



## Report

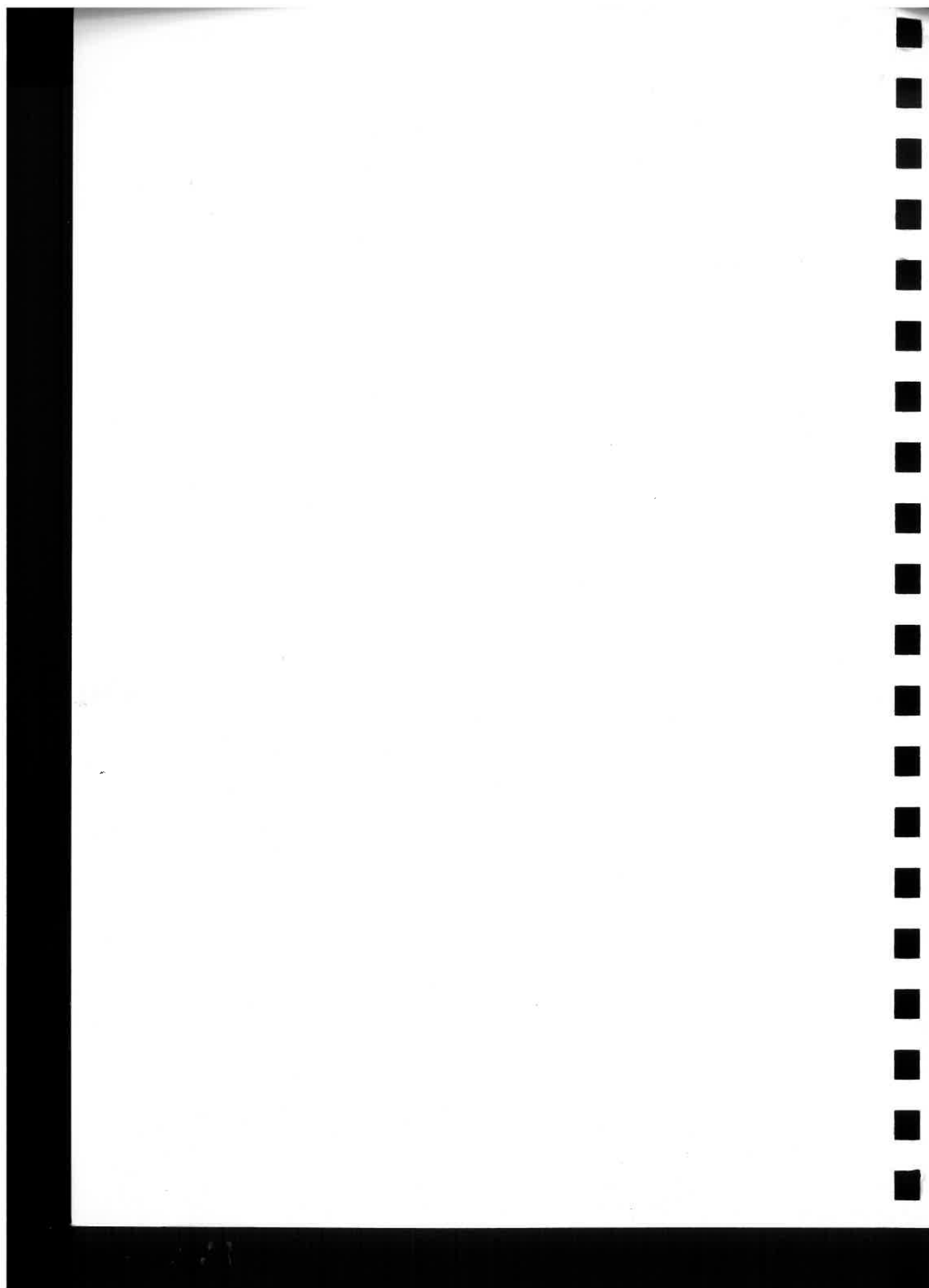
Royal Commission of Inquiry into processes and procedures followed by the Government of Papua New Guinea into obtaining the off-shore loan from the Union Bank of Switzerland and related transactions

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31 March 2022

Chief Sir Salamo Injia Kt GCL  
Chief Commissioner and Chairman of Inquiry

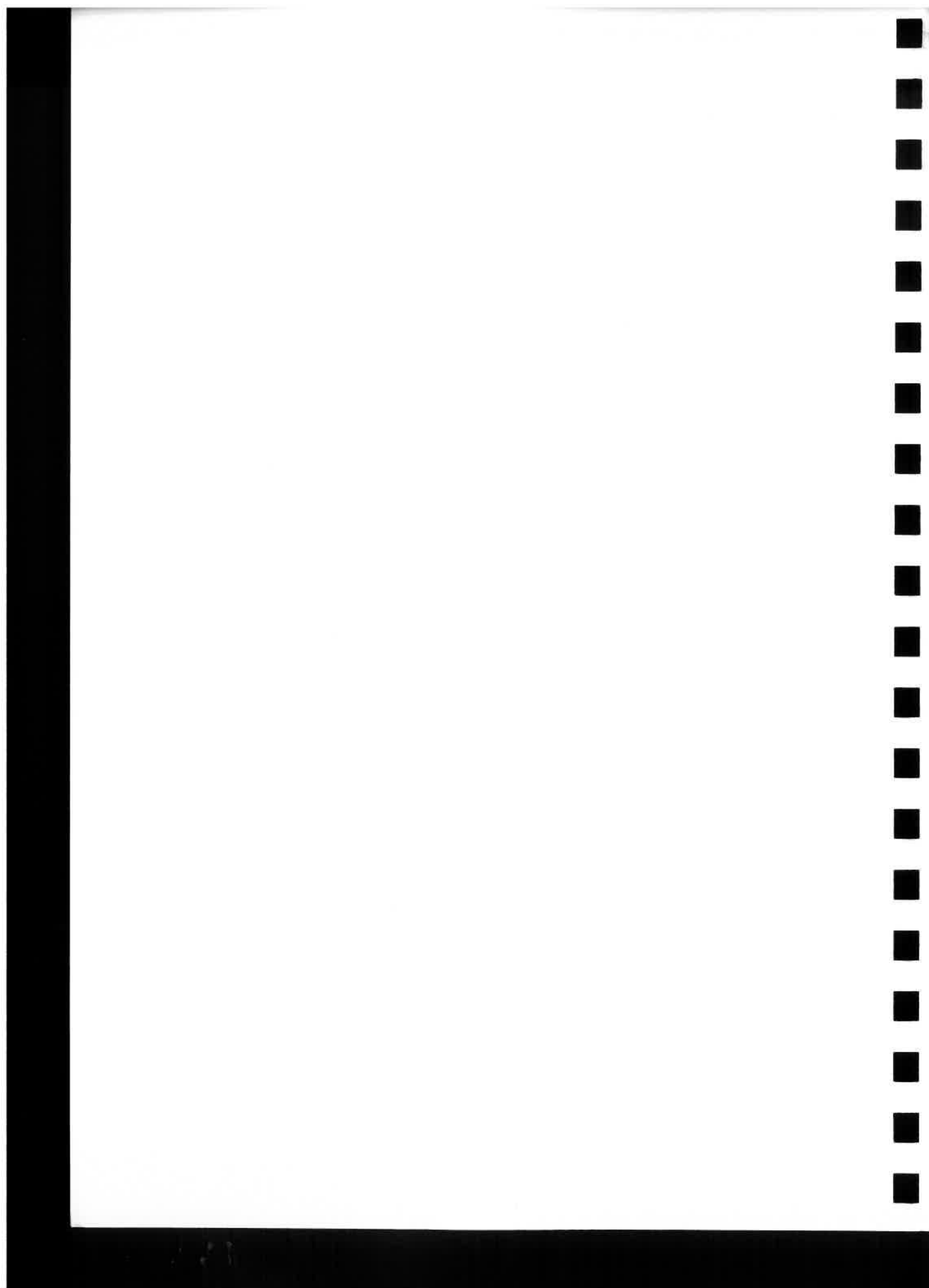
The Honourable Margaret White AO  
Commissioner



# VOLUME 1A

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**ROYAL COMMISSION OF INQUIRY  
INTO PROCESSES AND PROCEDURES  
FOLLOWED BY THE GOVERNMENT OF PAPUA NEW GUINEA  
INTO OBTAINING THE OFF-SHORE LOAN  
FROM THE UNION BANK OF SWITZERLAND  
AND RELATED TRANSACTIONS**

31 March 2022

The Honourable James Marape, MP  
C/- National Parliament  
PO Parliament House  
WAIGANI, National Capital District 131  
Papua New Guinea

Dear Prime Minister,

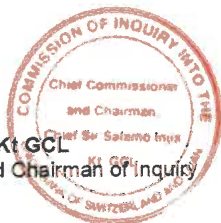
**Final Report of the Royal Commission of Inquiry into processes and procedures followed by the Government of Papua New Guinea in obtaining the off-shore loan from the Union Bank of Switzerland and related transactions**

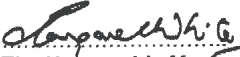
In accordance with the Terms of Reference made under the *Commissions of Inquiry Act 1951* on 30 August 2019 as extended by the Amended Terms of Reference dated 12 October 2021, we have inquired into and prepared a report on the processes and procedures followed by the Government of Papua New Guinea in obtaining the off-shore loan from the Union Bank of Switzerland and related transactions.

We now present to you our Final Report in respect of that inquiry.

Yours sincerely,

  
Chief Sir Salamo Injia Kt GCL  
Chief Commissioner and Chairman of Inquiry  
Dated: 31 March 2022



  
The Honourable Margaret White AO  
Commissioner  
Dated: 31 March 2022





# National Gazette

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**PORT MORESBY, FRIDAY, 5th NOVEMBER**

**[2021**

*Commissions of Inquiry Act (Chapter 31)*

## **EXTENSION OF THE COMMISSION OF INQUIRY INTO THE OFF-SHORE LOAN OBTAINED BY THE GOVERNMENT OF PAPUA NEW GUINEA FROM THE UNION BANK OF SWITZERLAND IN 2014 AND RELATED TRANSACTIONS**

I, **JAMES MARAPE**, Prime Minister, by virtue of the powers conferred by Section 2, 4, 4A of the *Commissions of Inquiry Act* (Chapter 31) and all other powers me enabling, hereby:

1. Extend by six months commencing from October 2021 the term or period of the investigation by the Commission of Inquiry into the offshore loan obtained by the Government of Papua New Guinea from the Union Bank of Switzerland in 2014 and the related transactions, and
2. Extend the Amended Terms of Reference to be investigated during the period of extension.

Dated this 12th day of October, 2021.

**J. MARAPE,**  
Prime Minister.



**ROYAL COMMISSION OF INQUIRY INTO PROCESS AND PROCEDURES FOLLOWED  
BY THE GOVERNMENT OF PAPUA NEW GUINEA IN OBTAINING THE OFF-SHORE LOAN  
FROM THE UNION BANK OF SWITZERLAND AND RELATED TRANSACTIONS**

**To: Chief Commissioner and Chairman, Retired Chief Justice of Papua New Guinea Chief Sir Salamo Injia, Kt GCL; and; Commissioner Hon Margaret White AO**

**AMENDED STATEMENT OF CASE**

**A. INTRODUCTION**

The decision of the Government of Papua New Guinea made in 2014 to obtain an off-shore loan from the Union Bank of Switzerland (UBS) has become controversial following the tabling of the Ombudsman Commission Investigation Report in Parliament in May 2019. The Prime Minister upon assuming office undertook to convene a Commission of Inquiry to establish facts surrounding the whole transaction, including all persons and entities involved in the deal and whether or not the deal followed proper and legal processes and procedures.

In order to appreciate the public concerns on improprieties in regard to the whole deal it is necessary and important that the Commission of Inquiry commences inquiry with the cause which brought about the need for the Government of the day to seek funding from an off-shore facility. This necessitates the Inquiry to commence its investigation with the States participation in the PNG LNG Project, including the purchase of shares and the disposal of same.

**B. OBJECTIVE**

The objective of the Commission of Inquiry is to inquire into and establish facts surrounding:

1. The decision by the Government to obtain the loan funding of US\$1.3 billion;
2. The decision to seek off-shore loan and the decision to select Union Bank of Switzerland as the preferred financier;
3. Individuals and entities who were instrumental in the negotiation (the middlemen involved) for and on behalf of the State, how were they engaged and how much were paid as fees for their services as brokers and negotiators;
4. Whether breaches of mandatory Constitutional requirements have occurred and the conduct on the part of Leaders and persons involved in the deal.

The ultimate objective of the Commission of Inquiry is to establish whether there were breaches of PNG laws and Constitutional requirements in the process of negotiation and approval of the UBS Loan, and also establish whether PNG as a country had suffered as a result of this off-shore deal, and whether the persons involved in the deal can be held accountable for their conduct.

**AMENDED TERMS OF REFERENCE**

Know you that I, Hon. James Marape, MP, Prime Minister of Papua New Guinea, reposing confidence in your integrity and ability to do so, by the virtue of the powers conferred by Section 2 of the *Commission of Inquiry Act 1951* (Chapter 31) and all powers me enabling, hereby direct the Commissioners and the Commission to inquire into the following matters:

1. The Commission shall, so far as reasonably possible, inquire into, make findings and report on the following matters:—

**Amended Statement of Case—continued****OROGEN MINERALS MERGER WITH OIL SEARCH LIMITED**

- (a) What was the reasoning behind the decision by the Morauta Government to approve the sale of Orogen Minerals to Oil Search Limited.
- (b) Were alternative structures / transactions considered? If so, why were these rejected?
- (c) What was the impact of the Orogen Minerals merger with Oil Search.
- (d) How the merger impacted the relationship with Oil Search and successive Governments of Papua New Guinea.

**PNG LNG PROJECT**

- (e) How the State financed its equity participation in the PNG LNG Project.
- (f) Whether due and proper legal and administrative processes were followed to obtain the loan to finance the State's equity participation in 2009, including but not limited to:—
  - (i) How was the process commenced?
  - (ii) How was IPIC selected?
  - (iii) What process was utilized?
  - (iv) What were the terms of the Loan from IPIC?
- (g) Who were the legal and financial advisors engaged in the IPIC Exchangeable Bond transaction?
- (h) Were legal and administrative processes followed to engage any legal and financial advisors?
- (i) What was the rationale for allowing payment to be made by an election of either cash, or the mortgaged Oil Search Shares or a combination of both.
- (j) What was the rationale for allowing the mortgaged Oil Search shares to be used in payment of the loan.
- (k) Whether IPIC had the sole election as to method of payment in satisfaction of the State Loan from IPIC, and if so what was the rationale for giving IPIC the right of sole election to either accept cash, the mortgaged Oil Search shares or a combination of both.

When and what decision did IPIC make on the repayment of the loan?

**UBS LOAN**

- (l) Why and when did the State commence the procedures to obtain a loan regarding the debt to IPIC and/or purchase Oil Search shares.
- (m) Whether legal and administrative processes were followed regarding the loan from UBS, including but not limited to:—
  - (i) How was the process commenced?
  - (ii) How was UBS selected?
  - (iii) What process was utilized?
  - (iv) What were the terms of the loan?

What processes have been utilized in the past to obtain loans?



**Amended Statement of Case—continued****PURCHASE OIL SEARCH SHARES**

- (n) The rationale as to why the State determined to buy share in Oil Search in 2014.
- (o) When the decision was made to purchase Oil Search shares.
- (p) The rationale as to why the State determined to utilize the UBS Loan to purchase Oil Search shares.
- (q) Whether legal and administrative processes were followed to buy Oil Search shares in 2014.
- (r) What role did Papua New Guinean and international legal and financial advisors play in relation to the UBS Loan?
- (s) Which individuals or organisations benefitted from the UBS Loan or related transactions.
- (t) What would the State's (and its government owned enterprises) financial positions have been had the UBS Loan to purchase Oil Search shares and the purchase of Oil Search shares not been entered into?

**ELK/ANTELOPE PRL-15 TRANSACTION**

- (u) The history of the Elk/Antelope PDL and PRL.
- (v) The approvals process for PRL-15.
- (w) The scale and quality of the PRL-15 resource.
- (x) Which entities have held interests in Elk/Antelope PRL-15 since its inception.
- (y) Which individuals or organisations benefitted from the 2014 sale of PAC LNG Group of companies to Oil Search Limited and related transactions.
- (z) What opportunities did the State have to acquire an interest Elk/Antelope PRL-15 other than indirectly through a shareholding in Oil Search? Were there alternative means of Oil Search financing the PRL-15 transaction, other than obtaining funds from the Independent State?

**SALE OF OIL SEARCH SHARES**

- (aa) The rationale as to why the State/Kumul Petroleum Holdings Limited sold the Oil Search shares in 2017.
  - (bb) Whether legal and administrative processes were followed in the sale of the Oil Search shares?
2. These Amended Terms of Reference may be added to, varied and amended from time to time.
  3. The Commission shall use its best efforts to conclude its inquiry and report as soon as possible but no later than the date appearing at the end of these Amended Terms of Reference, and shall make a full and faithful report on and recommendations concerning the aforesaid matters, and transmit the same to the Prime Minister after concluding its inquiry.
  4. The provisions of the *Commission of Inquiry Act* 1951 (Chapter 31) shall be applicable for the purposes of this inquiry.
  5. The Commission may hold public and private hearings, in such manner and in such locations, as may be necessary and convenient.
  6. All organs of state, institutions and stakeholders are required to cooperate fully with the Commission.

**Amended Statement of Case—continued****Sale of Oil Search Shares**

**AND I FURTHER** direct that the inquiry be held in the National Capital District, or at such other places in Papua New Guinea or elsewhere as to you may appear necessary and expedient.

**AND I FURTHER** direct that the inquiry shall be held in public, but I approve that you may permit to be given in private, any evidence that in the course of your inquiry you, in your absolute discretion, consider needs to be given in private in accordance with Section 2(5) of the *Commission of Inquiry Act*, 1951 (Chapter 31).

**AND I FURTHER** direct that you shall continue with the inquiry without delay and proceed therein with all dispatch and render to me your final report by 31 March 2022.

Dated this 12th day of October, 2021.

Hon J. MARAPE, MP,  
Prime Minister.

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Port Moresby.—751.

# Glossary

Amended Terms of Reference	Amended Terms of Reference dated 12 October 2021
AUD	Australian Dollar
BPNG	Bank of Papua New Guinea
Brattle	The Brattle Group
Brattle 1	Brattle Report dated 14 July 2021
Brattle 2	Supplementary Brattle Report dated 6 August 2021
Brattle 3	Third Brattle Report dated 17 August 2021
Brattle 4	Brattle Report dated 10 February 2022
Brattle 5	Supplementary Brattle Report dated 21 February 2022
Bridge Loan	Bridge loan facility of AUD\$335,000,000 provided by UBS to the Independent State in March 2014
<i>COI Act</i>	<i>Commissions of Inquiry Act 1951</i>
Collar Loan	Collar loan facility provided by UBS to the Independent State in March 2014
Commission	Commission of Inquiry
<i>Constitution</i>	Constitution of the Independent State of Papua New Guinea
CSTB	Central Supply and Tenders Board
Exchangeable Bond Transaction	Five-year AUD\$1.681 billion mandatory exchangeable bond issued by IPBC to IPIC on or around 5 March 2009
GBT	General Business Trust
GDP	Gross Domestic Product of the Independent State of Papua New Guinea
GloCo	PNG Liquefied Natural Gas Global Company LDC
Goldman Sachs	Goldman Sachs JBVere
Hon	Honourable
ICAC	Independent Commission Against Corruption
IPBC	Independent Public Business Corporation
IPIC	International Petroleum Investment Company
KCHL	Kumul Consolidated Holdings Limited
KPHL	PNG Company no. 1-100145, named: <ul style="list-style-type: none"> <li>▪ Telemu. No. 90 Limited from 16 December 2013 to 4 March 2014</li> <li>▪ NPCP Holdings Limited from 4 March 2014 to 25 September 2015</li> <li>▪ Kumul Petroleum Holdings Limited from 25 September 2015 to present</li> </ul>
Kumul Investments	Kumul Petroleum (Investments) Limited
LNG	Liquefied Natural Gas
MP	Member of the National Parliament
MRDC	Mineral Resources Development Company Ltd
NEC	National Executive Council
NPCP	PNG Company no. 1-100145, named:

Amended Terms of Reference	Amended Terms of Reference dated 12 October 2021
	<ul style="list-style-type: none"> <li>NPCP Holdings Limited from 4 March 2014 to 25 September 2015, now KPHL</li> </ul>
NPCP Kroton	PNG Company no. 1-63957, named: <ul style="list-style-type: none"> <li>Kroton No. 2 Limited from 20 June 2008 to 23 September 2010</li> <li>National Petroleum Company of PNG (Kroton) Limited from 24 September 2010 to 25 September 2015</li> <li>Kumul Petroleum (PNG LNG) Limited from 25 September 2015 to 28 January 2016</li> <li>Kumul Petroleum (Kroton) Limited from 28 January 2016 to present</li> </ul>
NPCP Investments	NPCP Investments Limited
NRFA	Norton Rose Fulbright Australia
Oil and Gas Act	<i>Oil and Gas Act 1998</i>
Oil Search	Oil Search Limited
Ombudsman	Ombudsman Commission of Papua New Guinea
Ombudsman Report	Final Report of the Ombudsman Commission of Papua New Guinea dated December 2018
Orogen	Orogen Minerals Limited
Petromin	Petromin PNG Holdings Ltd
PDL	Petroleum Development Licence
PGK	Papua New Guinean Kina
PNG LNG Gas Agreement	PNG LNG Gas Agreement dated 22 May 2008 between the Independent State of Papua New Guinea and Licencees of each of PDL 1, PRL 12, PRL 2, PRL 11, PDL 2, PDL 4, PDL 5 and PDL 6
PNG LNG Project	An integrated system of gas production, processing, liquefaction and storage facilities across the State established by subsidiaries of ExxonMobil, Oil Search, Santos, Merlin Petroleum Company, AGL and LX Holdings Incorporated and other State-owned companies under an unincorporated joint venture, and operated by Esso Highlands Limited on behalf of the PNG LNG participants
Pty	Proprietary
PPL	Petroleum Prospecting Licence
PRL	Petroleum Resource Licence
PwC	PriceWaterhouseCoopers
SoE	State-owned enterprise
State	The Independent State of Papua New Guinea
SWF	Sovereign Wealth Fund
Terms of Reference	Commission of Inquiry Terms of Reference published in the National Gazette on 30 August 2019 (as amended on 12 October 2021 by the Amended Terms of Reference)
Treasury	Department of Treasury
UBS	Union Bank of Switzerland Aktiengesellschaft (Australia Branch)
UBS Loan	General reference to the transactions by which UBS funded the acquisition by the Independent State of 149,390,000 Oil Search shares at \$8.20 per share
USD	US dollar

# List of Key Persons

Witness	Role
Mr Gereia Aopi CBE	Director of Oil Search at the time of the IPIC Exchangeable Bond Transaction and at the time of the UBS Loan Transaction Chairman, IPBC, at the time of the IPIC Exchangeable Bond Transaction
Mr Loi Bakani CMG	Governor, Bank of Papua New Guinea at the time of the IPIC Exchangeable Bond Transaction and at the time of the UBS Loan Transaction
Mr Peter Botten AC CBE	Chief Executive Officer of Oil Search at the time of the IPIC Exchangeable Bond Transaction and at the time of the UBS Loan Transaction
Mr Vittorio Casamento	Senior Associate, Norton Rose Fulbright Australia. Adviser in relation to the UBS Loan Transaction.
Mr Paddy Jilek	UBS, a key contact for the UBS Loan Transaction
The Honourable Kerenga Kua MP	Attorney General at the time of the UBS Loan Transaction
Mr Wasantha Kumarasiri OBE	Managing Director, IPBC, at the time of the UBS Loan Transaction
Mr Anthony Latimer	Partner, Norton Rose Fulbright Australia. Adviser in relation to the UBS Loan Transaction
The Honourable James Marape MP	Minister for Finance at the time of the UBS Loan Transaction Prime Minister at the time of the Commission
The late Mr Ben Micah	Minister for Public Enterprises and State Investments at the time of the UBS Loan Transaction
Mr Steven Moe	Senior Associate, Norton Rose Fulbright Australia. Adviser in relation to the UBS Loan Transaction
Mr Lars Mortensen	Adviser to Mr Vele at the time of the UBS Loan Transaction
The Honourable Peter O'Neill CMG MP	Member of Cabinet at the time of the IPIC Exchangeable Bond Transaction Prime Minister at the time of the UBS Loan Transaction and at the time of the sale of the Oil Search shares
The Honourable Don Polye MP	Treasurer until the UBS Loan Transaction
The Honourable Patrick Pruaitch MP	Treasurer at the time of the IPIC Exchangeable Bond Transaction, and re-appointed as Treasurer around the time of the UBS Loan Transaction, after the decommissioning of the Honourable Don Polye MP
Mr Daniel Rolpagarea	Solicitor at the time of the UBS Loan Transaction
Mr Arthur Somare	Minister for Finance at the time of the IPIC Exchangeable Bond Transaction
The late Right Honourable Grand Chief Sir Michael Somare GCL GCMG CH CF SSI MP	Prime Minister at the time of the IPIC Exchangeable Bond Transaction
Mr Wapu Sonk	Chief Executive Officer of KPHL at the time of the UBS Loan Transaction and at the time of the sale of the Oil Search shares

## List of Key Persons

Witness	Role
Mr Mitchell Turner	UBS, a key contact for the UBS Loan Transaction
Mr Dairi Vele	Director, Gas Production Coordination Office Secretary of the Department of Treasury at the time of the UBS Loan Transaction and at the time of the sale of the Oil Search shares
Dr Clement Waine	Secretary of the Department of Public Enterprises and State Investments at the time of the UBS Loan Transaction



## PART A

# Executive Summary

- 1.1 This Commission of Inquiry was established under the *Commissions of Inquiry Act 1951* by Instrument dated 30 August 2019 and, as amended in October 2021, it required a report to be delivered to the Prime Minister, the Honourable James Marape MP, by 31 March 2022. This is that Report.
- 1.2 This Executive Summary gives an overview of the Commission's work, and of some key conclusions and recommendations. It must be read with the Report as a whole, noting that individual chapters contain a comprehensive analysis of the often complex issues and evidence they each cover. Each generally concludes with relevant findings and recommendations. The Commission's key conclusions and recommendations follow this summary.
- 1.3 The rationale for this Commission is explicitly stated in the establishing Instrument as follows:
- The decision of the Government of Papua New Guinea made in 2014 to obtain an off-shore loan from the Union Bank of Switzerland (UBS) has become controversial following the tabling of the Ombudsman Commission Investigation Report in Parliament in May 2019. The Prime Minister upon assuming office undertook to convene a Commission of Inquiry to establish facts surrounding the whole transaction, including all persons and entities involved in the deal and whether or not the deal followed proper and legal process and procedures.*
- In order to appreciate the public concerns on improprieties in regard to the whole deal it is necessary and important that the Commission of Inquiry commences inquiry with the cause which brought about the need for the Government of the day to seek funding from an off-shore loan facility. This necessitates the Inquiry to commence its investigation with the States participation in the PNG LNG Project, including the purchase of shares and the disposal of the same.*
- 1.4 The Ombudsman Commission Report is titled:
- An Investigation Into The Alleged Improper Borrowing Of [An] Au\$1.239 Billion Loan From The Union Bank Of Switzerland ... (Australia Branch) To Purchase 149,390,244 Share[s] In Oil Search Limited ...*
- 1.5 This is a reference to what this Report calls the UBS Loan. It is one of the key financial transactions examined by the Commission, the other being the Exchangeable Bond Transaction that IPBC entered into with IPIC in 2008.
- 1.6 The Ombudsman Commission Report made serious findings of illegality and failure to follow proper procedures, but its jurisdiction was limited to investigating complaints concerning actions of governmental bodies and agencies, and the actions of 'Leaders' as defined in the Leadership Code. Unlike this Commission, the Ombudsman Commission could not investigate private citizens or entities, even those who had been paid to advise or perform other services for the State, such as lawyers NRFA and UBS itself.
- 1.7 It might have been expected that such well-paid former advisers would unstintingly assist the Commission, even though they are located overseas and beyond the reach of the Commission's

compulsory powers, but they have not. This surprising and disappointing behaviour has certainly limited what the Commission could achieve, and along with other findings of this Report, merits their exclusion from work for the State and its entities for some time to come.

- 1.8 Although the public concern generated by the Ombudsman Commission Report clearly led to this Commission, this Commission is not a review of the Ombudsman Commission's work, nor can this Commission decide legal controversies as a court can.
- 1.9 Nonetheless, despite the well-known difficulties caused by the COVID-19 pandemic, the Commission has been able to examine thoroughly a great many witnesses, entirely in live-streamed hearings which were held in public, and much documentary evidence, and to answer the Terms of Reference by the due date. The Commission acknowledges with gratitude the work of all those who made this significant achievement possible.
- 1.10 Papua New Guinea is blessed with abundant natural resources, which were largely unexploited before independence was attained in 1975. The need for wise and sustainable exploitation of natural resources focused the minds of the founders of the newly independent State and was reflected in the terms of the *Constitution* which, for example, declares in National Goal 4 that '*natural resources and the environment are to be conserved and used for the collective benefit of all and be replenished for the benefit of future generations*'. Equally, evidence to this Commission from founders such as Sir Julius Chan and the late Grand Chief Sir Michael Somare emphasised that governments should be wary of becoming involved in private business investments and, when doing so, must carefully manage risks in order to avoid losses: overall, the Commission concludes that risks were well managed in the case of the Exchangeable Bond Transaction but were not in the case of the disastrous UBS Loan.
- 1.11 Among the most valuable and internationally marketable resource located in this country is liquefied natural gas (LNG). Perhaps the most significant current resources project for many years is the PNG LNG Project. Since its first LNG export in 2014, the PNG LNG Project has exported approximately 7 million tonnes of LNG per year. It is a vast and complex project which has been necessarily undertaken with the involvement of multinational companies and overseas finance. To illustrate the scale of the PNG LNG Project: on 8 December 2009 the Final Investment Decision for the PNG LNG Project was made, and this immediately resulted in the commencement of comprehensive construction activities in the construction and commissioning period from 2010 to 2014 costing more than USD 19 billion (approximately PGK 67 billion).<sup>i</sup>
- 1.12 There are direct economic benefits to the country from such projects, especially employment and investment in infrastructure. And, like anyone else, the State can become a shareholder in the companies holding the licences or undertaking the work, receiving such dividends as those companies may choose to declare. But the State also has uniquely valuable 'back-in' rights under ss. 184 and 185 of the *Oil and Gas Act* which allowed it to pay to become an equity participant in the PNG LNG Project.
- 1.13 In 2009 the State decided to exercise those back-in rights, acquiring 19.4%. In return for acquiring 'back-in' rights then worth between USD 3-5 billion (approximately PGK 10.6-17.7 billion), the State needed to pay USD 300 million (approximately PGK 1.06 billion) upfront, and then USD 1 billion (approximately PGK 3.5 billion) between 2009 and 2014 in order to share in the future profits of the PNG LNG Project. The State did not have those funds, so it needed to raise them. At the time, it was the largest fundraising that the State had ever attempted. This significant need for finance directly led to the Exchangeable Bond Transaction.

- 1.14 In 2014, Oil Search was Papua New Guinea's largest company and an important partner with the State in many projects. The State had first acquired 196 million shares in Oil Search when it had merged in 2002 with Orogen Minerals, a company in which the State then held a bare majority of the shares. The merger gave Oil Search access to cash it did not otherwise have. The Oil Search shares the State then acquired gave the State between 17.65% (in 2004) and 13.17% (by 2013) of the issued share capital of Oil Search. Although Oil Search usually paid modest dividends, the shares tended to appreciate in value.
- 1.15 The Global Financial Crisis which began in 2007 was still being felt in Papua New Guinea in 2008/9 and it greatly affected the State's capacity to raise funds. At this time the late Sir Michael Somare was Prime Minister and Mr Peter O'Neill was in the NEC (Cabinet). The State decided to use a significant asset, namely its ownership, through IPBC, of the 196 million Oil Search shares to raise the funds needed for it to participate in the PNG LNG Project. The State (through IPBC) decided to raise AUD 1.681 billion (approximately PGK 4.46 billion) by issuing 5-year Exchangeable Bonds to IPIC, an Abu Dhabi sovereign wealth fund. Under that transaction, IPIC would receive 5% per annum interest for the duration of the Exchangeable Bonds. On maturity, the Exchangeable Bonds would be exchanged for the shares that IPBC held in Oil Search. The reference price for the exchange was AUD 8.55 per share. If (as was the case in 2014) the share price was below the reference price, IPBC would have to make a top-up payment to IPIC. If the share price was greater, IPIC would only receive shares up to the value of the bonds.
- 1.16 The Report closely considers the Exchangeable Bond Transaction: its terms and rationale, the processes leading to its adoption and the work done by advisers. The Commission, assisted by detailed expert reports from The Brattle Group, concludes that the lack of controversy historically attaching to the Exchangeable Bond Transaction is justified. While it involved some risks (which largely turned out not to be realised), it served a valuable purpose for the State by enabling it to acquire at an attractive price the back-in rights and share in the profits of the largest resource project in the country. Further (and in contrast with the UBS Loan) it:
- (a) was on the whole the best available option
  - (b) was quite carefully and methodically examined by Government and its advisers before the NEC decided to proceed with it
  - (c) was fairly priced
  - (d) achieved its stated purpose
- 1.17 From 2011-2019 the Prime Minister was Mr O'Neill. The Exchangeable Bonds were to mature in March 2014 and, unless IPIC otherwise agreed, the result would be that:
- (a) IPBC had used the funds borrowed to share in the future profits of the PNG LNG project, for the ultimate benefit of the State and the people
  - (b) IPIC would take ownership of the Oil Search shares, through the exchange provisions of the Exchangeable Bonds, leaving IPBC and the State with no Oil Search shares
  - (c) IPBC would, according to a formula based on the market value of the shares, most likely make a relatively modest payment to IPIC thereby bringing the Exchangeable Bond Transaction to an end (the amount actually paid was about AUD 74 million (approximately PGK 196 million), and, critically
  - (d) IPBC would not have any further monies to pay, and the significant amounts they were due to receive as early as 2014 from the PNG LNG Project could be put into the legislated

but not yet operational Sovereign Wealth Fund for the benefit of the country and its economy

- 1.18 The first three matters came to pass. The fourth - the road not taken - did not, fundamentally because of the decision by Mr O'Neill, principally aided by then Secretary for the Department of Treasury, Mr Dairi Vele, to persuade the NEC to enter into the disastrous UBS Loan arrangement.
- 1.19 These matters are at the core of the Commission's work. As its establishing Instrument stated:  
*The ultimate objective of the Commission of Inquiry is to establish whether there were breaches of Papua New Guinea laws and Constitutional requirements in the process of negotiation and approval of the UBS Loan, and also establish whether Papua New Guinea as a country had suffered as a result of this off-shore deal, and whether the persons involved in the deal can be held accountable for their conduct.*
- 1.20 The period between mid-2013 and the entering into the UBS Loan in March 2014 can be seen as a series of stages, at each one of which serious errors were made.
- 1.21 The first stage covered the unsuccessful attempts by the State or State entities to persuade IPIC to give up its contractual rights to retain the Oil Search shares which were the subject of the Exchangeable Bonds. While there were some limited signs that IPIC was prepared to do so, in the end it relied upon its rights to keep the shares. Although it was always clear the Exchangeable Bonds gave those rights to IPIC, and Mr O'Neill was in the Somare Cabinet which approved the Exchangeable Bond Transaction, in his evidence before the Commission he unhelpfully persisted with the notion that Papua New Guinea was well positioned to persuade IPIC to give up its rights. It never was. The NEC, the IPIC Exchangeable Bond Review Committee it established, IPBC and the Department of Public Enterprises and State Investments had their time wasted on what was likely to be a futile exercise.
- 1.22 The second stage was the growing realisation that the Oil Search shares formerly held were going to be lost and that, if even an approximately equivalent quantity was again to be held by the State, they would need to be newly acquired. From later in 2013 it became clear to Mr Vele, who was leading the State's search for a financial adviser in relation to refinancing the Exchangeable Bonds that an opportunity might exist to persuade Oil Search to issue new shares in itself to the State because Oil Search was seeking a significant amount of finance to buy into a valuable gas resource known as Elk-Antelope or PRL 15, and Oil Search might find it attractive to raise funds in a single transaction with the State.
- 1.23 The third stage was the formal but unsurprising advice from IPIC that it was keeping the Oil Search shares, which led to a series of urgent meetings between Oil Search executives, Prime Minister O'Neill and Mr Vele, which in turn led to the agreement with Oil Search. This created a need for the State to urgently obtain finance, although the urgency was because of Oil Search's timetable.
- 1.24 The fourth stage was a hurried and inadequate process over a period of 15 days whereby the State's financial adviser and arranger, UBS, and many lawyers, including from NRFA and PLG, put together a complex series of documents and largely drafted the NEC paperwork. Mr O'Neill and Mr Vele drove the process to the exclusion of others with key interests. Remarkably, even the Treasurer was excluded from drafting or commenting on a vital submission which recommended very large expenditure on behalf of the State. Nonetheless the UBS Loan was approved by the NEC and documentation executed.



- 1.25 The final stage of the UBS Loan was that, to avoid breaching the State's debt ratios, the Collar Loan (one of two parts of the UBS Loan) was novated to the SoE eventually known as Kumul Petroleum Holdings Limited (KPHL). In view of the controversy which resulted when the UBS Loan was announced, parliamentary disapproval of the UBS Loan could well have occurred. Importantly, KPHL never wanted either the Oil Search shares or the significant financing debts that came with the UBS Loan. But from 2015 the choice was not theirs alone, as the KPHL Trustee was the Prime Minister of the day and approval of the NEC was needed for many of its decisions. So the KPHL Board extended the loan in 2016 and, with its Trustee Mr O'Neill's permission, sold the shares at a significant loss in 2017. The Managing Director of KPHL, Mr Wapu Sonk, with some justification, felt the Trustee's permission was deferred for purely political reasons which, if established, would be a clear breach of duty by a trustee.
- 1.26 In the end, the State's entirely unnecessary UBS Loan to buy Oil Search shares resulted in:
- (a) the loss of those same shares
  - (b) significant financial losses to the State of in excess of AUD 340 million (approximately PGK 902 million)
  - (c) lost opportunities, including to establish the Sovereign Wealth Fund as intended and endow it properly
  - (d) diversion of the significant revenues expected from the PNG LNG Project once the exports of LNG began in 2014
- 1.27 As the Report concludes in relation to the UBS Loan:
- (a) Unlike the Exchangeable Bond Transaction which was justified by the purchase of significant and financially beneficial rights in the PNG LNG Project, the UBS Loan had no satisfactory justification or rationale. It made no economic sense for the State to pay large sums to multiple advisers as well as high interest payments on a loan to purchase shares in a publicly listed company. If the State wanted to be involved in further oil and gas exploration projects, waiting instead for the back-in rights to PRL 15 was a more prudent course. The Commission rejects Mr O'Neill's stated 'strategic interest' justification for obtaining new Oil Search shares in 2014. On analysis, it amounts, at its highest, to no more than the habit of such ownership over the preceding dozen years, and access to modest dividends in common with any other shareholder. If there were other reasons they have not been revealed to the Commission. The State had powers to block takeovers on national interest grounds if that became a concern. Further, any interest in share ownership was short lived: the UBS Loan was swiftly novated to KPHL, which never wanted the UBS Loan obligations and wished to sell the shares at the earliest opportunity
  - (b) The failure to follow proper processes, coupled with the speed with which complex documentation was produced had the disastrous consequence that no-one within the public service – including the Secretary for Treasury, Mr Vele – understood the overcharging of the State by UBS, and the risks inherent in the UBS Loans, and no adviser retained by or on behalf of the State identified these matters, either in themselves or as risks to be further investigated
  - (c) In addition to its sizeable disclosed fee of AUD 28.4 million (approximately PGK 75.4 million), UBS also benefited from the refinancing of the Collar Loan in December 2014 and February 2016 as well as from the ultimate sale of the shares in September 2017. Its total over-charging amounts to AUD 175 million (approximately PGK 464 million), which should be repaid, with interest. The Commission considers UBS' failure to provide

witnesses deeply disappointing, as is its final submission which suggested as inappropriate Brattle's use of the widely recognised Black-Scholes financial model but without stating what is appropriate or what model it used to price the UBS Loan in 2014. The Commission considers its assertion to be a defensive strategy not a serious submission. It is not accepted

- (d) The State's lawyers, including NRFA, failed to advise the State of UBS' at least potential conflicts of interest and how to manage them. Like UBS, NRFA declined to provide witnesses to the Commission. NRFA did not provide any submissions, and their delayed and incomplete production of documents, owned not by them but by their former clients, was inexcusable
- (e) Mr Vele was responsible for the settling of the NEC policy submission recommending the UBS Loan. The submission's inadequacies included its failure to set out any downside to the proposal and the false statement that the Treasurer agreed with the submission's contents when, to Mr Vele's knowledge, he had never seen it prior to the eve of the NEC meeting, and according to Mr Vele himself, then indicated his disagreement with the submission by refusing to sign it
- (f) Mr O'Neill knew the submission was lengthy and complex and needed to be explained to the NEC and yet he provided the NEC with no advance notice of it nor any real opportunity to debate it during a meeting that lasted less than an hour, notwithstanding the Treasurer's outburst against the proposal in the NEC (he being later sacked from that role). The NEC is a valuable democratic method of analysing and discussing difficult matters but Mr O'Neill ensured it could not operate effectively in relation to the UBS Loan. Proper processes in the NEC and Government generally, like keeping adequate records, may appear unimportant or uninteresting, but what happened in relation to the UBS Loan demonstrates why such matters (like the NEC, parliamentary scrutiny and anti-corruption measures) are vital in a democracy. Their absence can cost a nation dearly, as was the case with the UBS Loan

1.28 In answer to the question 'Who was responsible and what remedies should be sought against them'; detailed findings are set out elsewhere in the Report, but fundamentally:

- (a) Mr O'Neill should be prosecuted for giving false evidence to the Commission and referred to the Independent Commission Against Corruption (ICAC)
- (b) Mr O'Neill is centrally responsible for the UBS Loan, Mr Vele was indispensable in assisting him in that endeavour. Each should be referred to the Leadership Tribunal
- (c) UBS is solely responsible for overcharging and any misleading or deceptive conduct. They should be asked to repay the amounts overcharged and both Papua New Guinea and Australian authorities should consider whether civil or criminal sanctions should be sought. UBS should be banned from doing work for the State and any SoEs for 10 years
- (d) NRFA's obstruction of the Commission should be the subject of disciplinary investigation in Australia. Their failure to give proper advice to the State should be further examined and the firm should be banned from doing work for the State and any SoEs for five years
- (e) The following current or former UBS or NRFA personnel should be banned from doing work for the State and any SoEs, in their own capacity or as employed by an entity for five years:
  - (i) Patrick 'Paddy' Jilek



- (ii) Mitchell Turner
- (iii) Anthony Latimer
- (iv) Steven Moe
- (v) Vittorio Casamento

- 1.29 The Commission makes a number of recommendations to ensure the UBS Loan is not repeated. It also recommends the long promised establishment of the Sovereign Wealth Fund be delayed no longer. Its establishment and endowment is not only vital for the welfare of the State and its people but will be important evidence for foreign investors, along with the new ICAC and the ongoing role of the Ombudsman Commission, that sovereign risk from corruption and failure to follow mandated government processes is now being properly addressed.
- 1.30 During the course of its work, the Commission received information about matters of concern which it pursued as far as its powers allowed. The Commission proposes to provide that information to appropriate authorities with greater investigative powers for them to consider and pursue if they think fit.
- 1.31 The Commission's work is now done. It is a matter for the Government, the Parliament and ultimately the people to decide whether to act on the Report's findings and its nation-building recommendations.

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<sup>i</sup> Note: all references in this document to the PGK equivalent are approximate, using the exchange rate as at 28 March 2022. Exchange Rates UK website, accessed on 28 March 2022, <https://www.exchangerates.org.uk/currency/exchange-rate-calculator.html>.