr. Hamish Sharp had a conflict of interest in matters discussed in Board Meetings;

Principal Findings

1. In the opinion of the Ombudsman Commission, the then Minister for Transport, Honourable Don Polye's attempt to remove Mr. Michael Kasi was wrong on the basis that he did not comply with the dismissal requirements set out under Section 10 of the NMSA Act;
2. In the opinion of the Ombudsman Commission, the then Minister for Transport, Honourable Don Polye's conduct in appointing Mr. Hamish Sharp to the NMSA Board was wrong in that the Minister failed to comply with the correct appointment process provided by Section 7(7)(a) and (b) of the NMSA Act;
3. In the opinion of the Ombudsman Commission, the NMSA's administrative practice is defective in that it does not have a policy in place to guide appointments under Section 7(1)(d) of the NMSA Act;
4. In the opinion of the Ombudsman Commission, the conduct of Mr. Hamish Sharp as Chairman of the NMSA Board is wrong in that he has failed to comply with the statutory requirements for holding of Board Meetings;

5. In the opinion of the Ombudsman Commission, the conduct of Mr. Hamish Sharp was wrong in that he participated in Board Meetings where he had a real conflict of interest.

Irregularities

1. The Minister did not state the specific form of misconduct on the part of Mr. Michael Kasi when he attempted to terminate his appointment as a Board Member;
2. The Minister did not call for nominations from the three coastal regions instead relied on the letter from the Prime Minister Sir Michael Somare to make the appointment;
3. The NMSA Act does not specify an authority that could make nominations to the Minister in terms of appointment of a representative for the coastal regions;
4. In his capacity as the Chairman of the NMSA Board, Mr. Sharp has failed to call for Board Meetings as required by law;
5. In his capacity as a Board Member, Mr. Hamish Sharp participated in Board discussions relating to his sunken vessel the MV Sealark resulting in a conflict of interest.

Wrong Conduct

1. The then Minister for Transport Honourable Don Polye;
2. Mr. Hamish Sharp, Chairman NMSA Board

Recommendations

1. The Ombudsman Commission recommends to the Minister for Transport that he comply with the dismissal requirements set out in Section 10 of the NMSA Act in any future decision to terminate the appointment of a member of the NMSA Board;
2. The Ombudsman Commission recommends to the Minister for Transport that in considering future appointments of members of the NMSA Board under Section 7(1)(d) of the NMSA Act, the Minister must comply with the requirements of Section 7(7)(a) and (b) of the NMSA Act;
3. The Ombudsman Commission recommends to the Minister for Transport to review the appointment of Mr. Hamish Sharp as a Board Member appointed under Section 7(1)(d) of the NMSA Act;
4. The Ombudsman Commission recommends to the Secretary Department of Transport to develop a policy to guide appointments under Section 7(1)(d) of the NMSA Act;
5. The Ombudsman Commission recommends to the Chairman of the NMSA Board to schedule and hold Board Meetings in compliance with the requirements of Section 12(1) of the NMSA Act;

6. The Ombudsman Commission recommends to the Chairman of the NMSA Board to schedule dates of quarterly Board Meetings for a 12 Month period and to give advance notice to Board Members who are to ensure availability at meetings at such times and places determined by the Chairman;
7. The Ombudsman Commission recommends to the Minister for Transport to review the appointment of Mr. Hamish Sharp as a member to the NMSA Board on the basis of Mr. Sharp having a real conflict of interest on matters discussed in Board Meetings contrary to Section 13(1) of the NMSA Act.
8. The Ombudsman Commission recommends to the Chairman of the NMSA Board to develop Meeting Rules particularising the conduct of Board Meetings in terms of items for discussion with regard to issues of ‘conflict of interest’.

Conclusion

The Ombudsman Commission observed that there has been a tendency to over look the requirements of the relevant provisions of the NMSA Act both by the Minister for Transport and the Chairman of the NMSA in their leadership.



JURISDICTION AND PURPOSE OF THE INVESTIGATION

INTRODUCTION

This is the final report of the investigation conducted by the Ombudsman Commission into the appointment process of Mr. Hamish Sharp to the National Maritime Safety Authority (NMSA) Board. The scope of the investigation also included the issue of Mr. Sharp taking part in NMSA Board Meetings where he had a real conflict of interest in discussions pertaining to his sunken vessel the MV Sealark.

The investigation commenced in May 2007 following receipt of a complaint alleging that the correct appointment process was not followed when Mr. Hamish Sharp was appointed to the NMSA Board. The complaint further alleged that Mr. Sharp had a conflict of interest in matters discussed in NMSA Board Meetings.

In accordance with the requirements of Section 17(1) of the *Organic Law on the Ombudsman Commission* (OLOC), the notice to conduct a preliminary investigation, dated 28 May 2007 was served on Mr. Henry Parakei, Secretary Department of Transport, Mr. Chris Rupen, General Manager NMSA and Honourable Don Polye, Minister for Transport.

The Preliminary Report of the Investigation under Section 17(4) of the OLOC was served in October 2008 on the Minister, Honourable Don Polye, Mr. Henry Parakei, Mr. Chris Rupen, and Mr. Hamish Sharp, seeking submissions to the preliminary findings.

This final report is produced under Section 22 of the OLOC having received submissions in response to the preliminary report. The relevant parts of the submissions have been incorporated into this final report.

JURISDICTION

The Ombudsman Commission is established by the *Constitution* of Papua New Guinea. The purposes of the Ombudsman Commission are set out in Section 218 of the *Constitution*. The two purposes given are cited below as they relate to this investigation.

Section 218(b) and (c) *Constitution*:

- (b) To help in the improvement of the work of the governmental bodies and the elimination of unfairness and discrimination by them; and
- (c) 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 a complaint by a person who is affected by any conduct of any governmental body or any of its officers and or employees whilst exercising powers or functions vested in it, him or her by law where the conduct is or may be wrong, taking into account, amongst other matters, the National Goals and Directive Principles, the Basic Rights and the Basic Social Obligations.

Schedule 1.2(1) defines “governmental bodies” as:

- (a) the National Government; or

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

Section 16(1) of the OLOC states:

Any person may make a complaint to the Commission concerning any matter that is within the jurisdiction of the Commission.

In view of the Constitutional provisions highlighted, it is to be noted that the National Maritime Safety Authority is a governmental body created by statute namely the *National Maritime Safety Authority Act 2003* (hereafter NMSA Act). The Ombudsman Commission therefore has jurisdiction over the National Maritime Safety Authority.

PURPOSE OF INVESTIGATION

In accordance with Section 219(1) of the *Constitution*, the purpose of the investigation was to determine whether any of the conduct under investigation was wrong and to determine whether there were any defects in any law or administrative practice.

METHOD OF INVESTIGATION

The Ombudsman Commission issued a notice under Section 17(1) OLOC, on 28 May 2007 to Mr. Henry Parakei, Secretary Department of Transport, Mr. Chris Rupen, General Manager of NMSA and Hon. Don Polye, Minister for Transport, advising of its intention to investigate.

Section 17(1) of the OLOC states:

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

The Commission obtained documents and other evidence from a number of sources under Section 18(1) of the OLOC.

Section 18(1) of the OLOC states:

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.

INTERVIEWS CONDUCTED DURING THE INVESTIGATION

Mr. Henry Parakei, Secretary, Department of Transport, and Mr. Chris Rupen, General Manager, NMSA gave evidence before the Ombudsman Commission. Attempts to secure an interview with Don Polye, the Honourable Minister for Transport, were not successful.

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. It is also authorised to report on what, in its opinion, is “wrong conduct”, irrespective of whether that conduct has been in accordance with the law.

DEFINING “WRONG CONDUCT”

The *Constitution* gives some guidance to the Ombudsman Commission when it is deciding whether conduct is “wrong”.

Section 217(8) of the *Constitution*, defines ‘conduct’ as including any action or inaction or an alleged action or inaction relating to a matter of administration. Section 219(2) of the *Constitution* states that 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 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 judgement within the meaning of Section 62 (decisions in “*deliberate judgement*”)

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 categories in paragraphs (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*.

THE PRELIMINARY 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 this duty of procedural fairness, the Ombudsman Commission distributed a preliminary report of the investigation in October 2008.

A preliminary report allows persons who may be affected by the Commission's final report to respond to any adverse findings and correct any factual errors the Commission may have made.

The purpose of the preliminary report was to state the Ombudsman Commission's preliminary findings of fact and preliminary views on the subject of its investigation and to seek comments and submissions from those affected.

All of the findings in the preliminary report were qualified, that is, they were made subject to evidence gathered during the investigation.

Accompanying the preliminary report was a direction by the Ombudsman Commission, pursuant to Section 21(1) of the OLOC, that any evidence given before it or any document, paper or thing produced to it and referred to in the report, including all findings and opinions, were not to be published without the written consent of the Commission. Breach of the direction is a punishable offence.

The following persons were sent a copy of the preliminary report:

1. Hon. Don Polye, MP, Minister for Transport;
2. Mr. Henry Parakei, Secretary, Department of Transport;
3. Mr. Hamish Sharp, Chairman, NMSA Board; and
4. Mr. Chris Rupen, General Manager, NMSA

Recipients of the preliminary report were invited to respond to the Ombudsman Commission within 21 days of receiving the report. With the exception of the Minister who was granted an extension, no other recipient requested for an extension of time.

Written responses were received from Mr. Hamish Sharp through his solicitors, Warner Shand Lawyers and Mr. Henry Parakei, Secretary Department of Transport. The Minister for Transport Hon. Don Polye, appeared in person and presented both his written and verbal responses.

The Ombudsman Commission has carefully considered all submissions received in response to the preliminary report. Responses to particular issues can be found in the relevant sections of this report.

FINDINGS OF FACTS – APPOINTMENT PROCESS

General

The facts on which the Ombudsman Commission has based its findings of wrong conduct relating to the appointment of Mr. Hamish Sharp to the NMSA Board are outlined in this chapter. The Ombudsman Commission considered it necessary to set out the background of events and or decisions that led to his appointment.

Background

In August 2006, the National Executive Council (NEC) endorsed a recommendation to appoint Mr. Hamish Sharp as a Member of the NMSA Board. The recommendation was made by Honourable Don Polye, Minister for Transport, under Section 7(1)(d) of the NMSA Act.

Establishment of NMSA

NMSA was established in 2003 as a result of reforms undertaken by the Department of Transport. The NMSA Act was passed by Parliament and gazetted in the National Gazette No.G14 on 5 February 2003. Prior to the reforms, the Maritime Transport Division within the Department of Transport was responsible for finance, policy, and regulatory matters relating to maritime transport. Following the reforms, NMSA was given the responsibility of regulating the maritime transport.

Purpose of NMSA

As a ‘regulatory authority’ NMSA is responsible for matters relating to maritime safety, marine pollution prevention and for co-ordinating search and rescue operations at sea. It carries out surveys and inspections on all vessels, seafarers, machinery and other equipment and ensures that vessels comply with safety and security measures before being issued with ‘sea worthy’ certificates and licences. NMSA also ensures that ships update their navigational charts within PNG; that navigational lights around the country are operating; and that the marine environment is not polluted by pollutants from vessels. NMSA basically ensures that vessels comply with the *Merchants Shipping Act* Chapter 242 and all other International Maritime Conventions that PNG as a member of the International Maritime Organization is a party to.

NMSA Board

Section 6 of the NMSA Act establishes the NMSA Board and further specifies its roles and functions. Section 7 of the Act provides for the appointment of Board Members. The Act specifies Board representation from various institutions listed as follows:

- | | | | |
|-------|---|---|------------|
| (i) | Secretary, Department of Transport or his nominee | - | Ex Officio |
| (ii) | Secretary, Department of Finance or his nominee | - | Ex Officio |
| (iii) | General Manager NMSA | - | Ex Officio |

(iv)	Regional Representative [coastal regions]	-	Member
(v)	National Research Institute	-	Member
(vi)	PNG Shipowners Association	-	Member
(vii)	Chamber of Commerce and Industry	-	Member
(viii)	PNG Harbours Ltd	-	Member

The first NMSA Board Members

After the NMSA was established, the following persons were appointed as the first NMSA Board Members excluding ex-officio members:

(i)	Michael Kasi	-	Regional representative (Momase);
(ii)	John Sowe	-	National Research Institute;
(iii)	Andrew Proud	-	PNG Shipowners Association;
(iv)	Doug Reid	-	Chamber of Commerce and Industry; and
(v)	Kepas Wali	-	PNG Harbours Board

Representation of coastal regions

Momase, New Guinea Islands and Southern are the coastal regions in Papua New Guinea. Section 7(1)(d) of the NMSA Act allows the Minister for Transport to recommend to the National Executive Council one person to be appointed to represent these three regions. In order to make an appointment under this provision, the Minister is required to comply with the requirements of Section 7(7) of the NMSA Act:

Section 7(7) NMSA Act states:

- (7) **For the purposes of Subsection (1)(d), the Momase region, the New Guinea Islands region and the Southern region -**
- (a) **shall be represented on the Board on a rotational basis; and**
 - (b) **are in turn entitled to nominate their representative in such order as is determined by the Minister.**

Around 2003 and 2004, following establishment of the NMSA Board, Mr. Michael Kasi became the first appointee under this provision. At the time of the appointment, he was the First Secretary to the then Governor of Madang, Honourable James Yali.

In response to the Preliminary Report of the Ombudsman Commission, Warner Shand Lawyers responded for Mr. Sharp in the following terms:

“The NMSA Act does not nominate any entity from the Momase, New Guinea Islands, and Southern regions of the country which could nominate or recommend to the Minister a member to be appointed pursuant to section 7(1)(d).

Persons to be nominated pursuant to section 7(1)(d), (e), (f), (g), and (h) involve a process of recommendation to the Minister in section 7(4).

Clearly there is a distinction made by the NMSA Act that the Minister has the discretion as to whom he will seek nominations from pursuant to section 7(7)(b) and in respect of the manner in

which nominations are dealt with in section 7(4). Additionally section 7(5) refers to the nominee of the Minister.

Following the rules of statutory interpretation as there is no requirement in the NMSA Act that anyone or entity recommend an appointment to the minister for the coastal regions on the board as opposed to the other appointments referred to in section 7(1)(e), (f), (g) and (h) it is clear that the NMSA Act intends the matter to be at the discretion of the Minister, see section 7(5)".

COMMENT

The Ombudsman Commission considered Warner Shand Lawyers interpretation of Section 7(1)(d), in particular Section 7(7) of the NMSA Act and makes its comments in the following terms:

The appointment procedure for Board Members from defined institutions under Section 7(1)(e)(f)(g) and (h) is provided under Section 7(4) of the NMSA Act. The defined institutions are identified as (i) National Research Institute; (ii) PNG Ship Owners Association; (iii) PNG Chamber of Commerce and Industry; and (iv) PNG Harbours Ltd respectively.

The procedure under Section 7(4) is explicit in that a body within the defined institutions recommends three candidates to the Minister. The Minister then submits these candidates with his recommended choice to the NEC. For appointments under this provision, the Minister has no power of discretion to choose a nominee from elsewhere other than from the candidates nominated by the defined institutions.

For appointment of a Board Member under Section 7(1)(d), the Ombudsman Commission also has a firm view that the NMSA Act gives no power of discretion to the Minister to choose a nominee of his own choice or the discretion to choose the region from where he should seek nominations from. The relevant provisions are cited for ease of reference:

Section 7(1)(d) NMSA Act states:

one person nominated by the Minister to represent the Momase region, the New Guinea Islands region, and the Southern region of the country;

Section 7(4) NMSA Act states:

A body referred to in Subsection (1)(e)(f)(g) and (h) shall submit to the Minister the names of at least three persons, of whom one shall be a woman, possessing sufficient qualifications and experience to adequately represent them on the Board, and the National Executive Council shall choose from the nominees one person to be a member upon the recommendation of the Minister.

Section 7(5) NMSA Act states:

The Minister shall submit to the National Executive Council his nominee under Subsection 1(d) with his recommendation for appointment.

Section 7(7) NMSA Act states:

For the purposes of Subsection (1)(d), the Momase region, the New Guinea Islands region and the Southern region –

- (a) shall be represented on the Board on a rotational basis;
- (b) are in turn entitled to nominate their representative in such order as is determined by the Minister.

Pursuant to Section 109(4) of the *Constitution*, Section 7(4), (5) and (7) of the NMSA Act are read together.

Section 109(4) *Constitution*

Each law made by the Parliament shall receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the law according to its true intent, meaning and spirit, and there is no presumption against extra-territoriality.

In the opinion of the Ombudsman Commission, the appointment procedure under Section 7(5) that applies to the regional nominees under Section 7(1)(d), would be consistent with the procedure under Section 7(4) that applies to the nominees from defined institutions identified under Section 7(1)(e)(f)(g) and (h).

Section 7(7), requires regional representation on the Board to be on a rotational basis and that the order of rotation is to be determined by the Minister. This provision strengthens the opinion of the Ombudsman Commission that the Minister has no power of discretion to choose the region from where he should seek nominations from, nor the discretion to choose anyone of his own choice. The Minister can only accept nominations from a recognised body.

For appointment of a Board Member under Section 7(1)(d), there is no entity identified by the Act that could make nominations to the Minister. NMSA should therefore develop policy that will identify an entity that could make nominations. This should ensure that the appointment procedure for a Board Member under Section 7(1)(d) is complied with as intended by Parliament.

Pursuant to Section 25(2) and (3) of the *Constitution* the NMSA is duty bound to give effect to the National Goals and Directive Principles in its application of Section 7 of the NMSA Act.

The National Goals and Directive Principles No.2 - Equality and Participation:

- (10) all persons and governmental bodies of Papua New Guinea to ensure that, as far as possible, political and official bodies are so composed as to be broadly representative of citizens from the various areas of the country;

Section 25 *Constitution* - Implementation of the National Goals and Directive Principles

- (2) It is the duty of all governmental bodies to apply and give effect to them as far as lies within their respective powers.
- (3) Where any law, or any power conferred by any law (whether the power be of a legislative, judicial, executive, administrative or other kind), can reasonably be understood, applied, exercised or enforced without failing to give effect to the intention of the Parliament or to this Constitution, in such a way as to give effect to the National Goals and Directive Principles, or at least not to derogate them, it is to be understood, applied or exercised, and shall be enforced, in that way.

A failure to comply with the requirements of Section 7(7) of the NMSA Act defeats the purpose of the National Goals and Directive Principles on equality and participation. In

this case, the New Guinea Islands region and the Southern region have been denied their right to participate in matters relating to Maritime Transport.

The proposal to appoint Hamish Sharp as Board Chairman

Around March 2005, there were suggestions to have Mr. Hamish Sharp appointed as the Chairman to the NMSA Board. In a letter dated 21 March 2005, the Prime Minister Sir Michael Somare wrote to the Minister for Transport Hon. Don Polye, stating that he was in receipt of a letter from Mr. Guao Zurenuoc regarding the appointment of Mr. Sharp as the Chairman of the NMSA Board. The letter is quoted as follows:

“I have fully acknowledged the letter from Hon. Guao Zurenuoc regarding the appointment of Mr. Hamish Sharpe as the Chairman of National Maritime Safety and Control Board.

It is also in my view that Mr. Sharpe as a successful ship-owner and operator; I am in total support for Mr. Sharpe to be appointed as Chairman of the National Maritime Safety Board.

I look forward to your immediate cooperation.”

About briefing the Prime Minister

In response to the Prime Minister’s letter of 21 March 2005, Mr. Henry Parakei, Secretary of the Department of Transport sent a letter dated 15 April 2005 addressed to the Minister of Transport Hon. Polye. Mr. Parakei requested the Minister to brief the Prime Minister Sir Michael Somare, that Section 7 of the NMSA Act specified appointments to the Board. The relevant paragraphs of the letter are quoted as follows:

“It is important to note and hence brief the Honourable Prime Minister; Sir Michael Thompson Somare, that Section 7, sub-section (1) to (8) of the National MARITIME Safety Authority Act, 2003; specifies who should, and who should not be a member of the NMSA.

Section 7, sub-section (1), (a), (b), (c), (d), (e), (f), (g) and (h) says the Board shall consist of a nominee from a defined institution, therefore it provides you as Minister responsible for Transport matters very little flexibility to appoint a person of your own choice, except sub-section (1), (d), that is one person nominated by the Minister to represent the Momase region, the New Guinea Islands region, and the Southern region of the Country.

With regards to the appointment of chairperson of the NMSA Board, Section 8, sub-section (1) says, the Minister may from time to time appoint ONE OF THE MEMBERS OF THE BOARD to be a Chairman of the Board.

In other words, one cannot be a Chairman or even a Board Member, if one is not a nominee of the defined “Institutions” outlined under Section 7, sub-section (1), (a) to (h).

For Mr. Hamish Sharpe to be a Chairman of the NMSA, he should first of all be a nominee representing either:

- (i) The National Research Institute;*
- (ii) The PNG Shipowners Association;*
- (iii) The PNG Chamber of Commerce and Industry;*
- (iv) The Coastal and Islands regions*

.....During my brief interviews and discussion with other Board Members, they are satisfied and strongly recommend that Mr. Doug Reid remains the Chairman of the NMSA Board.”

Meeting with the Prime Minister

In his evidence to the Ombudsman Commission on 19 March 2008, Mr. Parakei, stated that the Prime Minister, Sir Michael Somare was concerned about irregularities in the provision of shipping services to the Momase region hence called for a meeting with him (Mr. Parakei), the Minister for Transport Hon. Polye, and with Governors Carlos Yuni, Dr. Jacob Jumogot, Luther Wenge and James Yali. The meeting was held on 17 June 2005. The main thrust of the discussions was centred on the need to either purchase a vessel or to negotiate with a shipping company to provide services. During the meeting, it was mentioned that Bismark Shipping Ltd, a company based in Lae and owned by Mr. Hamish Sharp, was willing to provide the services. Mr. Parakei also mentioned that Bismark Shipping was willing to provide the service with some form of government subsidy to assist with its operational costs and that there was an MOU to firm up what was discussed. Mr. Parakei also mentioned that in that meeting it was suggested that Mr. Hamish Sharp be appointed to the NMSA Board.

Replacing Mr. Michael Kasi with Mr. Hamish Sharp

On 22 June 2005, Mr. Parakei wrote to the Minister for Transport Hon. Polye and referred to the suggestion that was made in the meeting with the Prime Minister to replace Mr. Michael Kasi with Mr. Hamish Sharp. The relevant paragraphs of the letter are quoted as follows:

“I refer you to the letter dated 21st May 2005 from the Right Honourable Sir Michael Thomas Somare, GCMG CH KTStJ, MP, the Prime Minister and the Regional Member for East Sepik Province, regarding appointment of Mr. Hamish Sharpe as Member of the NMSA Board and Chairman of the Board.

.....After our briefing with the Prime Minister on Friday the 17th of June 2005, you briefly suggested for Hamish Sharp to replace Michael Kasi as a regional representation on the board.

Indeed Mr. Minister, the prerogative is yours. If this is going to be the case, then I strongly recommend that you talk to Mr. Kasi prior to any changes.

The change does not in anyway question the ability of Mr. Michael Kasi on the Board. In fact he has performed exceptionally well, however to accommodate the concerns raised by the Honourable Prime Minister, you will have to make some painful and unpopular decisions. I believe this is one of them.”

Attempt to revoke Mr. Michael Kasi’s appointment

On 13 July 2005, the Minister for Transport, Hon. Polye attempted to terminate Mr. Kasi’s appointment to the Board. Mr. Kasi was informed that his appointment as a Board Member was revoked and that he was being replaced by Mr. Hamish Sharp. The letter which was copied to the Prime Minister Sir Michael Somare and the then Chief Secretary Mr. Joshua Kalinoe, is quoted as follows:

“After much consideration, it is with deep regret that I write to inform you that your tenure on the board of the National Maritime Safety Authority is hereby revoked.

Recent events and circumstances have prompted me to invoke application of Part III Section 7, subsection (1)(d) of the NMSA Act enabling me to appoint Hamish Sharp as your alternate.

This decision is regrettable however it is in the best interest of our country.

I take this opportunity to thank you immensely for your input and contribution to nurturing the newly established NMSA Board and wish you all the best in your future endeavours.”

Section 10 Subsection 6 of the NMSA Act allows the Minister for Transport to terminate the appointment of a Board Member on grounds of misconduct in office.

Section 10(6) NMSA Act:

- (6) **The Minister may, at any time, by written notice, advise a member that he intends to terminate the appointment of that member on the grounds of misconduct in office and specifying the details of the misconduct, such misconduct includes, but is not limited to –**
- (a) **undisclosed interest as provided in Section 13;**
 - (b) **disclosure of information which is confidential as provided in Section 53.**

The Minister’s letter does not specify any misconduct on the part of Mr. Kasi.

Mr. Michael Kasi appealed against his termination

On 25 July 2005, Mr. Kasi appealed against the decision of the Minister to terminate his appointment. He argued that the Minister was required to advise him in writing about the intention to terminate his appointment and also the reason why he was being terminated. The relevant paragraphs of the letter are quoted as follows:

“I am in receipt of your faxed letter dated 14th July 2005 on Monday 18th July 2005 advising me of my revocation as the Deputy Chairman and a member of the Board of the National Maritime Safety Authority (NMSA).

As per Part III, Section 10, subsection (6), (7), and (8) of the NMSA Act, I wish to respond and make a reply to the action to revoke my appointment from the NMSA Board as follows.

.....Minister I am concerned that according to the Act, I am supposed to be advised or notified by you as Minister in writing to me like a show cause letter that you intend to terminate my appointment as a member of the NMSA Board. That is absent. What I have is a faxed letter advising that my appointment has been revoked and that seems final.

Secondly, according to the same paragraph of the Act, you as the Minister has to state the reasons or grounds of my being in misconduct in office etc.; or state the breach or breaches of a certain section or certain sections of the NMSA Act that warrants a termination of a board member. That is also absent. The faxed letter to me does not state any reasons or grounds of my revocation.”

The investigation could not determine whether the Minister responded to Mr. Kasi however the Minister’s letter of termination did not take effect on the basis that Mr. Kasi remained a Board Member until his resignation around 29 June 2006.

Generally, a power to appoint someone also includes the power to suspend or remove the appointee, unless a contrary intention is expressed in the legislation. Section 36 of the *Interpretation Act* (Chapter 2) states:

Section 36	Implied power to remove or suspend
(1)	Where a statutory provision confers a power to make an appointment, the power includes power, subject to Subsection (2), to remove or suspend a person so appointed.
(2)	The power provided for by Subsection (1) is exercisable only subject to any conditions to which the exercise of the original power of appointment was subject.

Section 10 of the NMSA Act 2003 limits the general power to revoke an appointment. The section sets out an extensive list of grounds by which a Board Member could be removed. This provision therefore sets out the conditions upon which the power to terminate a membership on the Board can be lawfully exercised.

In response to the Preliminary Report of the Ombudsman Commission, the Minister Hon. Don Polye responded as follows:

“I now note the allegation that Section 7 of the National Maritime Safety Authority Act were not complied with. Under Section 10(6) of the National Maritime Safety Authority Act No.11 of 2003, the Minister is given power to revoke membership to the Board”.

COMMENT

Section 10(6) of the NMSA Act provides that the Minister's power to revoke membership to the Board is only on specific grounds of misconduct. Section 10(7) and (8) provide the procedure to follow in the termination process. There were no grounds of misconduct cited against Mr. Michael Kasi to warrant termination by the Minister.

Attempt to appoint Mr. Hamish Sharp to the Board

On 14 July 2005, after advising Mr. Kasi of his termination, the Minister for Transport, Hon. Don Polye informed Mr. Hamish Sharp about his appointment as a Member of the NMSA Board. The letter states:

"It is with much pleasure that I write to inform and congratulate you on your appointment to the Board of National Maritime Safety Authority (NMSA). With your extensive experience in the Shipping industry, I have no doubt that your inclusion will enhance the performance and provide further direction on the Board's performance.

Your appointment takes effect immediately and I look forward to a harmonious working relationship with you and the Board of NMSA."

First NEC Submission

A submission dated 25 August 2005, signed by the Minister for Transport was sent to the National Executive Council to approve the decision that was made regarding the termination of Mr. Michael Kasi and his replacement by Mr. Hamish Sharp to the NMSA Board.

Screening candidates by the Public Service Commission

On 13 October 2005, the Minister for Transport Hon. Don Polye requested the Public Service Commission (PSC) to screen nominees for appointment to the Boards of the Civil Aviation Authority and NMSA. The letter reads:

"I make reference to the above and the attached copies of the two submissions for presentation to the National Executive Council for endorsement and approval. I have signed both submissions after our own elimination process in consideration of several capable candidates."

The Public Service Commission gives clearance

On 5 October 2005 the Public Service Commission wrote and informed the Minister for Transport that it had examined the suitability of Mr. Hamish Sharp and that it was satisfied with the credentials of the candidate. The letter reads:

"This Commission acknowledges receipt of your letter dated 3rd October 2005 regarding the appointment of new members of the

Civil Aviation Authority (CAA) Board, and the National Maritime Safety Authority (NMSA) Board.

You also wish to appoint Mr. Hamish Sharp as Alternate Member to the National Maritime Safety Authority.

This Commission advises that it has examined the suitability of the above named candidates for the membership of the two authorities, and is satisfied with the credentials of the candidates. All are qualified and experienced people in their own right, and are capable of making meaningful contributions to the affairs of the Boards.

As such the Commission endorses their candidature, and recommends their appointment to the respective Boards”

The instruction to expedite the appointment process

On receipt of the advice from the Public Service Commission, the Minister for Transport instructed his First Secretary to liaise with the Secretary for Transport Mr. Henry Parakei to expedite the process through the NEC. In a footnote on the PSC letter the Minister stated:

“1st Secretary, liaise with Sec. Parakei and expedite process via NEC. I think there’s a cabinet submission already with the cabinet secretariat.”

The Prime Minister’s follow up letter

On 20 February 2006, the Prime Minister Sir Michael Somare wrote to the Minister for Transport raising his concern about the delay in progressing Mr. Sharp’s appointment to the NMSA Board. His letter reads:

“I have been advised that Mr. Hamish Sharp’s appointment to the Board of the Maritime Safety Authority has not been finalized.

Could you please ascertain and advise me of what the hold up might be so that we, as a Government can proceed to address the outstanding issues.

If a NEC Submission/Statutory Paper is required, then your office should proceed to prepare that Paper and have it presented to Cabinet for our due consideration as soon as possible.”

Mr. Parakei’s instructions resulting from the Prime Minister’s letter

Mr. Henry Parakei, Secretary for the Department of Transport issued an instruction for a brief to be prepared for the Minister for Transport after receiving the Prime Minister’s letter. Mr. Parakei’s instructions were written on the Prime Minister’s letter by way of a footnote dated 13 March 2006:

“Draft a short brief to the Minister advising him this is PM’s third letter. Pls draft a letter to Mr. Michael Kasi politely asking him to step down.”

Mr. Michael Kasi resigns

On 29 June 2006, Mr. Michael Kasi wrote to the Minister for Transport and advised him that he had agreed to resign as a member and as the Deputy Chairman of the NMSA Board. He stated:

“I wish to advise that I have agreed to resign as a Member and Deputy Chairman of the National Maritime Safety Authority (NMSA) Board on the basis of the discussions I had with the Secretary, Department of Transport of the undertaking that I will be re-appointed by you as a Member and Deputy Chairman of the National Land Transport Board.”

The Second NEC Submission

On 1 August 2006, Mr. Philip Habon, Acting Secretary of the Department of Transport wrote to the Minister for Transport Hon. Polye about the second submission to NEC relating to the appointment of Mr. Hamish Sharp to the NMSA Board. The letter reads:

“You may recall that our earlier submissions were returned mainly because of Mr. Kasi’s reluctance to resign. This has since changed as Mr. Kasi has resigned and will be appointed to the National Land Transport Board as Deputy Chairman.”

Submission delivered to NEC

On 8 August 2006, Ms. Winnie Kiap, Secretary to the National Executive Council was informed about the submission relating to Mr. Hamish Sharp’s appointment to the NMSA Board. The letter to Ms. Kiap was signed by Mr. Henry Parakei, Secretary of the Department of Transport. The relevant paragraphs of the letter are quoted as follows:

“Find enclosed fifty (50) copies of NEC submission seeking endorsement and approval for the appointment of Mr. Hamish Gordon Sharp as the new member on the board of National Maritime Safety Authority.

His appointment has become necessary due to the resignation of Mr. Michael Kasi. Copies of resignation and clearance from the Public Service Commission are also appended in the submission.”

NEC Decision

On 12 August 2006, the National Executive Council made the decision appointing Mr. Hamish Sharp as a NMSA Board Member. The NEC decision is registered as Decision

No.169/2006 which was gazetted on 29 August 2006 in the National Gazette No.G166 dated 31 August 2006.

Mr. Hamish Sharp appointed as Chairman of NMSA Board

By a letter dated 22 November 2006, the Minister for Transport Hon Don Polye informed Mr. Hamish Sharp of his appointment as the Chairman to the NMSA Board. The relevant paragraphs of the letter are quoted as follows:

“You are no doubt fully aware that the current Chairman, Mr. Doug Reid has been retired on medical grounds and furthermore, I have been reliably informed that he could not possibly retain Chairmanship of the NMSA because of the risk associated with the illness.

I am confident that you will lead, direct, and lift NMSA to a new height in your new role as the Chairman of the NMSA despite reservation by some people in the maritime fraternity.

Under Section 8, subsection (1) of the National Maritime Safety Authority Act, 2003, I hereby appoint you as Chairman of the NMSA Board of PNG.

Your appointment shall become effective as of 1st January 2007”.

Nomination letters from regions

Mr. Henry Parakei, Secretary of the Department of Transport in his evidence to the Ombudsman Commission on 19 March 2008, responded to the question whether there were letters from the coastal regions nominating their preferred representative as required under Section 7, Subsection 7(a) and (b) of the NMSA Act, Mr. Parakei informed the Ombudsman Commission that there was only one letter from the Prime Minister requesting for Mr. Hamish Sharp to be appointed representing Momase region. Mr. Parakei stated that there was no formal correspondence from the regions nominating their preferred candidate which is a requirement under Section 7(7) of the NMSA Act.

Policy guiding appointment of regional representative

In response to the question whether the NMSA had a policy in place to guide appointments under Section 7, Subsection 7(a) and (b) of the NMSA Act, Mr. Parakei, informed the Ombudsman Commission that there was no policy in place to guide appointments as required under that Section.

In response to the Preliminary Report of the Ombudsman Commission, the Minister, Hon Don Polye responded as follows:

“I did note in your preliminary investigation that you did highlight the legislative arrangements that could be drafted and put in place for such a similar appointment in future and you have pointed out to me

some loopholes, so that will guide us when selecting members from the maritime province and that is a good suggestion which I have noted to my Secretary also so those are regulatory things that we need to look at”.

COMMENT

NMSA is authorized by Section 56 of the NMSA Act to develop regulations it considers appropriate to assist and enhance its operations. The fact that the NMSA Act does not identify an entity to make nominations for an appointee under Section 7(1)(d) cannot be ignored. Under Section 56, NMSA should develop a policy that could identify a specific nominating authority or entity for each coastal region to make nominations to the Minister.

Compliance with Section 7, Subsection 7(a) and (b) of the NMSA Act

Mr. Parakei, Secretary of the Department of Transport was asked by the Ombudsman Commission whether the Minister for Transport Hon. Polye complied with Section 7, Subsection 7(a) and (b) of the NMSA Act when he appointed Mr. Hamish Sharp. Mr. Parakei informed the Ombudsman Commission that he believed the Minister was coerced to make the appointment without due compliance with the requirements of the law.

The Ombudsman Commission obtained two copies of letters signed by the Prime Minister Sir Michael Somare addressed to the Minister Hon. Don Polye. The first letter dated 21 March 2005 is quoted as follows:

*“The Hon. Don Polye
Minister for Transport and Civil Aviation
Parliament House
WAIGANI
National Capital District*

My dear Minister,

I have fully acknowledged the letter from Hon. Gao Zurenuoc regarding the appointment of Mr. Hamish Sharpe as the Chairman of National Maritime Safety and Control Board.

It is also in my view that Mr. Sharpe as a successful ship-owner and operator; I am in total support for Mr. Sharpe to be appointed as Chairman of the National Maritime Safety Board.

I look forward to your immediate cooperation

Yours Sincerely

M. T. SOMARE GCMG CH KTStJ”

The second letter signed by Sir Michael Somare, Prime Minister and addressed to the Minister Hon. Don. Polye is dated 20 February 2006. The letter is quoted as follows:

“Hon. Don Polye, MP

*Minister for Transport and Civil Aviation
P. O. Box 1489
Port Moresby NCD*

My Dear Minister

I have been advised that Mr. Hamish Sharp's appointment to the Board of the Maritime Safety Authority has not been finalized.

Could you please ascertain and advise me of what the hold up might be so that we, as a Government can proceed to address the outstanding issues.

If a NEC Submission/Statutory Paper is required, then your Office should proceed to prepare that Paper and have it presented to Cabinet for our due consideration as soon as possible.

Yours sincerely

M. T. SOMARE GCL GCMG CH CF KSt.J"

General Comments – Hon. Don Polye

In response to the Preliminary Report of the Ombudsman Commission, the Minister Hon. Don Polye commented that it was not just about appointing someone from the Maritime Provinces. It was also about appointing someone of Mr. Sharp's background to assist in developing the local shipping industry in the country because the shipping industry was being controlled by a few operators that competition was difficult. The Minister was looking at local shipping interests, more Papua New Guinea oriented shipping operators.

The Minister further commented that with the advice he got at that time, it was the best thing to do therefore he proceeded to make the changes to get Mr. Hamish Sharp in. The advice he was given at that time was that Mr. Sharp provided services to the provinces directly to the local or rural people. The other shippers were more commercial based and that they would not load vegetables or agriculture products. Based on those observations and the advice available to him at that time, he proceeded with the changes to appoint Mr. Sharp.

COMMENT

The scope of the Ombudsman Commission's investigation was limited to the appointment process of Board Members appointed under Section 7(1)(d) of the NMSA Act and the conduct of Mr. Hamish Sharp in Board Meetings. Mr. Hamish Sharps' business interests were of no relevance to this investigation nor were the reasons behind the changes. The Ombudsman Commission maintains that the procedure for appointment and termination provided by the NMSA Act were not followed correctly in making the changes.

* * *

FINDINGS OF FACTS – CONFLICT OF INTEREST

General

The facts on which the Ombudsman Commission has based its findings of wrong conduct are outlined in this chapter in particular, facts relating to Mr. Hamish Sharp having a conflict of interest on matters discussed in the NMSA Board Meetings.

It must be emphasised at the outset that the Ombudsman Commission does not endorse the findings of the NMSA investigation report into the MV Sealark accident. All references to the NMSA investigation report by the Ombudsman Commission is on the reason that Mr. Hamish Sharp remained and took part in the NMSA Board Meetings where MV Sealark was discussed resulting in a conflict of interest.

Mr. Hamish Sharp's background

Mr. Hamish Sharp's business interests in Papua New Guinea relate mainly to the shipping industry. He owns Bismark Maritime Ltd and Sealand Pacific and operates a number of ships. His company headquarters is based in Lae and other branches are located in Port Moresby and Madang. Mr. Sharp was appointed as a NMSA Board Member by virtue of a NEC decision on 12 August 2006 and subsequently as Chairman to the NMSA Board by the Minister for Transport Hon. Don Polye which became effective on 1 January 2007.

MV Sealark

MV Sealark was a passenger and cargo vessel, registered on 6 October 2005 to Sealand Pacific, a sister company of Bismark Maritime Ltd owned and operated by Mr. Hamish Sharp. On 7 April 2006, the vessel caught fire and sank within the jurisdictional area of PNG Ports Ltd, in Lae, Morobe Province. The NMSA conducted an investigation to determine the cause of the accident. A copy of the report was furnished to the Ombudsman Commission.

NMSA Investigation Report

The Ombudsman Commission observed from the NMSA investigation report that the wreck posed a threat to navigation and that a recommendation was made for the owner to remove the wreck. The Ombudsman Commission further observed the reports findings that (i) the owner failed to implement and enforce safety systems; (ii) the crew lacked proper qualifications; (iii) the crew were not adequately trained to promote safety on board in particular shipboard fire and, (iv) the owner failed to maintain the vessel at the standard required by the International Safety Management Code hence a recommendation was made for all vessels owned and operated by Mr. Sharp to be surveyed and where serious defects were to be found, to ground the vessel(s) until adequate safety measures were implemented by Mr. Sharp to the satisfaction of NMSA.

Legal Actions against NMSA

Mr. Hamish Sharp commenced two legal actions against NMSA. One was an action taken against NMSA's decision for him to remove the wreck and the other was a K1 Million claim for damages against NMSA and Mr. Virgil Toanchina for defamation resulting from the investigation into the MV Sealark accident. During the investigation, Mr. Chris Rupen, General Manager of NMSA informed the Ombudsman Commission that after his appointment to the NMSA Board, Mr. Sharp withdrew the legal action seeking damages however the action seeking to stay the decision of the NMSA [about wreck disposal] is still pending.

Conflict of Interest in Board Meetings

Mr. Hamish Sharp attended his first Board Meeting on 27 and 28 September 2006 with Mr. Doug Reid as the Chairperson of the NMSA Board at that time. The Ombudsman Commission examined certified copies of the meeting minutes and found that during the meeting, the then Chairman Mr. Doug Reid announced that where a member had interest in a matter being considered by the Board the member had to be excused from the meeting and should not participate in the decision. Mr. Hamish Sharp objected to the decision arguing that as an interested party, Board Member(s) should not be asked to leave the room.

In response to the Preliminary Report of the Ombudsman Commission, Mr. Hamish Sharp responded through his solicitors Warner Shand Lawyers that:

“Any matter before the board in which a member may be directly or indirectly interested must be disclosed and the manner that is dealt with is set out and detailed in section 13 of the NMSA Act.

The board minutes in question have not been certified as correct by the chairman Hamish Sharp as any correct board minutes would have to show that at the meeting concerned there was unanimous agreement in the board meeting that Hamish Sharp should remain but not take part in any vote”.

Hamish Sharp having a conflict of interest – MV Sealark

Mr. Hamish Sharp's appointment as Chairman of the NMSA Board became effective on 1 January 2007. On 28 February 2007, Mr. Sharp requested the Australian Maritime Safety Authority (AMSA) to conduct an independent investigation into the MV Sealark accident. The Ombudsman Commission could not establish during the investigation whether the decision was sanctioned by the NMSA Board.

In response to the Preliminary Report of the Ombudsman Commission, Mr. Hamish Sharp responded through his solicitors Warner Shand Lawyers that:

“Mr. Hamish Sharp had already declared his interest in relation to the Sealark and writing to AMSA requesting an investigation is certainly not a conflict when the purported investigation carried out by NMSA was clearly biased”.

NMSA Board Meetings

As Chairman of the NMSA Board, Mr. Hamish Sharp Chaired two Board Meetings. The First Board Meeting was held on 15 February 2007 while the second Board Meeting was held on 24 May 2007. The investigation found that there have been no further meetings conducted since.

Section 12(1) of the NMSA Act states that the Board is required to meet as often as the business of the Authority requires, and at such times and places as the Board determines, or as the Chairman directs, but in any event shall meet not less frequently than once in every three months.

In response to the Preliminary Report of the Ombudsman Commission, Mr. Hamish Sharp responded through his solicitors Warner Shand Lawyers that he was appointed Chairman of the Board around January 2007 after which there was a Board Meeting and a further meeting in March of that year. The NMSA Act requires the quorum to be four excluding the General Manager of NMSA. After the resignation of Andrew Proud and Doug Reid, there were no members representing the PNG Ship Owners Association and the PNG Chamber of Commerce. Mr. Kepas Wali was no longer an employee of PNG Ports Ltd therefore was not available for meetings.

Mr. Sharp stated that for a statutory meeting to be held in 2007, it was necessary for Mr. Henry Parakei, Mr. James Ikirima (Finance) and the representative from the National Research Institute to be available with him. He further stated that after September 2007, Mr. Henry Parakei would not agree to any dates for a meeting, making it impossible for him as the Chairman to call meetings.

COMMENT

The Ombudsman Commission was not able to confirm during the investigation whether the Chairman issued written directives for Board Members to attend Board Meetings. The Ombudsman Commission is of the view that Section 12(1) of the NMSA Act empowers the Chairman to call for meetings at such times and places. The NMSA Board's failure is a breach of the Act. Its failure to meet undermines the NMSA's ability to perform functions and responsibilities it is mandated to do. As the NMSA is the body that is entrusted with regulating safety of all vessels within the country the Board's failure to meet, seriously impacts on safety for the travelling public and crews.

Legal Actions against NMSA

The investigation found that during the second Board Meeting held on 24 May 2007 Chaired by Mr. Sharp, the issue about the legal actions taken by Mr. Sharp against NMSA were discussed. Mr. Henry Parakei, Secretary to the Department of Transport asked Mr. Sharp whether he was still pursuing the court actions he had taken against NMSA relating to the MV Sealark accident. The Ombudsman Commission examined the meeting minutes and found that Mr. Sharp had responded and advised the Board that he had two legal suits against NMSA. One was against the team leader of the MV Sealark investigation team and NMSA where he claimed K1 Million in damages for alleged defamation and the other was an application for a judicial review into the decision of the NMSA that ordered him and his

company Sealand Pacific Ltd to remove the Sealark wreck from the anchorage area of Lae Wharf.

During the meeting, Mr. Sharp informed the Board that he would withdraw the defamation suit however, the application for a judicial review remained. Mr. Sharp requested the Board to revoke the decision ordering him to remove the wreck whereby he would withdraw the judicial review application against NMSA. In discussing this issue, Mr. Sharp was reminded by Mr. Parakei that due to Mr. Sharp's ownership of the Sealark placing him in a conflict of interest situation, Mr. Sharp should not be involved in the discussions instead he should have a representative to present his case to the Board. The Board was informed that NMSA had obtained quotes to remove the wreck which it considered too costly and Mr. Sharp mentioned to the Board that his insurer was not willing to pay anything that was above the quotes for the removal.

General Comments – Hon. Don Polye

In response to the Preliminary Report of the Ombudsman Commission, the Minister Hon. Don Polye commented that Mr. Sharp might have had a conflict of interest. He said those issues surfaced to him after he made the appointment from allegations and reports he saw in the media and leaked to him by other parties. In regard to MV Sealark, the Minister stated that he gave the instruction to NMSA to investigate the sinking of the Sealark, owned by Bismark which Mr. Sharp was owner of.

The Minister stated that all the people on the Board especially from the shipping industry were operators and if they were to control the Board, competition would be less likely in the shipping industry. His intention was to encourage and facilitate competition.

He further stated that he made mistakes, had a couple of issues but his intention was to see competition and that he did not want to see cartel existing. That was his mindset and that he still sees the necessity for competition and local participation in the industry, to make service affordable. He admitted that *“we could have stepped on some toes, we could have made some mistakes’ but on the issue of conflict of interest, it is a serious matter before me”*.

* * *

FINDINGS OF WRONG CONDUCT

Status of Findings

In this chapter, we summarise our principal findings of wrong conduct and defective administrative practices.

As we stated in Chapter 1, the purpose of this investigation was:

- To determine whether any of the conduct under investigation was *wrong*; and
- To determine whether there were any *defects* in any law or administrative practices.

When the Commission conducts an investigation, it is not confined to reporting on whether breaches of the law have occurred. The constitutional mandate is much broader. The Commission is authorised to report on what, *in its opinion*, is *wrong* conduct, irrespective of whether that conduct was in accordance with the law.

The Ombudsman Commission is authorised to form opinions on these matters by Section 22(1) of the *Organic Law on the Ombudsman Commission*, which states:

The succeeding provisions of this section apply in every case where the Commission, after making an investigation under this Law, is of the opinion that –

- (a) the conduct, the subject of the investigation, was wrong; or
- (b) the law or administrative practice, the subject of the investigation, or any other law or administrative practice, is defective; or
- (c) the practice, the subject of the investigation is discriminatory within the meaning of any law prohibiting such practices.

Finding No.1

In the opinion of the Ombudsman Commission, the Minister, Honourable Don Polye's attempt to remove Mr. Michael Kasi was wrong on the basis that he did not comply with the dismissal requirements set out under Section 10 of the NMSA Act.

Reason

Section 7 Sub-section 1 to 8 of the NMSA Act sets out the appointment process of members to the NMSA Board. Section 7 Sub-section (1) (a) to (h) of the Act sets out the defined institution's where members are to be nominated from. Section 10 of the Act sets out the procedure and the specific grounds upon which a membership can be terminated. In attempting to terminate Mr. Kasi's membership, the Minister failed to state the reason for terminating his membership in particular the grounds of misconduct as required by Section 10 Sub-section (6) of the Act.

Reference

The facts relevant to this opinion are set out in paragraph [2.13](#)

Finding No.2

In the opinion of the Ombudsman Commission, the Minister, Honourable Don Polye's conduct in appointing Mr. Hamish Sharp to the NMSA Board was wrong in that the Minister failed to comply with the correct appointment process provided by Section 7(7) (a) and (b) of the NMSA Act.

Reason

Mr. Sharp was appointed under Section 7(1)(d) of the NMSA Act. Appointments made under this provision must comply with Section 7(7)(a) and (b) of the same Act, where regional representation must be done on a rotational basis and that each region is entitled to nominate their representative. The investigation found that there were no letters from the regions nominating their preferred nominee. There was one letter however from the Prime Minister Sir Michael Somare recommending for Mr. Sharp to be appointed.

Reference

The facts relevant to this opinion are set out in paragraph [2.26](#)

Finding No 3

In the opinion of the Ombudsman Commission, the National Maritime Safety Authority's administrative practice is defective in that it does not have a policy in place to guide appointments under Section 7(1)(d) of the NMSA Act.

Reason:

Mr. Hamish Sharp was appointed under Section 7(1)(d) of the NMSA Act. Appointments made under this provision are further guided by Section 7(7)(a) and (b) of the NMSA Act. There is no policy in place to guide appointments under this provision.

Reference

The facts relevant to this opinion are set out in paragraph [2.27](#)

Finding No.4

In the opinion of the Ombudsman Commission, the conduct of Mr. Hamish Sharp as Chairman of the National Maritime Safety Authority Board is wrong in that he has failed to comply with the statutory requirements for holding of Board Meetings.

Reason

Section 12(1) of the NMSA Act requires the Board to meet at least once in every three months. The investigation found that the last Board Meeting was held on 24 May 2007 and that no further meetings have been held since then.

Reference

The facts relevant to this opinion are set out in paragraph 3.8

Finding No.5

In the opinion of the Ombudsman Commission, the conduct of Mr. Hamish Sharp was wrong in that he participated in Board Meetings where he had a real conflict of interest.

Reason

Section 13 of the NMSA Act requires disclosure of interest by Board members in a matter before the Board. In the meeting of 27 and 28 September 2006, Mr. Sharp argued that Board members who have interest in a matter should not be asked to leave the meeting. In the Board meeting of 24 May 2007 chaired by Mr. Sharp, MV Sealark was discussed. Mr. Sharp as Chairman also wrote to the Australian Maritime Safety Authority requesting for an independent investigation into the Sealark accident which is a conflict of interest.

Reference

The facts relevant to this opinion are set out in paragraphs 3.4, 3.6, 3.7 & 3.9

* * *

RECOMMENDATIONS

LEGAL FRAMEWORK FOR MAKING RECOMMENDATIONS

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

The Ombudsman Commission is expressly authorised to form an opinion on such matters by Section 22(1) of the *Organic Law on the Ombudsman Commission*.

If, after conducting its investigation, the Commission comes to the conclusion that some of the conduct was wrong or that any law or administrative practice was defective, it is authorised to make specific 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 recommendation is stated:
- The recipients (i.e. the person to whom the recommendations are directed) are identified; and
- The main reasons for making recommendations are stated.

RECIPIENTS OF RECOMMENDATIONS

When making recommendations, Section 22(2) of the *Organic Law on the Ombudsman Commission* allows the Ombudsman Commission to identify the service, body, person or other appropriate authority that has to carry them out.

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

In relation to each recommendation, recipients of the recommendations are listed in the following manner:

- First, the service, body or person required to implement the recommendation is identified;
- Secondly, the Minister responsible for that service, body or person is identified; and
- Thirdly, if appropriate, the permanent or statutory head responsible for that service, body or person is identified.

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 Minister for Transport.

MINISTER RESPONSIBLE FOR FOLLOWING UP IMPLEMENTATION OF RECOMMENDATIONS

- Minister for Transport.

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

DUTIES OF RECIPIENTS OF RECOMMENDATIONS

The fact that 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 service of the report of the steps proposed to be taken to give effect to the recommendations.

Section 22(3) of the OLOC 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 as to the steps that he proposes to take to give effect to its recommendation. If he proposes 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. Those 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*.

RECOMMENDATIONS

Recommendation No.1

The Ombudsman Commission recommends to the Minister of Transport that he comply with the dismissal requirements set out in Section 10 of the NMSA Act in any future decision to terminate the appointment of a member of the NMSA Board.

Reasons

- Section 10 of the *National Maritime Safety Authority Act* provides the procedure and the specific grounds upon which an appointment can be terminated;
- In attempting to revoke the appointment of Mr. Michael Kasi, the Minister, Hon Don Polye failed to state the specific grounds of misconduct as required by Section 10(6) of the NMSA Act.

Recommendation No.2(i)

The Ombudsman Commission recommends to the Minister of Transport that in considering future appointments of members of the NMSA Board under Section 7(1)(d) of the NMSA Act, the Minister must comply with the requirements of Section 7(7)(a) and (b) of the NMSA Act.

Reasons

- Appointment of a NMSA Board member under Section 7(1)(d) of the NMSA Act is guided by the requirements of Section 7(7)(a) and (b) of the NMSA Act;
- There were no letters of recommendation for an appointee from the three (3) coastal regions for the Ministers consideration

Recommendation No.2(ii)

The Ombudsman Commission recommends to the Minister of Transport to review the appointment of Mr. Hamish Sharp as a Board Member appointed under Section 7(1)(d) of the NMSA Act.

Reasons

- Appointment of a Board Member under Section 7(1)(d) is guided by Section 7(7)(a) and (b) of the NMSA Act. Section 7(7)(a) requires representation on a rotational basis. The Ombudsman Commission found that Mr. Hamish Sharp was also appointed to represent the Momase region following Mr. Michael Kasi's resignation. Mr. Kasi was the first appointee under Section 7(1)(d) representing Momase region;
- The Ombudsman Commission also found that the Minister failed to call for nominations from the coastal regions to nominate a candidate nor were there any letters of nomination.

Recommendation No.3

The Ombudsman Commission recommends to the Secretary, Department of Transport to develop a policy to guide appointments under Section 7(1)(d) of the NMSA Act.

Reasons

- The appointment of a member under Section 7(1)(d) of the NMSA Act is required to be made in line with the requirements of Section 7(7)(a) of the NMSA Act. The policy developed will ensure the three coastal regions are fairly represented as law intended on a rotational basis;
- Mr. Michael Kasi was the first coastal regions representative representing the Momase region. The current Chairman, Mr. Hamish Sharp is the representative also of Momase region. There has been no representation of the New Guinea Islands region and the Southern region.

Recommendation No.4 (i)

The Ombudsman Commission recommends to the Chairman of the NMSA Board to schedule and hold Board Meetings in compliance with the requirements of Section 12(1) of the NMSA Act.

Reasons

- Section 12(1) of the NMSA Act requires the Board to hold one meeting in every three months and from time to time as its business requires. In 2007, the NMSA Board held two meetings contrary to the requirements of Section 12(1) of the NMSA Act.

- The NMSA Board has an important role in the business of Maritime Transport. As a regulatory authority, it has the responsibility to ensure transportation in this sector is maintained at standards established and required by the International Maritime Organization of which PNG is a member. The NMSA Board therefore is the final authority to ensure these standards are maintained and regulated.

Recommendation No.4(ii)

The Ombudsman Commission recommends to the Chairman of the NMSA Board to schedule dates of quarterly Board Meetings for a 12 Month period and to give advance notice to Board Members who are to ensure availability at meetings at such times and places determined by the Chairman.

Reason

- Section 9(1) and (2) of the NMSA Act allows the Board to determine leave of absence for the Chairperson and the Chairperson to determine leave of absence for all other members.
- Section 10(4)(a) specifies that if a member other than an ex-officio member is absent for three consecutive meetings of the Board without the *written consent* of the Board or the Chairperson in accordance with Section 9, the members appointment shall be terminated by the National Executive Council.

Recommendation No.5(i)

The Ombudsman Commission recommends to the Minister of Transport to review the appointment of Mr. Hamish Sharp as a member to the NMSA Board on the basis of Mr. Sharp having a real conflict of interest on matters discussed in Board Meetings contrary to Section 13(1) of the NMSA Act.

Reason

- In the Board meeting on 27 and 28 September 2006, Mr. Sharp argued that Board members who have interest in a matter should not be asked to leave the meeting;
- In the Board meeting of 24 May 2007, MV Sealark was discussed with Mr. Sharp as the Chairman of the Board Meeting;
- During the Board Meeting of 24 May 2007, Mr. Sharp informed the Board that he would withdraw his application for a judicial review against NMSA on the condition that the Board (NMSA) revoke its decision to order him and his company Sealand Pacific to remove the MV Sealark wreck from its current location. Mr. Henry Parakei reminded Mr. Sharp that he had a conflict of interest therefore he (Mr. Sharp) should present his case to the Board through a representative.
- In his capacity as the Chairman, Mr. Sharp requested the Australian Maritime Safety Authority to conduct an independent investigation into the accident involving his vessel MV Sealark.

Recommendation No.5(ii)

The Ombudsman Commission recommends to the Chairman of the NMSA Board to develop Meeting Rules particularizing the conduct of Board Meetings in terms of items for discussion with regard to issues of 'conflict of interest'.

Reason

- In the Board Meeting of 27 and 28 September 2006, Mr. Hamish Sharp argued that members who had interest in matters discussed in the Board Meeting should not be asked to leave the Meeting;
- In its meeting of 24 May 2007, the Board discussed the MV Sealark accident. Mr. Hamish Sharp was the Chairperson of the meeting and responded to queries raised by the Board about the vessel (wreck);

* * *

CONCLUSION

Good and desirable governance of public institutions, as well as the nation is dependent upon good and sound management and decisions being made by those placed in responsible positions. Good public officials and managers understand their roles and responsibilities and perform their duties within the ambit of the law that governs their conduct. Public officials who are empowered by law to make decisions that will affect the lives of individuals must ensure that they carry out their duties in good faith and in compliance with the laws.

Public officials must exercise due diligence, honesty and dedication in the work they are entrusted with. Inconsistency in decision making or non compliance with relevant laws creates doubt in the minds of the public that the decision maker has been influenced by outside sources and forces not conducive to good governance and accountability. Professional negligence by public officials must be dealt with seriously.

Some characteristics of good governance necessary to eliminate bad administrative practices include honesty, diligence, consistency, competency, compliance with established laws and procedures, and standing up to political interference.

This report highlighted irregularities in the processes followed in the appointment of Mr. Hamish Sharp to the National Maritime Safety Authority Board. The report also highlighted Mr. Sharps conduct in his capacity as a Member and Chairman of the NMSA Board in particular his participation in Board discussion on matters relating to his sunken vessel the MV Sealark.

The Ombudsman Commission considered the circumstances of this case and requests through this Report that, respective persons to whom recommendations have been directed at, to carefully consider our recommendations and implement them without delay.



CHRONOX MANEK
CHIEF OMBUDSMAN



JOHN NERO
OMBUDSMAN



PHOEBE SANGETARI (MS)
OMBUDSMAN

[7.1] Constitution of the Independent State of Papua New Guinea

National Goals and Directive Principles.

2. Equality and participation.

We declare our second goal to be for all citizens to have an equal opportunity to participate in, and benefit from, the development of our country.

WE ACCORDINGLY CALL FOR—

- (1) an equal opportunity for every citizen to take part in the political, economic, social, religious and cultural life of the country; and
- (2) the creation of political structures that will enable effective, meaningful participation by our people in that life, and in view of the rich cultural and ethnic diversity of our people for those structures to provide for substantial decentralization of all forms of government activity; and
- (3) every effort to be made to achieve an equitable distribution of incomes and other benefits of development among individuals and throughout the various parts of the country; and
- (4) equalization of services in all parts of the country, and for every citizen to have equal access to legal processes and all services, governmental and otherwise, that are required for the fulfilment of his or her real needs and aspirations; and
- (5) equal participation by women citizens in all political, economic, social and religious activities; and
- (6) the maximization of the number of citizens participating in every aspect of development; and
- (7) active steps to be taken to facilitate the organization and legal recognition of all groups engaging in development activities; and
- (8) means to be provided to ensure that any citizen can exercise his personal creativity and enterprise in pursuit of fulfilment that is consistent with the common good, and for no citizen to be deprived of this opportunity because of the predominant position of another; and
- (9) every citizen to be able to participate, either directly or through a representative, in the consideration of any matter affecting his interests or the interests of his community; and

(10) all persons and governmental bodies of Papua New Guinea to ensure that, as far as possible, political and official bodies are so composed as to be broadly representative of citizens from the various areas of the country; and

(11) all persons and governmental bodies to endeavour to achieve universal literacy in Pisin, Hiri Motu or English, and in "tok ples" or "ita eda tano gado"; and

(12) recognition of the principles that a complete relationship in marriage rests on equality of rights and duties of the partners, and that responsible parenthood is based on that equality.

PART III.—BASIC PRINCIPLES OF GOVERNMENT.

Division 1.—National Goals and Directive Principles.

Section 25 - Constitution

25. Implementation of the National Goals and Directive Principles.

(1) Except to the extent provided in Subsections (3) and (4), the National Goals and Directive Principles are non-justiciable.

(2) Nevertheless, it is the duty of all governmental bodies to apply and give effect to them as far as lies within their respective powers.

(3) Where any law, or any power conferred by any law (whether the power be of a legislative, judicial, executive, administrative or other kind), can reasonably be understood, applied, exercised or enforced, without failing to give effect to the intention of the Parliament or to this Constitution, in such a way as to give effect to the National Goals and Directive Principles, or at least not to derogate them, it is to be understood, applied or exercised, and shall be enforced, in that way.

(4) Subsection (1) does not apply to the jurisdiction of the Ombudsman Commission or of any other body prescribed for the purposes of Division III.2 (leadership code), which shall take the National Goals and Directive Principles fully into account in all cases as appropriate.

Section 109 - Constitution

109. General power of law-making.

(1) Subject to this Constitution, the Parliament may make laws, having effect within and outside the country, for the peace, order and good government of Papua New Guinea and the welfare of the People.

(2) In particular, Acts of the Parliament, not inconsistent with the Constitutional Laws, may provide for all matters that are necessary or convenient to be prescribed for carrying out and giving effect to this Constitution.

- (3) No law made by the Parliament is open to challenge in any court on the ground that—
 - (a) it is not for the peace, order or good government of Papua New Guinea or the welfare of the People; or
 - (b) it purports to have extra-territorial effect.
- (4) Each law made by the Parliament shall receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the law according to its true intent, meaning and spirit, and there is no presumption against extra-territoriality.

[7.2] NATIONAL MARITIME SAFETY AUTHORITY ACT

7. Membership of the Board.

- (1) The Board shall consist of—
 - (a) the Departmental Head of the Department responsible for transport matters, ex officio, or his nominee; and
 - (b) the Departmental Head of the Department responsible for finance matters, ex officio, or his nominee; and
 - (c) the General Manager, ex officio, as a non-voting member; and
 - (d) one person nominated by the Minister to represent the Momase region, the New Guinea Islands region and the Southern region of the country;
 - (e) one person nominated by the National Research Institute; and
 - (f) one person nominated by the Papua New Guinea Shipowners Association; and
 - (g) one person nominated by the Papua New Guinea Chamber of Commerce and Industry; and
 - (h) one person nominated by the Papua New Guinea Harbours Ltd.
- (2) The—
 - (a) member referred to in Subsection (1) (d) shall be appointed for a term not exceeding three years and is eligible for re-appointment; and
 - (b) members referred to in Subsection (1)(e), (f), (g) and (h) shall be appointed for a term of three years or a term not exceeding four years and are eligible for re-appointment; and
 - (c) members referred to—

- (i) in Subsection (1)(d), (e), (f), (g) and (h) shall hold office on such terms and conditions as are determined under the Boards (Fees and Allowances) Act (Chapter 299); and
- (ii) in Subsection (1)(a), (b), (c) may be paid by the Authority such allowances including sitting fees as the Minister responsible for financial matters may from time to time approve.

(3) A nominee referred to in Subsection (1)(a) and (b) shall be an officer of a level not less than that of a First Assistant Secretary or the equivalent.

(4) A body referred to in Subsection (1) (e), (f), (g) and (h) shall submit to the Minister the names of at least three persons, of whom one shall be a woman, possessing sufficient qualifications and experience to adequately represent them on the Board, and the National Executive Council shall choose from the nominees one person to be a member upon the recommendation of the Minister.

(5) The Minister shall submit to the National Executive Council his nominee under Subsection (1)(d) with his recommendation for appointment.

(6) The Minister, in making his recommendation to the National Executive Council under Subsections (4) and (5), shall do so with a view of ensuring, as far as is practicable, that there are at least two women representatives on the Board as members.

(7) For the purposes of Subsection (1)(d), the Momase region, the New Guinea Islands region and the Southern region—

- (a) shall be represented on the Board on a rotational basis; and
- (b) are in turn entitled to nominate their representative in such order as is determined by the Minister.

(8) If a body referred to in Subsection (1)(e), (f), (g), (g) or (h) ceases to exist or is unable to nominate a person for membership to the Board, the National Executive Council may appoint a person in its place who shall, so far as practicable, be representative of the interest of the group comprised by the body.

9. Leave of absence of members

(1) The Chairperson may grant leave of absence to a member on such terms and conditions as the Chairperson determines.

(2) The Board may grant leave of absence to the Chairperson on such terms and conditions as the Board determines.

10. Vacation of office.

(1) A member, other than an ex officio member, may resign from office in writing signed by him and delivered to the Minister.

(2) Where a nominee is appointed as member by an ex officio member under Section 7(1)(a) or (b) and that nominee ceases to hold office in the relevant Department, the Departmental Head shall advise the Minister of that fact and shall nominate another officer to be a Member in accordance with this Act.

- (3) If a member dies, resigns his office or is otherwise terminated in accordance with this section, his office becomes vacant.
- (4) If a member, other than an ex officio member,—
- (a) is absent, except with the written consent of the Board or the Chairperson in accordance with Section 9, from three consecutive meetings of the Board; or
 - (b) fails to comply with Section 13; or
 - (c) becomes bankrupt, or applies to take the benefit of any law for the benefit of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
 - (d) is convicted of an offence under this Act or an offence under any other law punishable by a term of imprisonment for one year or longer, or by death, and, as a result of the conviction, is sentenced to imprisonment or death; or
 - (e) otherwise becomes incapable of performing his duties,
- the National Executive Council shall terminate his appointment.
- (5) Where the person (other than an ex officio member) or body who has appointed a member requests the National Executive Council in writing to terminate the appointment of that member, the National Executive Council shall terminate the appointment of that member.
- (6) The Minister may, at any time, by written notice, advise a member that he intends to terminate the appointment of that member on the grounds of misconduct in office and specifying the details of the misconduct, such misconduct includes, but is not limited to—
- (a) undisclosed interest as provided in Section 13;
 - (b) disclosure of information which is confidential as provided in Section 53.
- (7) Within 14 days of the receipt of a notice under Subsection (6), the member may reply in writing to the Minister, who shall consider the reply and, where appropriate, terminate the appointment of the member.
- (8) Where the member referred to in Subsection (6) does not reply in accordance with Subsection (7), his appointment automatically terminates at the end of the period specified in Subsection (7).

12. Meetings of the Board.

- (1) The Board shall meet as often as the business of the Authority requires, and at such times and places as the Board determines, or as the Chairperson directs, but in any event shall meet not less frequently than once in every three months.
- (2) At a meeting of the Board—
- (a) four members, excluding the General Manager, constitute a quorum; and
 - (b) the Chairperson shall preside, and if he is absent, the members present shall appoint, from amongst their number, a Chairperson for that meeting; and
 - (a) matters arising shall be decided by a majority of the votes of the members present (excluding the General Manager); and

- (b) the person presiding has a deliberative, and in the event of an equality of votes on any matter, also a casting vote.
- (3) The Board shall cause minutes of its meetings to be recorded and kept.
- (4) The Board, in its discretion at any meeting of the Board, may—
 - (a) invite persons to attend; or
 - (b) receive or hear submissions or information from any person.
- (5) Subject to this Act, the procedures of the Board are as determined by it.

13. Disclosure of interest by members.

- (1) A member, who is directly or indirectly interested in a matter (other than in his capacity as a member) being considered or about to be considered by the Board shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a duly constituted meeting of the Board.
- (2) A disclosure under Subsection (1) shall be recorded in the minutes of the meeting of the Board and after such disclosure the member interested—
 - (a) shall not take part, after the disclosure, in any deliberation or decision of the Board in relation to the matter; and
 - (b) shall be disregarded for the purpose of constituting a quorum of the Board for any such deliberation or decision.
- (3) Where a member referred to in Subsection (1) has not made a disclosure in accordance with that subsection, his vote on a matter on which he has an interest is null and void as of the time when the matter was first considered by the Board, and the Minister shall terminate the appointment of the member concerned in accordance with Section 10(4)(b).
- (4) For the purposes of Subsection (3) and notwithstanding Section 10(4), "member" includes an ex officio member.

56. Regulations.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

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