

Government of Papua New Guinea

Office of the Auditor General

SPECIAL INVESTIGATION  
INTO THE OFFICE OF  
THE PUBLIC CURATOR

September 2005

This would provide for total payments to Jaco of K1,221,000 including GST. The AGO can find records of K1,467,387 in payments that can be directly related to payments for these accounts, not including amounts related to work on a small number of deceased estates. Of this only K154,180 is in relation to the 2001-2004 accounts. As these payments only relate to 2001 to 2003 financial statements, this represents an **overpayment of K4,180**. Therefore the total payments for the preparation of the 1992 to 2000 financial statements were K1,313,207 against contractual obligations of K1,001,000, an **overpayment of K312,207**.

The AGO notes that part of this overpayment can be accounted for by the Public Curator paying for ten years of statements rather than the nine that were produced (1992 to 2000) and payment of some K161,605 for Jaco to process Auditor-General's queries despite this being provided for in the *Agents* agreement as part of the service to be delivered for the annual K90,000 fee.

### Anvil Project Services

On 23 May 2000, Anvil Project Services (Anvil), an Australian based company now known as CCS Anvil (PNG) Ltd, was engaged by the Secretary of the Department for Justice and Attorney General to visit PNG and *produce a succinct focused report of work completed to date and a project plan for the process of preparing the office for corporatisation. The plan shall cover timeline, activities and other related issues and be incorporated into proper Tender Documentation for the Public Curator's Office to tender the implementation of the project.*<sup>12</sup> Anvil invoiced the Public Curator's Office on 30 May 2000 AU\$20,000 for the cost of the visit. According to the Public Curator, Mr G Fridriksson and Mr Ivan Demetrius, resigned from RAM Business Consultants shortly before May 2000 and along with several other expatriates formed Anvil Project Services in both Australia and PNG<sup>13</sup>.

Anvil provided a project plan to the Public Curator that involved a two stage process to address the financial and operational management problems of the Public Curator's Office. Rather than call tenders on 12 June 2000 the Department for Justice and Attorney General's Corporate Executive Team (CET) approved the engagement of Anvil. The proposed fee for the initial three months was AU\$480,000 plus estimated disbursements of AU\$110,000. The engagement was to audit the work undertaken by previous consultants, review the current situation of the Public Curator's Office, develop a project plan for the future and implement the plan.

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<sup>12</sup> Extract from a letter from the Secretary for Justice and Attorney General to Mr Byron Patching, Managing Director Anvil Project Services *RE. SITUATION REVIEW – PUBLIC CURATOR'S OFFICE 23 May 2000*.

<sup>13</sup> Source Letter from the Public Curator to the Chairman of the Parliamentary Accounts Committee, *Background information on CCS Anvil 27 January 2004*.

Subsequently the Public Curator applied to the Central Supply and Tender Board (CSTB) for a certificate of inexpediency but was rejected on the ground that the engagement had not been advertised. At the time the CSTB were not advised that an agreement had been reached with Anvil that CET had approved their engagement and that Anvil were already working on the task.

The Public Curator called restricted tenders for the second stage of the project, evaluated the tenders and advised the CSTB that Anvil was the successful tenderer. The CSTB rejected the process as it was not an open tender process. Anvil continued to work for the Public Curator. The AGO understands that the Public Curator entered into a further six month contract with Anvil on 30 November 2000. This process did not meet the procurement requirements set down by the *Public Finances (Management) Act*. There was a further request on 14 May 2001 for a certificate of inexpediency for the appointment of Anvil to complete its work and to undertake training. Again there was no approval by the CSTB and despite this the Public Curator entered into an engaged Anvil to undertake the work. Up until 7 June 2001, total payments to Anvil for work relating to the corporatisation project was K1,210,116.

From October 2001 through October 2002, Anvil undertook a range of additional engagements for the Public Curator for which the Public Curator did not meet required procurement processes. These engagements totalled K1,720,000 and included:

- Data collation and preparation of business case against POSF – K250,000;
- Upgrade of software for Estate Tracker, creation of database and data purification – K300,000;
- Assistance with preparation of financial statements for Public Curator's Office – K500,000;
- Analysis and identification of overpayments against accounts – K195,000;
- Analysis of estate receipts against banking – K300,000; and
- Administration support services – K175,000.

On instruction from the Secretary for Justice and Attorney General the engagement of Anvil as a consultant was terminated, Anvil continues to act as the Agent.

On 12 June 2000, the Public Curator appointed Anvil as an agent under *Section 4 of the Public Curator Act*. This appointment was extended on 30 November 2001. There was also a specific appointment for an agent for particular estates from 13 June 2000. In all Anvil and Mr Fridriksson received K158,983 from the Estate Trust Account by way of commissions on the sale of real estate, estate administration and other services related to deceased estates.



Payments as an Agent of the Public Curator and for delivery of consultancy services amount to **K5,120,464**. These payments have all been made using estate monies.

### *Conclusion*

#### **Failure to follow procurement procedures**

I am of the view that the Public Curator has failed to meet his responsibilities under *Section 39 and 40 of the Public Finance (Management) Act*, to follow procurement processes that ensure fairness, transparency, value for money and contractual conditions over payments and delivery of services. The Public Curator clearly was aware of his responsibilities as he on a number of occasions made unsuccessful attempts to have the CSTB ratify his actions. The Public Curator has entered into contractual arrangement with Anvil on at least 10 separate occasions for the provision of services. Each of these contracts exceeded K100,000. Where estimated costs of services exceed K100,000 *Section 40 of the Public Finance (Management) Act* requires the procurement process to be subject to the Government tender procedures, including the involvement of the Consultancy Steering Committee.

#### **Relationship with Anvil**

I am of the opinion that the Attorney General and the Public Curator had entered into a relationship with Anvil and its officers that did not provide for effective management and scrutiny of their activity. In regard to the operation of the Public Curator's Office there appears to be no proper separation of responsibility, for example the AGO found a number of instances where the principal of Anvil had *certified* payments, for as much as K500,000, to his own firm.

#### **Payments to Anvil**

Payments to Anvil total K4,872,375. These payments have been made from estate monies, from the Estate Trust Fund, the Arrears Account or Corporate Trust Account. In addition, Anvil has withheld a significant amount of monies it has received from the proceeds of the realisation of assets of deceased estates, including sale of properties, shares and investments and rent. Also, as set out under the section of this report on the Estate Trust Fund, Anvil has been paid significantly more for its role as an Agent than provided for by the *Public Curator Act* and *Public Curator Regulation*. Of particular concern is the provision of *Section 4 of the Public Curator Act* that provides for the Public Curator to pay, by way of commission, up to 10% of all monies collected by an Agent, and which would be expected to apply to collection of rents and the like. Anvil has withheld 10% of all monies realised by the sale of properties and shares and identification of bank accounts.

In fact the AGO can find no evidence that any money realised by Anvil on behalf of estates has been paid into the Estate Trust Account.

As an Agent for the Public Curator, Anvil should be aware of their responsibilities under the *Public Curator Act* and *Public Curator Regulation*. This awareness would include the basis for their remuneration and the illegality of withholding estate funds and making payments on their own behalf. As a result they could possibly be held responsible for loss of monies belonging to estates.

### **Lasting Benefits**

The work to be undertaken by Anvil has been well documented, providing an overall strategy for the restructure program package, as well as details on the individual steps. There are also an extensive range of progress reports available. At the conclusion of each stage a final report has been produced. Tasks were generally completed on time and to the agreed cost. According to the Public Curator the project was on track to produce the desired outcome of rebuilding the Public Curator's Office capability and systems to function, at least in Waigani, in an effective manner. A number of systems had been implemented and casual staff had been retained and along with full time Public Curator Office staff, were being managed and trained.

The AGO understands that the Public Curator was coming under increasing pressure from the Department for Justice and Attorney General to dismiss Anvil. This eventually occurred in 2003. At this time there was some structure to the operation of the Public Curators Office, however not all issues had been addressed and the full range of documentation to support systems and policies along with procedures, proper training of staff had not been established. There was no engagement to fill the management void left by the departure of Anvil. As a result the systems providing the estate records and financial accounting have not operated effectively. Some 2-3 years later most of the gains from the work undertaken by Anvil have gone.

### **Missing Records and Financial Accountability**

At the time of audit, the AGO found a number of estate files and other records were not with the Public Curator but had been retained by Anvil. Anvil had provided reports to the Public Curator on the estates that they were managing, but in the absence of estate records it is not possible for the Public Curator, or the AGO to gain an understanding of the full extent of estate assets and to effectively review the activity of Anvil in the management of the estates. In addition the financial account for these estates has not been provided for in the accounting records maintained by the Public Curator's Office. Monies realised on estates were not remitted and managed within the Public Curator's estate Trust fund. As a result it was not possible for the AGO, or for that matter the Public Curator, to undertake any assessment of the estate management by Anvil, including financial accounting.

**PUBLIC ACCOUNTS COMMITTEE**

**INQUIRY INTO THE OFFICE OF THE PUBLIC CURATOR**

**REPORT TO NATIONAL PARLIAMENT**

**VOLUME 1.**

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

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

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

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

#### **ANVIL PROJECT SERVICES**

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

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

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

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

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

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

34.38. This Committee finds that:

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

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



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

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

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

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

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

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

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

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

### **35. INAPPROPRIATE FINANCIAL TRANSACTIONS**

#### **FINDINGS OF THE AUDITOR GENERAL**