

## CHAPTER 35: Review of the Proposed Kokoda Track Management Authority Act

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### Preamble

According to the Australian Newspaper on 11 May 2022 *‘Papua New Guinean landowners have accused Canberra of - “foreign interference” after a controversial draft bill which will stop them holding power in a new Kokoda Track authority was revealed to be the work of an Australian bureaucrat’*.

On 27 February 2019, the PNG National Newspaper reported ‘Legislation for new entity to manage Kokoda underway’.

It was an innocuous article that didn’t raise any eyebrows at the time due to the ongoing dysfunction within the Kokoda Track (Special Purpose) Authority (KTA) over the previous 10 years.

The article advised that the Review of the KTA had been completed and draft legislation was underway.

After the clandestine process had been exposed two years later, it was discovered the Bill sought to expand the influence of DFAT officials by redefining the Kokoda Trail as a ‘Kokoda Corridor’ and extending its boundaries far beyond its gazetted area to include Sirinumu Dam on the south coast, a large chunk of the Owen Stanley Ranges through to the beach-heads of Buna and Gona on the north coast. The proposal will enshrine the careers of a new generation of aid-funded bureaucrats and consultants with yet another layer of environmental legislation.

PNG already has six Acts of Parliament to protect their environment and has recently established a Climate Change Authority. It does not need another layer of aid-funded ‘green tape’ which seeks to hijack the name ‘Kokoda’ to give relevance to a wider DFAT environmental agenda.

A leaked email to Governor Juffa from the DFAT Strategic Management Advisor, Mark Nizette, on 1 April indicates he could be the mastermind behind the development of the KTMA Bill:

From: Mark Nizette <[mark.nizette@gmail.com](mailto:mark.nizette@gmail.com)> Date: Thu, 1 Apr 2021, 11:47 am  
Subject: KTMA Draft Bill and Discussion Paper To: Gary Juffa <[Gvjuffa@gmail.com](mailto:Gvjuffa@gmail.com)>  
Gary,

Attached is the latest version of the KTM<A draft bill, and a draft discussion paper I'm working on, and a draft covering brief for you and the other members of the KIC.

There are some key policy issues we require guidance on and then your approval to get this draft out to the communities and the other stakeholders (e.g. tour operators).

We will then finalise it for final KIC approval and then go through the channels to get it to Parliament for the three readings. Would love to have this in place before the end of 2021 so we can start 2022 with the KTMA.

Your help would be most appreciated, as I'm finding it difficult to step people through the process (being so far away). However, Julius and Dr Moutu have been very helpful. (CEPA has been more absent - just between you and me).

Happy to discuss the content and the process of going forward from here. I think Martin Brash could assist.

Please note that nothing is set in stone yet, with the bill, or my discussion papers etc. We need KIC clearance/discussion and feedback/direction.

m.

Mark Nizette, MBE  
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Nizette later denied he was the author of the bill in the Australian *'saying the first draft was completed by former PNG Supreme Court judge Brian Brunton'*. This was a bit disingenuous as he failed to mention who provided the instructions for Brian Brunton to draft the bill!

It is certainly no surprise that CEPA had *'been more absent'* as advised in the email from Nizette to Governor Juffa. There is nobody in CEPA, which is the recipient of significant DFAT aid-funding, who is qualified in business, pilgrimage trekking, tourism, or commemoration.

None have ever trekked Kokoda – or is physically capable of doing so! The only person with the incentive to hijack the word 'Kokoda' to drive an environmental agenda far beyond the Trail as a career enhancing opportunity is Mark Nizette.

It is therefore possible the lines of *'advice'* and *'influence'* could have been blurred due to Mr. Nizette's long tenure as a Strategic Advisor (2011-2022) with the Kokoda Initiative and his dual role as Secretary of the influential Kokoda Initiative Committee (KIC).

The process leading to the development of the proposed KTMA Bill indicates Mr. Nizette may have fused his role of *'advisor'* with that of *'influencer'* of PNG legislation. For example, according to Word and pdf document properties:

- The author of the 'Issues Brief KTMA Draft Legislation' signed by Mr. Julius Wargiral, is 'Mark Nizette'.
- The author of the 'KTMA Bill "Zero Draft" Discussion Paper February 2022' is 'Mark Nizette'.
- The author of the 'KTMA Discussion Paper, March 2021', is 'Mark Nizette'.
- The author of the 'Kokoda Track Management Authority Bill 2021' is 'Mark Nizette'.

Given that the Bill has been drafted in secret without any consultation with key stakeholders such as the Minister for Tourism, Arts and Culture, the Tourism Promotion Authority (TPA), the relevant

Provincial and Local-Level Governments, tour operators, or the Traditional Resource Custodians (TRCs) across the Trail it surely goes beyond the charter of a 'foreign advisor' and could be construed to be 'foreign interference' in PNG.

According to KTA records, when the Kokoda Trail was managed under the patronage of TPA from 2004-2008 trekker numbers increased by 255% from 1584 to 5621. After it was transferred to CEPA trekker numbers decreased by 46% from 5621 to 3300. This has resulted in a cumulative loss of K46 million in foregone wages, campsite fees and village purchases for villagers across the Trail.

PNG is now the only country in the World to manage its most popular tourism destination as an environmental resource rather than as a tourism enterprise. The cumulative loss of income since CEPA wrested control of the Kokoda Trail from the patronage of the TPA makes a mockery of their much-repeated claim of supporting '*income generation*' for local villagers which is stated in every Kokoda Initiative Annual Report since 2010.

It is worth recapping that neither government had expressed any interest in the Kokoda Trail until a threat to mine gold and copper coincided with an increasing awareness of trekking Kokoda in 1996. The mine was stopped after a DFAT funded lawyer found a technical hitch in the approvals process after a protracted court battle.

This led to a '*Joint*' Agreement, drafted in Canberra between our two Governments, to protect the Brown River Catchment Area as a future water source for Port Moresby by obtaining a World Heritage listing. The agreement was funded by the Australian Government.

Responsibility for meeting these objectives was allocated to the respective environment departments who took over management of the Trail from the patronage of TPA in 2009.

One of the first decisions of the new arrivals was to rebadge the Kokoda Trail, which lies between Owers Corner and Kokoda, as a '*Kokoda Corridor*' to include Sirinumu Dam in the South, a large chunk of the Owen Stanley Ranges in the centre, and the northern beach areas of Buna and Gona in the North.

This created a smorgasbord of opportunity for Australian officials and consultants in the fields of anthropology, archaeology, environment, and social issues.

A review of their operation will show that the areas of tourism and military heritage were ignored - for example:

- No tourism management systems were put in place.
- No funds were allocated for the development of campsites to meet the needs of tourists.
- No toilets which meet the most basic hygiene needs of tourists were ever built.
- No funds were allocated for military heritage to enhance the value of the pilgrimage.
- No research was ever conducted to understand the needs of the two key stakeholders across the Trail i.e., the paying customers and those who own the land which is sacred to our shared military heritage.

As a result, the '*law of the jungle*' prevailed across the Trail as Kokoda tour operators and their trekkers fought over inadequate campsites, trampled over sacred sites, and shat all over the place rather than put up with the stench of foul, putrid bush toilets.

Australian officials embedded in what has become an aid-funded alliance between the DFAT Kokoda Initiative, CEPA and the KTA were oblivious to the negative impacts on tourism due to the historical desecration of sacred sites, the fouling of the environment, erosion, and the creation of false expectations amongst village communities.

They also remain oblivious to the values of pilgrimage as none have ever joined a professional group to trek across it to witness the bonds that develop between trekkers and their PNG guides as the story of the campaign unfolds.

In 2015, an expert report revealing that the Kokoda Trail did not meet the requirements for a World Heritage listing coincided with an announcement of the Chinese funded Edevu Hydro Power Project on the Brown River which solved environmental concerns over the catchment area and made the basis of the 'Joint' Agreement redundant.

The DFAT-KI-CEPA alliance, under the guidance of foreign aid officials has since shifted its emphasis from World Heritage to '*Protected Areas*<sup>i</sup>' which is the basis of this proposed Bill.

There is no need for another layer of bureaucracy in this area as CEPA is already responsible for the administration of seven (7) existing Acts of Parliament relating to the protection of our Environment and Climate Change. It would be more appropriate to review and amend these Acts where required if appropriate.

A critical review of the proposed KTMA Bill leads to the conclusion that the name 'Kokoda' has been hijacked to give relevance to a wider aid-funded environmental agenda that would otherwise be unremarkable.

DFAT should instruct their operatives within the PNG Kokoda Initiative to withdraw the Bill to avoid any form of diplomatic embarrassment in the lead-up to the 80<sup>th</sup> anniversary of the Kokoda campaign this year.

Major Charlie Lynn (Retd)  
Officer of Logohu, PNG  
February 2022

#### **OVERVIEW:**

**This is not a PNG bill – it is an Australian bill being imposed on PNG in a clandestine manner.**

There is no record of any consultation with key stakeholders of the Kokoda Tourism Industry in the drafting of the Bill.

The Bill seeks to expand the influence of DFAT officials by expanding the gazetted boundaries of the Kokoda Trail to cover a large part of the Owen Stanley Ranges and protecting their aid-funded careers with another layer of environmental legislation.

The most outrageous aspect of the Bill is the exclusion of Traditional Resource Custodians (TRCs) across the Kokoda Trail from membership of the Board designed to govern their land as per 4.13.3:

*'The persons so nominated shall not be persons who have any grandparents from, or be persons who are indigenous to, or who are resident in, the areas of the Koiari Rural Local Level Government, or the Kokoda Rural Local-level Government.'*

The Bill fails to acknowledge that the Kokoda Trail is PNG's most popular tourism destination and should therefore be managed on a commercial basis as a tourism resource owned by Traditional Resource Custodians. The business would be required to comply with existing IPA and CEPA legislation.

#### **RECOMMENDATION:**

The Bill be rejected and withdrawn.

The Bill . . .

Being an Act–

- a) to implement the vision of protecting the natural resources and values, and building sustainable development including the tourism potential of the Owen Stanley Ranges, Brown River Catchment, the Kokoda Track and the Kokoda Track Protected Area, by working with communities, landowners, industry and all levels of government, and

**COMMENT:**

This is a wide-ranging vision that extends far beyond the gazetted boundaries of the Kokoda Trail between Owers Corner and Kokoda.

Kokoda Trail Pilgrimage Tourism is now a sustainable commercial industry. The gazetted area includes part of the Brown River Catchment which is now protected by the Chinese funded Edevu Hydro Power Project. There is no prospect of tourism beyond the boundaries of the Kokoda Trail.

The advocates of the Bill should therefore be called upon to advise and clarify:

1. who were/are the architects of the bill?
2. who drew up, funded, and managed the contract?
3. who were the principal advisors to the contractor?
4. What form of consultation did the proponents of the Bill conduct with '*communities, landowners, industry and all levels of Government*'?
5. If consultation did in fact take place how was it conducted?
6. Was a consultation plan developed and implemented – if so, is it possible for a copy to be provided to stakeholders along with advice on the implementation process?
7. Was each part and section of the bill described verbally, and in written form, in *Tok Pisin* and/or plain English to Traditional Resource Custodians (TRCs) across the Trail who are not literate in English?
8. If explanations were provided in *Tok Pisin* or plain English, were copies made available to the two relevant Governors?
9. Is it possible for the proponents of the Bill to provide a record of any formal studies that have been conducted to identify the '*tourism potential*' of any area beyond the gazetted boundaries of the Kokoda Trail between Owers Corner and Kokoda?

- b) to establish the Kokoda Track Management Authority to manage the Kokoda Track and the Kokoda Track Protected Area as an internationally recognised cultural asset, archaeological wartime monument, military commemorative site, natural, protected area, and a cultural, oral- history experience, in consultation with customary landowners and community members, and as a memorial for those lives lost from the Kokoda Campaign, for unknown graves and cemeteries, and being a road for pilgrimage in remembrance of the fallen, and

**COMMENT:**

This is a presumptive, poorly crafted, and overly ambitious statement for an 'intention' which extends well beyond the gazetted boundaries of the Kokoda Trail between Owers Corner and Kokoda.

The proponents of the Bill should be invited to clarify the following:

1. What is the legal status of the '*Kokoda Track Protected Area*'?
2. What is the international benchmark for recognition as an '*internationally recognized cultural asset*'? *Is this a reference to a potential World Heritage Area status?*
3. What is an '*archeological wartime monument*'?

4. What is a ‘*cultural, oral history experience*’?
5. Should the above terms be included in the ‘Interpretation’ or an accompanying ‘Glossary of Terms’?
6. What evidence is there to indicate that tourists attracted by the wartime heritage of the place are interested in any of these issues beyond the gazetted boundaries of the Kokoda Trail?

- c) to protect further, the lands affected in the Proclamation of the Kokoda Track Local-Level Government Special Purposes Authority established on the 11th of June 2003 by virtue of section 46 of the *Local-Level Government Administration Act 1997*, as amended the 13th of August 2008,
- i. in consultation with the Government of Papua New Guinea, and lawful government bodies empowered to conserve protected areas and national heritage assets, in particular the protection of the environment, culture, natural heritage, wartime relics and for tourist promotion; and
  - ii. with the provincial governments of the Central and Northern Provinces, and their constituent Local Level Governments, and District Development Authorities, of and in, the Kokoda Track region; and
- d) to provide a system of cooperation and mutuality, in accordance with the *Organic Law on Provincial and Local Level Governments* and associated laws, for the management of the Kokoda Track, the conservation and protection of the Owen Stanley Ranges, Brown River Catchment and the Kokoda Track, all for the better livelihoods of the People of the Kokoda Track region, and the protection and enhancement of their homes, gardens, hunting-grounds, real property, businesses and livelihoods; and

**COMMENT:**

The proponents of the Bill should be asked to clarify how a ‘*system of cooperation and mutuality*,’ will be achieved with subsistence communities along the Trail **when 3.13.3 below revokes the rights of landowners.**

- e) to repeal the Kokoda Track Local-Level Government Special Purposes Authority established on the 11th of June 2003 by virtue of section 46 of the *Local-Level Government Administration Act 1997*, as amended the 13th of August 2008, under the *Local Level Government Administration Act 1997*, as a managing body; and
- f) for related purposes.

**COMMENT:**

Para c), d) and e) refer to the establishment of the KTA as a Special Purpose Authority which was established by Sir Peter Barter in 2004 because Kokoda was then emerging as a trekking destination, and there was no precedent for the concept of a National Park which charged entry fees for maintenance purposes in PNG at the time.

PNG Tourism then assumed responsibility for the KTA which saw trekker numbers increase by 255% from 1584 in 2004 to 5621 in 2008. During this period the Kokoda Trail emerged as PNGs most popular tourism destination.

Since the Australian Government assumed responsibility for the Trail via a Joint Agreement with PNG environment officials were embedded in the PNG Conservation Environment Protection Authority (CEPA) which took over from PNG Tourism to manage it as an environmental resource.

Since then trekker numbers have declined by 46% from 5621 in 2008 to 3300 in 2019.

This has resulted in a cumulative loss of K46 million in foregone wages, campsite fees and village purchases for communities across the Trail.

In 2015, World Heritage experts, Dr Peter Hitchcock AM, Dr Jennifer Gabriel and Dr Matthew Leavesley revealed that the Kokoda Trail does not meet the criteria for a World Heritage Listing. Their report can be viewed [on this link](#).

In view of these factors the Kokoda Trail, which is already designated as a National Park in PNG (10 metres either side of the length of the Trail) should be excluded from the provisions of this Bill and managed on a commercial basis as a national tourism asset for the benefit of village communities who own the land and live along it.

Consideration should then be given to the reclassification of the Bill as the ‘Owen Stanley Ranges Management Authority Act’ (OSRMA) to reflect its responsibility for environmental management of the wider area it has defined beyond the gazetted boundaries of the Kokoda Trail?

## PART I. – PRELIMINARY

### 1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS

- 1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C of the *Constitution*, namely, the right to privacy conferred by Section 49 of the *Constitution*, is a law that is made for the purpose of giving effect to the public interest in public order and public welfare.
- 2) For the purposes of Section 41 of the *Organic Law on Provincial Governments and Local-level Governments*, it is declared that this law relates to a matter of national interest.

#### COMMENT:

This Bill should be related to the interests of the TRCs across the Kokoda Trail between Owers Corner and Kokoda.

The proponents of the Bill should be asked to clarify their reference to the ‘*national interest*’ and explain what it means?

- 3) For the purposes of any law, the purposes of the Authority are a public purpose.

#### INTERPRETATION

“Authority” means the Kokoda Management Authority established by Section 12; and

“Board” means the Kokoda Track Management Authority Board established by Section 18; and

“Chair” means the Chair of the Board designated by the Minister under Section 18(8); and

“Chief Executive Officer” means the Chief Executive Officer of the Authority appointed by the Board under section 29(1); and

“consultation” means full meaningful substantial consultation, that in other than trivial or routine matters, shall be evidenced in writing and may be obtained by an exchange of emails; and

“cultural heritage” means a place or object or tradition of aesthetic, historical, scientific, social, spiritual or other value, which may or may not be determined by reference to criteria established in the Regulations; and

“Deputy Chair” means the Deputy Chair of the Board appointed under Section 20; and

"Eco-service payments" means money, goods or services provided in exchange for any ecosystem services; and



“Ecosystem services” means a *profit a prendre*, the right to participate in the profits of the soil that run with the land, and is owned by a landowner in relation to a condition, natural process, or natural activity supporting the environment, inherent in the land, or the value in the preservation of such a natural process, or a natural activity, to the benefit of other persons, and includes;

- a. the ability of trees and forests to photosynthesize and provide clean air, and a sink for carbon through the sequestering and storage of carbon dioxide from the atmosphere, consistent with the definition of REDD+; and a habitat for living organisms; and
- b. the quality of the land to capture rain and secure fresh water, before it becomes water in a water course; and

“free prior informed consent”, set out more fully in Schedule 4, includes -

- a. the provision to a person of information necessary to make an autonomous decision; and
- b. a person having adequate comprehension of the information provided; and
- c. any consent to be written in lay language suited for the comprehension skills of the general population of the area; and
- d. the capacity and ability of a person to both understand the information provided and form a reasonable judgment based on the potential consequences of any decision made by the person; and
- e. voluntariness and a person’s right to freely exercise any decision making without being subjected to external pressure such as coercion, deceit, manipulation, or undue influence; and
- f. the person having access to independent advice, including where any agreement touches land, land rights in custom or law, the advice of a qualified legal practitioner; and

“future generations” means any person not born at the time a matter arises under this Act; and

“general order” means a written instruction by the Chief Executive Officer consistent with this Act; and

“government body” means the National Government, a provincial government, a local level government, a district development authority, an arm, agency or instrumentality of the National Government or a Provincial Government, a Local Level Government, and a body set-up by statute or administrative act for governmental or official purposes; and

“Incorporated Land Group” means an Incorporated Land Group under the *Incorporated Land Groups Act*; and

"IUCN category" means a category of land-use established by the International Union for the Conservation of Nature; and

"Kokoda Initiative" means the partnership and understanding between Papua New Guinea and Australia on the Owen Stanley Ranges, Brown River Catchment and Kokoda Track region in the *Second Joint Understanding 2010-2015 between Papua New Guinea and Australia on the Owen Stanley Ranges, Brown River Catchment and Kokoda Track Kokoda Initiative*, and further described in the *Papua New Guinea-Australia Joint Declaration on the Preservation of the Kokoda Track Region* dated 10<sup>th</sup> of September 2015; and

**COMMENT:**

“KI-CEPA-KTA Alliance” should be included under the heading ‘Interpretation’.

The “Kokoda Initiative-CEPA-KTA Alliance” is an informal arrangement between the DFAT-Kokoda Initiative; the Conservation Environment Protection Agency (which has DFAT officials embedded within it); and the Kokoda Track (Special Purpose) Authority (KTA) which has been



under the control of Australian officials since 2009 – the DFAT Strategic Management Advisor and a Qld National Parks Ranger are currently embedded within it.

It is assumed the KTA receives funding support from the DFAT-Kokoda Initiative, however this is not possible to verify as neither organization publishes financial reports. If this is the case the KTA would be rightly regarded as part of an alliance with the Kokoda Initiative and CEPA.

Both CEPA, and the KTA, are dependent on DFAT funding via the Kokoda Initiative.

Within such an arrangement, the approval authority for major aid projects across the Trail could influence outcomes in such a way as to neutralize any potential criticism from local officials. A cost-benefit review of some aid projects delivered across the Kokoda Trail in recent years will verify this.

The ‘*arrangement*’ allows for any blame for a lack of accountability, or poor outcomes, to be subtly shifted ‘to PNG’.

"Kokoda Initiative agencies" means any government body identified in the “Kokoda Initiative Master Plan” and includes the Conservation and Environment Protection Authority, the Department of Provincial and Local Level Government Affairs, the National Museum and Art Gallery, the Tourism Promotion Authority, the Northern Provincial Administration and the Central Provincial Administration, and

"Kokoda Initiative Master Plan” means the report, cited and referred to as such set out in Schedule 5 to the Act; and

**COMMENT:**

The ‘Kokoda Initiative Master Plan’ has been referred to as a ‘*White Masta Plan*’ within PNG circles because it was developed by an Australian consultancy firm which failed to consult with the former PNG CEO of the KTA and failed to conduct any local village workshops to engage local leaders and communities in the process.

According to the former PNG CEO he was advised by Minister John Pundari that the plan would be reviewed, but since then both men have moved on and it remains in place.

The plan ignored the advice it received from trek operators regarding the lack of management protocols, and no action has since been taken to rectify the current dysfunctional management system.

The plan also ignored the most important topic relating to the Kokoda Trail which is based on military heritage and commemoration. As a result, no investment has ever been made by the KI-KTA-CEPA Alliance in interpretive memorials along the Trail to enhance the value of the trekking pilgrimage for their paying customers, i.e., Australian trekkers, since they assumed responsibility for the Trail in 2009.

The ‘Kokoda Initiative Master Plan’ cannot therefore be regarded as a valid document until village communities across the Trail, and Kokoda Trail Tourism Operators have been formally consulted.

"Kokoda Track " means the land within the geographic boundaries of the area delineated in the coordinates and map boundaries at Schedule 2; and

**COMMENT:**

Australia’s refusal to acknowledge PNGs sovereign right to name their own geographic features by insisting on the use of the unofficial term, ‘*Kokoda Track*’ is a patronizing insult.

According to PNG Government Gazette No. 88 of 12 October 1972, page 1362, column 2. Notice 1972/28, ‘*the Kokoda Trail*’ is the walking path from Owers Corner, through Uberi, Ioribaiwa, Nauro, Menari, Efogi, Kagi, Templeton’s Crossing, Aola and Isurava to Kokoda.’

It is also an insult to the Papuan Infantry Battalion who were awarded the battle honour 'Kokoda Trail' by the Commonwealth Battles Nomenclature Committee in 1953.

There are no known official references to the term '*Kokoda Track*'.

"Kokoda Track community" means persons, including landowners, whether resident or not resident in the close vicinity of the Kokoda Track, and identified in the "Kokoda Initiative Master Plan" as set out in Schedule 5; and

**COMMENT:**

According to current legislation, gazetted in 1972, the Kokoda Trail community means those who reside in Owers Corner, Ioribaiwa, Nauro, Menari, Efogi, Kagi, Naduri, Alola, Kovelio, Hoi and Kokoda.

This DFAT interpretation is being used to attempt to give validity to a document that has not been sanctioned by the traditional custodians of the resource it applies to.

"Kokoda Track Protected Area" means the land within the geographic boundaries of the protected area delineated in the coordinates and map boundaries at Schedule 3; and

**COMMENT:**

The 'Kokoda Track Protected Area' should refer to the area gazetted by the PNG Government in 1972 i.e., 10 metres either side of the 138 km Trail between Owers Corner and Kokoda.

If it is meant to be anything more than this it would be seen to be a duplicitous strategy to extend DFATs environmental agenda beyond the existing, gazetted boundaries of the Kokoda Trail.

"Kokoda Trail" includes the term "Kokoda Track"; and

**COMMENT:**

This should be deleted. There are no official references in PNG which refer to the term '*Kokoda Track*' – the term has been imported by Australian officials. This document is being used in a clandestine manner to validate their ideological interpretation.

"land" means the soil and everything above and below the soil and includes an interest in land, and includes;

- a. land below the low-water mark and within jurisdiction; and
- b. land covered with water, including dams and reefs; and
- c. rights to rivers and streams; and
- d. the foreshore, the sea, seabed and subsoil of the waters of Papua New Guinea; and

"landowner" means a person who owns a proprietary interest in land whether by custom or by an Act, including rights held by, or under an Incorporated Land Group, but does not include a mortgagor or a person holding similar rights over land; and

"landowner of the Kokoda Track" or "landowners of the area" means a person indigenous to the Kokoda Track, who own a proprietary interest in land, whether by custom, or by an Act, or who manages the land and or resources, within the geographic boundaries of the Kokoda Track set out in Schedule 2 to this Act, and in the opinion of the Chief Executive Officer is a *bona fide* resident in Kokoda Track or the Kokoda Track Protected Area, or represents a body corporate established for the purpose of collectively representing the views and interests of a group of *bona fide* landowners; and

"Local Level Government" means the Koiari Rural Local Level Government, and the Kokoda Rural Local Level Government, as the case may be; and

"member" means a member of the Board appointed under Section 18; and

"military heritage" means a physical object, place or intangible object (story, song, dance etc.) of war, war relic; and

**COMMENT:**

'Military heritage' along the Kokoda Trail refers to significant sites relating to the battles that occurred during the Kokoda campaign from July to November 1942.

"National Heritage Area" includes a site of military heritage, that may or may not contain war materials, sites and artifacts, and a place or region of outstanding natural or cultural significance, conforming to IUCN category III, within the Kokoda Track, Kokoda Track Protected Area, or areas associated with the war on the Kokoda Track, where the site is primarily biological, geophysical, scenic, landscape in nature, but may have military heritage, and includes natural and or cultural features consisting of physical and biological formations or groups of such formations, or cultural heritage places which are important from the aesthetic or scientific point of view, geological and physiographical formations, or cultural heritage places and precisely delineated areas, which constitute the habitat of threatened species of animals and plants of outstanding value from the point of view of science or conservation, including natural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation or natural beauty, and may include a sacred site or *ples masalai* under custom or a place of cultural heritage value; and

**COMMENT:**

This is an unduly complex definition. The sites of historical significance during the Kokoda campaign have already been identified as Owers Corner, Imita Ridge, Ioribaiwa Ridge, Nauro, Menari, Brigade Hill, Mission Ridge, Lake Myola, Templeton's Crossing, Eora Creek, Alola, Abuari, Isurava, Deniki and Kokoda.

"National interest" means an interest not inconsistent with this Act, with the law, and the obligations of Papua New Guinea under international law; and

"policy", means a lawful course or line of action;

- a. whether or not in writing, pursued by the National Executive Council; and
- b. in writing, pursued by the Board, or the boards of the Conservation and Environment Protection Authority, the National Museum or the Tourism Promotion Authority; and

"policy direction" means a lawful direction by the National Executive Council or the Minister, that may or may not be written, and a written decision of the Board; and

"protected area" means the Kokoda Track or Kokoda Track Protected Area as the case maybe; and

"protected area management plan" means a managerial plan for the sustainable use of resources in the protected area that may not be overridden by the development sector without the approval of the Managing Director of the Conservation and Environment Protection Authority; and

**COMMENT:**

Village communities along the Kokoda Trail, as defined by the PNG Government, are subsistence farmers.

There are no known mining or forestry extractive industries – and if there were they would be covered by the provision of the six (6) existing Acts of Parliament relevant to conservation and environment issues.

There is a long-overdue demand for a 'Kokoda Trail Maintenance Plan' to protect the environment along the Trail which has been seriously degraded by trekking under the watch of the KI-KTA-CEPA Alliance since they assumed responsibility for it in 2009..

Of more concern is the failure of the Alliance to develop a sustainable maintenance plan through the engagement of local village communities.

“Provincial Government” means the Central Provincial Government and the Northern Provincial Government as the case may be; and

"Second Joint Understanding" means *The Second Joint Understanding 2010-2015 between Papua New Guinea and Australia on the Owen Stanley Ranges, Brown River Catchment and Kokoda Track Region* and further described in the *Papua New Guinea-Australia Joint Declaration on the Preservation of the Kokoda Track Region* dated 10<sup>th</sup> of September 2015; and

**COMMENT:**

Both the First and Second Joint Understanding documents were framed by Australian environmental officials in Canberra and signed off by their ‘subordinate’ (from a colonial perspective) PNG counterparts due to their aid-dependent linkage from funding within the Australian foreign aid budget.

“Special Purposes Authority” means the Kokoda Track Local-Level Government Special Purposes Authority repealed by this Act; and

**COMMENT:**

The Kokoda (Special Purpose) Track Authority (KTA) was approved by Sir Peter Barter as an interim measure as Kokoda trekker numbers were rapidly increasing after the 60<sup>th</sup> anniversary of the Kokoda campaign in 2002. It was necessary because PNG did not have any legislation for funding the management of national parks.

The arrangement at the time was untidy in that the KTA was then legally responsible to the Minister for Provincial and Local Level Government, but his department had enough challenges to contend with without adding ‘tourism’ to its responsibilities.

The Minister for Tourism, Arts and Culture assumed responsibility for the Trail until after Australian officials were embedded in CEPA.

The Minister for Conservation and Environment, one of the most influential Ministers in the Government at the time, then assumed responsibility for the Trail via the establishment of a ‘Joint Ministerial Committee’ and a ‘Technical Working Group’ within CEPA to oversee the management of the Trail.

None of the members on the Joint Ministerial Committee or the Technical Working Group had any experience in business management, tourism, trekking or pilgrimage.

Trekker numbers have continued to decline ever since.

The KTA has served its purpose as a ‘Special Purpose Authority’ and should now be repealed.

It should now be replaced as a ‘Kokoda Trail Management Authority’ responsible to the Minister for Tourism, Arts and Culture as the Kokoda Trail is now PNGs most popular tourism destination.

“stakeholder” means a person, sole or corporate, incorporated or unincorporated customary group or association, a commercial or philanthropic entity, with a genuine concern, and or interest, or an involvement, whether pecuniary, or otherwise, in the Kokoda Track and the Kokoda Track Protected Area, the conservation of landscapes, biodiversity, cultural heritage, natural science or nature therein, and the livelihoods arising therefrom; and

**COMMENT:**

The key stakeholders in the Kokoda Trail Tourism Industry are:

1. Government - which provides infrastructure and legislation;
2. Trekking companies - who generate the income for the industry; and
3. Traditional Resource Custodians (TRCs) - who own the land across the Trail.

All others should be classified as ‘Interested Parties’.

“the Minister” means the Minister responsible for (Tourism or Conservation); and

**COMMENT:**

The Kokoda Trail is now established as PNGs most popular tourism destination.

Responsibility should therefore be vested with the Minister for Tourism, Arts and Culture.

“this Act” includes the Regulations; and

“tourism development” includes any business or industry either in or doing business in the Kokoda Track or Kokoda Track Protected Area that is wholly or partly engaged in providing services;

- a. for visitors and tourists in and to Papua New Guinea, for holidays, recreation, amusement, pilgrimage, or education; and
- b. for persons travelling within the country for holidays, recreation, amusement, pilgrimage, education; and
- c. by way of transport, hotel accommodation, food, tour guides, attractions, sports, entertainments, education, or scientific research; and

“tourism products” means all offerings by tour operators, services, activities, productions, fixed plant, building and machinery that are hired or employed for consumption and enjoyment by international visitors and tourists and local people, as well as for enhancement of increase in output of the tourism industry; and

“tourism promotion” includes any legitimate marketing or business activity undertaken in Papua New Guinea or in any country for the purposes of encouraging visitors and tourists to travel to and within Papua New Guinea; and

This is the responsibility of the PNG Tourism Promotion Authority which is responsible to the Minister for Tourism, Arts and Culture.

"Track fees" and "Track related income" includes all income to the Authority from its lawful administration of the Kokoda Track; and

“World Heritage” or "World Heritage Convention” means the *Convention Concerning the Protection of the World Cultural and Natural Heritage* adopted by the General Conference of UNESCO on 16 November 1972.

## PART II. – KOKODA INITIATIVE GOALS, VISION, PRINCIPLES

### Division 1 Vision and Principles

**COMMENT:**

[According to Wikipedia:](#)

*‘A vision statement provides direction, it sets a course toward a future that tells the people in that organization what the group believes, how to behave, and what kinds of decisions to make without explicitly doing so. As a result, a vision - to have vision - means to imagine a world that does not yet exist and intends to inspire people to make it a reality. What an organization does, and how they do it, has nothing to do with its vision statement’.*

#### 1) VISION FOR THE KOKODA TRACK

The purpose and vision of this Act is for the Authority, in consultation with all stakeholders, to

manage, protect, and conserve Papua New Guinea's Kokoda Track as an internationally recognised cultural, natural and wartime, landscape asset and experience, and for the Authority to be a leading organisation that delivers systems, policies and certainty from which Kokoda Track experiences may be provided to visitors, and from which Track communities, and their businesses, may prosper.

**COMMENT:**

*'Purpose'* and *'Vision'* require separate statements.

The mission statement as defined in this draft Act, is prescriptive and should therefore be redefined as a series of objectives.

A more appropriate Vision Statement for the Kokoda Trail would be:

***'The Kokoda Trail is a world-class adventure tourism pilgrimage based on the shared wartime heritage of Papua New Guinea and Australia'.***

The following factors relate to the proposed vision statement in para 3 above:

1. The Kokoda Trail has generated an estimated K450 million in tourism revenue since 2002 and is now PNG's most popular tourism destination. This begs the question as to whether the Trail should now be managed as a commercial enterprise with shared ownership between the two Provincial Governments and the Traditional Resource Custodians (TRCs), or whether it should continue to be managed as an environmental asset by a government bureaucracy. It will not be appropriate to frame a Vision Statement until this conflict is clarified.
2. The KI-CEPA-KTA Alliance has now been operating for 12 years. The Alliance should now be invited to advise what business systems have been established to manage trekking across the Kokoda Trail since they assumed responsibility for it in 2009?
3. The KI-CEPA-KTA Alliance should also be asked to advise why they have never implemented the following management protocols:
  - a. a Campsite Booking System;
  - b. a Trek Itinerary Management System to monitor the progress of trek groups, and avoid congestion at critical points along the trail and at campsites;
  - c. a database to allow for the conduct of surveys, to obtain feedback from trekkers, and to provide ongoing marketing opportunities for PNG Tourism; or
  - d. a philanthropic program that allows for trekkers to make charitable donations.
4. They should also be asked to advise if:
  - a. any micro-business initiatives have been introduced to assist local communities to earn additional income by meeting the needs of trekkers?
  - b. any surveys have been conducted to ascertain what services trekkers would be prepared to pay for during their trek – for example, washing of clothes, local cultural activities, commemorative re-enactments, provision of brewed coffee and scones, etc.

- 2) The Act does not make a judgement on the validity or otherwise of the rival terms "Kokoda Trail" and "Kokoda Track," which may be used synonymously and interchangeably in correspondence relating to the implementation of this Act. For consistency, the term "Kokoda Track" is used throughout this Act, but this does not indicate a preference for either term.

**COMMENT:**

*'Kokoda Trail'* is not a *'rival'* term to *'Kokoda Track'* – it is the official term gazetted by the PNG government in 1972!



It has become common practice for DFAT/DVA officials to patronize their PNG counterparts with a false reassurance that the terms '*may be used synonymously and interchangeably*' and that this '*does not indicate a preference for either term*' - they then go on to use their preferred, non-official term, '*Kokoda Track*'.

There are no known official references to the term '*Kokoda Track*' – the term has been imported by Australian officials.

One can only imagine the furor that would occur in Australia if Government officials attempted to use a similar argument to interchange the name of 'Ayer's Rock' and 'Uluru'!

## 2. PRECAUTIONARY PRINCIPLE

- 1) In a matter affecting heritage, resources, land, parks, reserves and protected areas, the precautionary principle applies, requiring prudent measures to be taken to avoid harm to nature, or cultural heritage, so as to guard against damage arising either directly or indirectly from any harm, and non-compliance with the precautionary principle is a civil wrong and a Court may make such orders as to achieve compliance with the principle, and such orders for damages, as seem just.
- 2) All persons shall take actions to avoid or diminish any threat affecting heritage, resources, land, parks, reserves and protected areas, arising from human activities leading directly or indirectly to threats of serious and irreversible damage to cultural heritage, the environment and nature, that may be shown, on evidence to be scientifically plausible, but uncertain.
- 3) A court may conclude, as a matter of fact, that an act or proposed act, is imprudent and, may cause harm to cultural heritage or nature, or cause damage, and make such orders as seem just.
- 4) The burden of proof, of showing an act, or proposed act, is prudent, or will not cause harm to cultural heritage or nature, or damage is on the person who asserts;
  - a. the act, or proposed act, is prudent will not cause harm to cultural heritage or nature; and
  - b. will not cause damage.
- 5) An act, or proposed act, is *prima facie* imprudent when there is;
  - a. evidence of a threat of serious, or irreversible damage; and
  - b. scientific uncertainty as to the extent of possible damage.
- 6) Scientific uncertainty may include an assessment of;
  - a. what facts would constitute sufficient evidence of the uncertainty; and
  - b. the level and kind of uncertainty; and
  - c. the potential to reduce uncertainty.
- 7) Without limitation, the threat of serious or irreversible damage may include a consideration of;
  - a. the scale of the threat locally, regionally or internationally; and
  - b. the perceived value of the threatened environment or cultural heritage object or place; and
  - c. whether the possible impacts are manageable; and
  - d. the level of public concern; and
  - e. whether there is a rational or scientific basis for the concern.
- 8) The precautionary principle should not be used to try to avoid all risks, and measures may be adopted to avert any anticipated threat of environmental damage proportionate to the potential threats.
- 9) Proportionate precautionary measures may be taken to avert the anticipated threat of environmental or cultural heritage damage, and a consideration of whether precautionary measures are appropriate to any threat may include consideration of;



- a. the degree of seriousness of the threat; and
- b. the reversibility of the threat; and
- c. any degree of uncertainty over the reversibility of the threat; and
- d. the more significant and uncertain the threat, the greater the precaution required.

**COMMENT:**

The proponents of the Bill should advise if these ‘*Precautionary Principles*’ already apply to the other six Acts of Parliament relevant to protecting the environment in PNG, ie., the *Mining Act*; the *Oil and Gas Act*; the *Forestry Act*, *The Fauna (Protection and Control) Act*; *The Conservation Areas Act*; and *The National Parks Act*.

It is worth noting that CEPA is already responsible ‘*to ensure natural and physical resources are managed to sustain environmental quality and human well-being*’.

If these precautionary principles are already contained in these Acts why does CEPA now need to duplicate them with another Act to add to the current bureaucracy?

### 3. UNREASONABLE RESTRAINTS ON TRADE

- 1) The rule of *Underlying Law* that forbids unreasonable restraints on trade, does not apply to the provisions, or to the implementation of this Act.

### 4. CONSULTATION

- 1) Where this Act requires consultation, the Authority shall first communicate orally, or by telephone, then formally in writing by letter, or email, with the appropriate national government body or provincial government body, or other person.
- 2) Where there is a delay in a response of 30 days from the time of the formal communication, the Authority shall use its best endeavours to communicate again, with the national or provincial government body, or other person.
- 3) If, following 60 days from the time of the first attempt at communicating with the appropriate national or provincial government body, or person, there is no meaningful response to the communication of the Authority, it shall be presumed that consultation is complete.
- 4) Local communities and landowners are to be consulted on the manner and extent of their participation in decision-making.
- 5) In accordance with this Act, the Authority shall develop a protocol which the Chief Executive Officer may publish as a general order, on the manner of consultation including, customary land rights, compliance with protected area laws, heritage sites, income, spin-off and livelihoods, monies due and owing, the safety and conduct of tourists and tour-operator staff, good relations with tourists, and the physical integrity of the track pavement and bridges.

**COMMENT:**

The proponents of the Bill should be invited to explain the process they used in their consultation with all stakeholders likely to be impacted by this Act i.e., Oro and Central Provincial Governments; Koiari and Kokoda Local-Level Government Wards; PNG Tourism; Traditional Resource Custodians; and Kokoda Tourism Operators.

They should also advise:

- 1. What process was used to identify and validate TRCs along the Trail between Owers Corner and Kokoda?
- 2. Were the proceedings of meetings held with all relevant stakeholders documented?

3. Are they able to provide a copy of all records of consultation with TRCs to be made available as part of the review process for this Bill?

## 5. PROPERTY RIGHTS IN PROTECTED AREAS

- 1) Existing property rights within the Kokoda Track and the Kokoda Track Protected Area, may not be appropriated without Free Prior Informed Consent, and where necessary adequate compensation determined by law being paid, including private property rights arising from;
  - a. custom, the *Underlying Law*; and
  - b. statute, including but not limited to
    - i. the *Mining Act*; and
    - ii. the *Oil and Gas Act*; and
    - iii. the *Forestry Act*; and
    - iv. the *Fauna (Protection and Control) Act*;
    - v. the *Conservation Areas Act*; and
    - vi. the *National Parks Act*
- 2) Nothing in this Act affects any property right acquired before the date of this Act's entry into force.

### COMMENT:

These existing Acts of Parliament provide sufficient safeguards for the protection of PNGs natural resources - why do they need another one?

PNG is a Third World country – it needs less bureaucracy – not more!

## TRADITIONAL SACRED SITES, *PLES MASALAI*, *TAMBU* AREAS

- 1) Land that custom designates as a traditional sacred site, *ples masalai* or a traditional *tambu* area in the Kokoda Track Protected Area and the Owen Stanley Ranges, Brown River Catchment and Kokoda Track Region is protected by this Act, whether or not it is registered under this Act or any other law.
- 2) The boundaries and the designation of such land may be determined by a customary owner, or a Village Court Magistrate.

### COMMENT:

The '*Kokoda Track Region*' is an artificial construct by DFAT officials within the KI-CEPA-KTA Alliance. It is not an official Province or Local Government Area.

The proclamation of the Kokoda Trail as a formal entity by the PNG Government in 1972 has enshrined its legal status and geographic boundaries.

The '*Kokoda Track Region*' defined by DFAT officials within the KI-CEPA-KTA Alliance has no legal status.

The natural resources of the 'region' they are attempting to define through this Act are already covered by the *Mining Act*; the *Oil and Gas Act*; the *Forestry Act*; the *Fauna (Protection and Control) Act*; the *Conservation Areas Act*; and the *National Parks Act*.

There are no known traditional sacred sites along the Trail, however if any are identified, Kokoda Tourism Operators would duly respect them – they don't need an Act of Parliament to instruct them in this regard!

The Brown River Catchment is now protected by the Chinese funded Edevu Hydropower Dam on the Brown River which has been approved by the relevant landowners, and due to be opened in 2022.

### **COOPERATION AND DISPUTE RESOLUTION**

- 1) Subject to his Act and the law, the Authority shall cooperate in all dealings, negotiations, and in any dispute resolution, with government bodies or other stakeholders.
- 2) The Authority may make agreements with government bodies or stakeholders for the purposes of this Act, in accordance with this Act, the Regulations, and Schedule 6.
- 3) Subject to law, in relation to matters the subject of this Act and not touching the ownership of customary land, the Regulations may provide for a system of dispute resolution between the Authority and stakeholders, and amongst stakeholders, including;
  - a. the primary use of cooperation, and mediation between the Authority, government bodies, and stakeholders; and
  - b. safeguarding the science-base, and traditional customary wisdom in relation to or of any protected areas, in priority to economic values; and
  - c. the use of the law of agreements and contract law, by the Authority, government agencies companies, and landowners to achieve amicable and just settlements of likely disputes; and
  - d. the notification to stakeholders of disputes; and
  - e. consultation leading to a definition of any dispute; and
  - f. dispute resolution with government bodies and stakeholders and the notification of a dispute between parties and affected persons; and
  - g. the use of mediation; and
  - h. the use of the *Arbitration Act* to determine disputes between government bodies and other stakeholders; and
  - i. penalties for any breach of the system of dispute resolution hereby established.
- 4) Where a dispute arises as to interests in customary land or the position of boundaries of customary land the dispute shall be settled as provided for by the *Land Disputes Settlement Act*.

#### **COMMENT:**

The most effective means of anticipating and resolving disputes in Melanesia is via the conduct of village-based workshops by skilled facilitators, who can convert written statements to spoken words in the local language, then convert their views back into written words.

Courts should only be used as a last resort - they already have relevant Acts of Parliament to allow for this.

CEPA should be called upon to advise how many village-based workshops have been conducted over the past decade by the KI-CEPA-KTA Alliance to determine local community needs and anticipate any potential problems or likely disputes.

They should also provide a record of any workshops conducted.

### **WILDLIFE ENFORCEMENT**

- 1) Laws that protect flora and fauna apply to their full effect in the Kokoda Track Protected Area, and nothing in this Act affects such laws as they apply outside the Kokoda Track Protected Area.

## PART III. – THE KOKODA TRACK

### Division 1 Policy Coordination

#### 6. BASIS OF THE KOKODA TRACK POLICY

The basis of the policy, and the intent of this Act is that the Authority shall manage the Kokoda Track to keep it safe and open, and the Kokoda Track Protected Area. The benefits from the tourism business on the Kokoda Track and in the Kokoda Track Protected Area, generated and received by the Authority, shall be distributed fairly to the landowners and community members of the Kokoda Track and the Kokoda Track Protected Area in accordance with the Regulations.

##### COMMENT:

The basis of the policy should be to provide an economic environment that generates a sustainable income for subsistence villagers in the form of wages, fees, safety, the sale of goods, the provision of services, and philanthropy.

Government is responsible for investing in infrastructure to generate economic activity such as airfields and communications; to assist villagers in developing micro-business initiatives; and to make the rules that apply equally to all stakeholders regarding fees, employment conditions, insurance obligations, and compliance with the IPA Act.

Business entrepreneurs are responsible for accepting risk and investing in the industry in accordance with the relevant rules and regulations.

The potential of the Kokoda Tourism Industry along the Trail will not be achieved until it is professionally managed as a tourism resource on a commercial basis which allows for shared ownership by TRCs.

There will be no known ‘*tourism benefits*’ from the wider ‘*Kokoda Track Protected Area*’ proposed by the KI-CEPA-KTA alliance as there is no demand and no facilities. If the Alliance has any qualitative research to support their assertion, they should be called up to reveal it.

### Division 2 the Kokoda Track Trail Management Authority

#### 7. ESTABLISHMENT OF THE AUTHORITY

A body to be known as the Kokoda Track Management Authority is established to manage the Kokoda Track and the Kokoda Track Protected Area, and will assume the prior responsibilities, tenancies, liabilities, assets and obligations of the former Kokoda Track Authority Special Purposes Authority.

##### COMMENTS:

- The current ‘Kokoda Track (Special Purpose) Authority’ operates under the watch of the KI-CEPA-KTA Alliance on a ‘Not-for-Profit’ basis.
- The organization has no known assets and does not employ any staff with qualifications or expertise in business, tourism, trekking, or pilgrimage.
- It has not published a financial report for more than a decade. There is no record where the K12 million collected in trek fees has gone.
- It has not published a newsletter since 2014.
- It has not introduced a single management protocol for the trekking industry from the time the KI-CEPA-KTA Alliance assumed responsibility for the Trail in 2009.
- Not a single kina has been invested in improving any campsites despite collecting K12 million in trek fees – as a result there is not a single toilet that meets the most basic of hygiene standards anywhere along the Trail. This has contributed to a 46 percent decline in trekker numbers under their watch.

- The KI-CEPA-KTA Alliance has not invested in a single incoming earning initiative to assist local villagers to earn additional income from trekkers through the sale of local artefacts and the provision of services to meet their needs.
- The KI-CEPA-KTA Alliance condones non-compliance by Australian trekking companies with the PNG IPA Act which has cost millions of Kina in foregone revenue for PNG.

## 8. THE KOKODA TRACK

- 1) The area of the Kokoda Track to be managed by the Authority, and the coordinates there to, and a map of the boundaries of the Kokoda Track are set out in full in Schedule 2.

### COMMENT:

According to PNG Government Gazette No. 88 of 12 October 1972, page 1362, column 2. Notice 1972/28, *'the Kokoda Trail' is the walking path from Owers Corner, through Uberi, Ioribaiwa, Nauro, Menari, Efogi, Kagi, Templeton's Crossing, Aola and Isurava to Kokoda.'*

There is no need for the KI-CEPA-KTA Alliance to broaden the prescribed boundaries of the Trail because they are not related to pilgrimage or tourism.

## 9. INCORPORATION OF THE AUTHORITY

- 1) The Authority;
  - a. is a body corporate with perpetual succession; and
  - b. shall have a common seal; and
  - c. may acquire, hold and dispose of real and personal property; and
  - d. may sue and be sued in its corporate name.
- 2) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Authority affixed to a document and shall presume that it was duly affixed.
- 3) The Authority, and the Board, in decisions and matters affecting;
  - a. the environment, nature, and national heritage shall apply the Precautionary Principle; and
  - b. customary land, and dealings with landowners shall apply the provisions of this Act as they relate to Free Prior Informed Consent.

## 10. FUNCTIONS OF THE AUTHORITY

The functions of the Authority are to keep the Kokoda Track open, safe and accessible, and include;

### COMMENT:

The primary function of management is to ensure:

1. Kokoda Tourism operators comply with:
  - a. the IPA Act;
  - b. A Code of Conduct; and
  - c. Rules and regulations established by the management body.
2. Campsites are sited and developed to meet demand;
3. Campsite booking systems are in place;
4. Trek itinerary management systems are in place;
5. A Trail Maintenance System is established;
6. Villagers communities are assisted to develop micro-business initiatives to generate income from trekkers;
7. A professional database is established;
8. Compliance with good governance.

The KI-CEPA-KTA Alliance has clearly failed to meet their responsibilities regarding these management functions since they assumed responsibility for the Kokoda Trail in 2009. Specific details can be viewed [on this link](#).

- 1) Protecting the Kokoda Track and ensuring a safe and well-managed Kokoda Track, honouring its wartime historical significance, and promoting its special values; and

**COMMENT:**

If this is true it begs the question as to why the KI-CEPA-KTA Alliance has failed to invest in a single military heritage interpretive memorial across the Trail to enhance the value of the pilgrimage for trekkers since 2009?

- 2) In accordance with law, and in consultation with government bodies and stakeholders, to ensure the wise use and conservation of the Kokoda Track and the Kokoda Track Protected Area and the associated natural, national and cultural heritage, consistent with the current Tentative World Heritage listing and leading to a possible World Heritage nomination; and

**COMMENT:**

[A detailed review of the Kokoda Trail by the late Mr Peter Hitchcock AM \(who was regarded as one of the world's senior specialists on World Heritage and forest conservation\) and Dr Jennifer Gabriel – an anthropologist at James Cook University](#) concluded that:

*'The Kokoda Initiative, a joint arrangement between the PNG and Australian Governments, has resulted in substantial studies, planning and community development, almost wholly confined to the Kokoda Track and its immediate vicinity. An 'Interim Protection Area' has been identified but not formally promulgated. There appears to have been no tangible progress in formal protection of the Tentative Listed area since 2006. If PNG is to take the Kokoda Track-Owen Stanley Ranges Tentative listing seriously, there is a need to commit to further progressing research, field survey and protection. World Heritage nomination for any part of the proposed Tentative List area should not be considered until biodiversity research, landowner agreements and protection are much further advanced. The current Kokoda Track Initiative has identified an Interim Protection Zone (IPZ), the whole of which falls within the Tentative Listed Area. If that interim protected area is converted into a permanent protection zone, it would make a very significant contribution to KOKODA TRACK AND OWEN STANLEY RANGES 67 protection of the Tentative Listed area. However, the IPZ has little prospect of being able to stand alone as a World Heritage nomination, at least on natural heritage values. Given the on-going threat to heritage values by mining and other development activities, **no part of the Kokoda Track and Owen Stanley Ranges Tentative Listed area should be considered for formal nomination as a World Heritage area until such time as an adequate extent of high value areas is formally protected. Given this prerequisite, it may be years before a suitable tract of land is protected and worth considering for World Heritage nomination.**'*

The late [Mr Peter Hitchcock AM](#) and [Dr Jennifer Gabriel](#) were assisted by [Dr Matthew Leavesley FSA](#) Adjunct Lecturer in Archaeology James Cook University Lecturer in Archaeology from the University of Papua New Guinea in the compilation of their report.

The Kokoda Trail is currently protected by six (6) existing Acts of Parliament relating to the protection of the environment. It would be more appropriate to address the effectiveness of these existing Acts and recommend any amendments rather than impose another layer of bureaucracy on the area.

- 3) In accordance with law, and in consultation with government bodies and stakeholders, developing the national and international tourism potential of the Kokoda Track and the Kokoda Track Protected Area; and
- 4) Working with all levels of government and all government bodies, communities, landowners, industry to ensure that activities established under the Kokoda Initiative are sustained, and managed into the future, including;



- a. tourist businesses, and insurances for tourists; and
- b. industrial health and safety for carriers and track workers; and
- c. issuing trekking permits to tourists accessing the Kokoda Track and the Kokoda Track Protected Area, and licensing tour operators in accordance with the conditions set out under the General Orders, or the Regulations; and
- e. in consultation with other government bodies, assist with the wider conservation and protection of the Kokoda Track, its tourism, cultural heritage, arts, within the Kokoda Track Protected Area for protection, management, and future development.

**COMMENT:**

It is reasonable to assume that any commercial organisation that presided over a 46 percent decline in custom over a 10-year period; which failed to introduce a single management protocol or income earning initiative for local villagers; or failed to invest in a single campsite or toilet to ensure they meet the most basic hygiene needs of their clients, would most likely be replaced.

The KI-KTA-CEPA Alliance has been in a coma since trekking ceased in November 2019 due to Covid.

They have not produced any emails or newsletters to update trek operators on any issue since then. They have failed to use the break in tourism activity to review the industry.

They have failed to initiate any plans to address post-Covid standards that will apply regarding social distancing and personal hygiene across the Trail.

No consideration has been given to developing standards for campsites and their siting to ensure they can meet peak trek season demands during school holiday periods.

#### 14. THE POWERS OF THE AUTHORITY

- 1) The Authority has power to do all things not inconsistent with this Act, which by this Act are required or permitted to be done or that are necessary or convenient to be done in connection with the performance of its functions and, without limiting the generality of the foregoing, has power;

**COMMENT:**

This is 'legal gobbledygook'. It should be redrafted in plain English.

- a. to make charges for issuing trekking permits and for the issuing of licenses for registered tour operators, for work done, services rendered and goods and information supplied by or on behalf of the Authority; and

**COMMENT:**

We understand the primary role of the management body is to approve applications for trek operator licences, to issue trek permits, to book campsites, to monitor trek itineraries for groups, to monitor the welfare of guides, carriers and campsite owners and to publish financial reports.

- b. to collect Kokoda Track and regional tourism access fees and licencing fees; and



**COMMENT:**

The KI-KTA-CEPA Alliance should be called upon to explain what ‘*regional tourism access fees*’ are, and where they will apply.

- c. in consultation with stakeholders distribute those fees collected through agreed proportions and mechanisms, to landowners and other community members; and

**COMMENT:**

Trek fees should be based on the need to cover the cost of managing the Kokoda Tourism Industry on a commercial basis to allow for the development of sustainable employment and micro-business opportunities; the environmental maintenance of the Kokoda Trail; the conduct of annual village-based workshops; support for village health and education; and local community development.

The primary benefits from the business of trekking relate to the creation of job opportunities, and income-generating activities through campsite fees, village purchases, and the provision of services to meet the needs of trekkers,

For reasons known only to the KI-KTA-CEPA Alliance the potential of philanthropy has been ignored over the past decade. This is because they are unaware of the emotional impact the pilgrimage has on trekkers who complete it.

Trekkers who have completed their pilgrimage are mostly aware of the endemic corruption in PNG, but they would still like to leave a footprint behind – and they would if there was a philanthropic body with good governance in place to ensure any donations are directed to their intended cause and not siphoned off by intermediaries.

The essence of any philanthropic system is a comprehensive database, a professional website, and a dynamic marketing program incorporating social media.

If such a system had been developed, and just 10 percent of the 54,623 Australian trekkers since 2002 had committed to a donation of just \$5 per week (a few cents more than the cost of a cappuccino), a Kokoda Philanthropic Trust would currently have an annual income stream of \$1.4 million (PNGK3.6 million) for charitable purposes across the Trail.

It is a travesty that no such systems have been developed by the KI-KTA-CEPA Alliance over the past decade despite.

- d. in consultation with the Tourism Promotion Authority and other stakeholders to develop and implement a Regional Tourism Master Plan for the Kokoda Track and the Kokoda Track Protected Area; and

**COMMENT:**

Given that the Kokoda Trail is PNGs most popular tourism destination the responsibility for policies relating to marketing, promotion and its operation should rest with the Minister for Tourism, Arts and Culture.

Trek operators are not aware of any of the 54,623 Kokoda trekkers ever having expressed any interest in visiting any other part of the so-called ‘Kokoda Track Protected Area’.

However, many have expressed an interest in visiting other wartime tourism sites such as the Black Cat Track, Shaggy Ridge, Buna-Gona, Milne Bay and Rabaul but they have never been contacted by either the Kokoda Initiative or PNG Tourism to assist in marketing these destinations.

The KI-CEPA-KTA Alliance should be called upon to produce the results of any research they have conducted to assess the tourism demand for other parts of the proposed '*Kokoda Track Protected Area*'.

If there is no indication of any '*tourism demand*' in areas remote from the existing Kokoda Trail, there is obviously no need for such an area to be protected?

- e. to conduct promotional activities, both in Papua New Guinea and overseas including to produce, or arrange for the production and distribution of magazines, publications and other promotional materials; and

**COMMENT:**

The Government agency responsible for the marketing and promotion of tourism destinations within PNG is the PNG Tourism Promotion Authority.

- f. to liaise with appropriate government and private sector bodies for the purpose of developing and implementing appropriate standards and regulations for the effective and satisfactory operation of tourism and hospitality enterprises and products on the Kokoda Track and in the Kokoda Track Protected Area; and

**COMMENT:**

The proposed '*Kokoda Track Protected Area*' is not relevant to the management of the Kokoda Tourism Industry, or any other form of adventure tourism, and should not be included in a bill relating to the Kokoda Trail.

- g. in consultation with the Conservation and Environment Protection Authority carry out planning and activities to protect the natural environment including the identification, recording and monitoring of the flora and fauna of the region, the quality of water within the catchment and its special natural values; and

**COMMENT:**

CEPA has been the responsible agency for the Kokoda Trail as part of the KI-KTA-CEPA Alliance for more than 10 years. They should be asked to explain why this task has not been completed.

- h. in consultation with the National Museum and Art Gallery, carry out planning and activities to protect the military heritage of the region including the recording and monitoring of special military heritage sites and artefacts; and

**COMMENT:**

The PNG Tourism Promotion Authority is the agency responsible for the National Museum and Art Gallery.

Any initiatives in this area will inevitably be funded by the Australian Department of Veterans Affairs (DVA) who are responsible for the Australian War Memorial.

A priority should be the establishment of an 'Australian-Papua New Guinea Research Project' between the Australian War Memorial and UPNG along similar lines to the Australia-Japan Research Project established more than a decade ago to allow for the academic development of PNG scholars in our shared military history.

- i. to administer, control and or operate, or assist in, any way, the development and operation of training and educational facilities and programs associated with the protection and management of the Kokoda Track and the Kokoda Track Protected Area; and
- j. to undertake research and disseminate information obtained from such research; and

- k. to seek and accept grants, subscriptions, contributions and corporate sponsorships, and enter into co-operative arrangements with other government agencies, international donors, persons and commercial entities for the purpose of more effective management of the duties and responsibilities of the Authority; and
- l. to devolve grants, and provide operational and financial assistance to small and medium-scale business initiatives and development projects in accordance with due process; and

The Kokoda Initiative-CEPA-KTA Alliance has been in place since 2009.

Why has nothing been achieved in these areas?

It is evident to those involved in Kokoda Tourism that a change in attitude by Australian officials is more important than a change in the name of the management authority.

- m. to plan and to review plans, and as appropriate, integrate the Authority's planning into those of a ward, district, provincial government or other development partner through the development planning processes; and
- n. to prepare or arrange for development plans and strategies, and implement the investment and promotional recommendations of same; and
- o. to enter into contracts, establish offices, appoint agents and attorneys, and act as agent for other persons; and
- p. to acquire, hold and dispose of real and personal property; and
- q. to occupy, use and control any land or building owned or held under lease by the State and made available for the purposes of the Authority.

**COMMENT:**

The KI-KTA-CEPA Alliance has failed to ensure Australian tour operators on the Trail comply with their own PNG Investment Promotion Authority (IPA) Act.

As a result, all but one Australian company, have been operating in breach of the Act as they are not registered as a 'Foreign Enterprise' in accordance with the IPA Act and are therefore operating illegally in PNG.

The KI-KTA-CEPA Alliance should be called upon to explain why they have condoned this illegality by issuing Tour Operator licenses to companies who are in breach of the IPA Act.

### **Division 3 Authority management and operations**

#### **11. BUDGET AND FUNDING**

- 1) In accordance with law, the Authority may approve;
  - a. a budget, and provide for expenditure from monies lawfully available to it; or
  - b. an agreement to fund a budget or part of a budget, between the Authority, the State and a Provincial Government, a District Development Authority, or a Local Level Government, a government body, or any private corporation or any other person;

for the lawful funding of expenditure within the Authority budget, or otherwise, for the purpose of sustaining, promoting and establishing in the Kokoda Track Protected Area sites and activities for the environment in accordance with the Authority's powers.

**COMMENT:**

The proponent of the Bill should be asked to provide research-based evidence to support the contention that the proposed '*Kokoda Track Protected Area*' beyond the Kokoda Trail has tourism potential.

Feedback from Kokoda trekkers over the years indicates there is no demand for tourism in any 'protected area' beyond the gazetted area of the Kokoda Trail.

#### Division 4 The Board

### 12. THE BOARD

- 1) There shall be a Kokoda Track Management Authority Board.
- 2) The Minister shall request;
  - a. The President of the Papua New Guinea Chamber of Commerce and Industry; and
  - b. The President of the Institute of Chartered Management Accountants (PNG); and
  - c. The President of the Law Society of Papua New Guinea,

to nominate five persons each, to be Board members of the Kokoda Track Management Authority, with not less than seven years' experience in their profession or business, and at least two so nominated from each profession or business, shall be women.

#### COMMENT:

If the Kokoda Trail is to be managed as a tourism resource on a commercial basis the Board of Directors should include:

- An accountant nominated by the President of the Institute of Chartered Accountants (PNG);
- A lawyer nominated by the President of the Law Society of PNG;
- A businessman or woman nominated by the PNG Chamber of Commerce and Industry;
- Provincial Governors from Oro and Central or their appointed representatives;
- The President of the Port Moresby RSL;
- The President of the PNG Flag Officers League which comprises former PNGDF Commanders;
- The President of the PNG Tourism Industry Association;
- A woman with previous experience in PNG Tourism at an executive level;
- A woman with previous experience in Community Development at an executive level.

- 3) The persons so nominated shall not be persons who have any grandparents from, or be persons who are indigenous to, or who are resident in, the areas of the Koiari Rural Local Level Government, or the Kokoda Rural Local-level Government.

#### COMMENT:

This clause, which was in the original draft of the bill, has been struck out as the result of a strong backlash from community leaders across the Trail.

**The proponents of the Bill had to be reminded that PNG is no longer an Australian colony!**

The Trail belongs to TRCs within the Koiari and Kokoda Rural Local Level Governments. It beggars' belief that the Australian proponent of the bill would attempt to deny Kokoda Trail landowners the right to have official representation in the future management of their traditional land.

- 4) Before appointing a person to be a member, the Minister shall be satisfied that a person will have no such financial or other interests as a member as are likely to affect prejudicial discharge by him of his functions as a member, and the Minister shall be satisfied, from time to time with respect to every member, that the member has no such interest.
- 5) A person who is, or whom the Minister proposes to appoint to be, a member shall, whenever requested by the Minister so to do, furnish to the Minister such information as the Minister considers necessary for the performance by the Minister of his duties under this Act.

- 6) The Minister, from the nominations so provided, shall appoint five persons, to be members of the Board of the Kokoda Track Management Authority, and at least two of whom shall be women;
- a. one person shall have at least seven years' experience in private sector tourism or hospitality management; and
  - b. one person, shall have at least seven years practicing experience as an accountant; and
  - c. one person, shall have at least seven years practicing experience as a lawyer.

The remaining two persons will be chosen by the Minister from the other nominees described in 18(2).

See comment to 13. 2), above re composition of the Board.

- 7) The members of the Board;
- a. shall be appointed for a term of three years; and
  - b. shall hold office on a part-time basis on such terms and conditions as reflect the market in the private sector for similar corporations; and
  - c. are eligible for re-appointment.
- 8) The Minister shall designate one Board Member to be Chair of the Board.
- 9) Any Chief Executive Officer, or Acting Chief Executive Officer, of the Authority, may attend such meetings of the Board as the Chair so requests, and shall act in an advisory and facilitatory capacity to the Board, and shall not be entitled to vote on any matter arising.
- 10) The *Regulatory (Statutory Authorities) Act* does not apply to this Act.

**1) FUNDING THE BOARD**

- 2) In accordance with the law, the Minister may take such steps as are appropriate, to ensure that the National Government provides such monies as may well be available, from the National Budget, to fund;
- a. all meetings of the Board; and
  - b. an executive officer who should be at the level Principal Legal Officer, and act as a secretary, and a junior executive assistant, to the Board; and
  - c. the terms and conditions of the Chief Executive Office at a level similar to that of comparable government authorities; and
  - d. the terms and conditions of a qualified accountant as program director for performance and reporting; and
  - e. such other positions as the Chair of the Board shall advise the Minister; and
  - f. such other running expenses as the Chair of the Board shall advise the Minister to be appropriate.

**13. DEPUTY CHAIR OF THE BOARD**

- 1) The Board shall appoint another member to be the Deputy Chair of the Board for such period as may be determined by the Board, or until the person ceases to be a member, whichever shall first happen.

**14. LEAVE OF ABSENCE OF MEMBERS**

- 1) The Minister may grant leave of absence to the Chair or Deputy Chair of the Board on such terms and conditions as the Minister determines.
- 2) The Chair may grant leave of absence to a member of the Board on such terms and conditions as the Chair determines.

## **15. VACATION OF OFFICE**

- 1) A member of the Board may resign office by writing, under hand, addressed to the Minister.
- 2) Where a member of the Board;
  - a. becomes permanently incapable of performing functions; or
  - b. resigns office in accordance with Subsection (1); or
  - c. is absents from three consecutive meetings of the Board except with the written consent of the Minister or Chair, as is appropriate; or
  - d. fails to comply with any provisions of this Act; or
  - e. 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
  - f. is convicted of an offence punishable under a law 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 is under a bond to appear for sentence if called on,the Minister shall terminate his appointment.
- 3) The Minister, may, at any time, by written notice, advise a member that the Minister intends to terminate his appointment on the grounds of inefficiency, incapacity or misbehaviour.
- 4) Within 14 days of the receipt of a notice under Subsection (3), the member may reply in writing to the Minister, who shall consider the reply, and, where appropriate, terminate the appointment.
- 5) Where the member referred to in Subsection (3) does not reply in accordance with Subsection (4), his appointment is terminated. In such a circumstance the Minister shall provide a written explanation of his decision to the Board.

## **16. VACANCY NOT TO AFFECT POWERS OR FUNCTIONS**

- 1) The exercise of a power or the performance of a function of the Board is not invalidated by reason of there being a vacancy in the membership of the Board.
- 2) In an emergency, in order to keep sufficient membership of the Board so as not to impede its business, the Minister;
  - a. may appoint a temporary member of the Board for a period of three months, until a Board member may be appointed in accordance with this Act; and
  - b. shall have regard for the gender balance on the Board in so doing.

## **17. CALLING OF MEETINGS**

- 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 Chair or in the Chair's absence, the Deputy Chair, directs, but in any event shall meet not less frequently than once in every three months.
- 2) Where the Chair receives a request for sound reason;
  - a. from the Minister, or
  - b. from not less than two members,the Chair, or in his absence the Deputy Chair, shall convene a meeting of the Board within 15 days.
- 3) For the purposes of Subsection (1), and wherever possible, the Chair or the Deputy Chair, as the case may be, shall give to every member at least 14 days' notice of the meeting, and notice may be given by letter or by email.

## **18. MEETINGS OF THE BOARD**

- 1) At a meeting of the Board;
  - a. three members form a quorum; and
  - b. the Chair, or in his absence the Deputy Chair, shall preside, but, if both the Chair and Deputy Chair are absent, the members present shall appoint a Chair for that meeting from among their own voting membership; and
  - c. subject to this Act;
    - i. matters arising shall be decided by a majority of the votes of the members present and voting; and
    - ii. the person presiding has a deliberative and, in the event of an equality of votes on any matter, also a casting vote; and
    - iii. in a Board meeting comprising only three members, a motion must be unanimous in order to be legally carried.
- 2) The Board shall cause minutes of its meetings to be recorded and kept.

### **COMMENT:**

KI-CEPA-KTA Alliance has not published any Minutes of Board meeting or financial reports since 2009.

Of more concern is the fact that when the outcomes of 'Tour Operator Forums' are not in accordance with their agenda they simply stonewall and refuse to publish a record of the Minutes. Examples can be provided if requested.

- 3) Subject to this Act, the procedures of the Board are as determined by the Board.

## **19. DISCLOSURE OF INTEREST BY MEMBERS**

- 1) A member who is directly or indirectly interested in a matter being considered or about to be considered by the Board, including as a member of, and in common with the other members of, an incorporated body or corporation consisting of not less than 25 persons, shall, as soon as possible after the relevant facts have come to their knowledge, disclose the nature of the interest at a meeting of the Board.
- 2) A disclosure under Subsection (1), shall be recorded in the minutes of the Board, and the member;
  - a. shall, exit the room and not take part, after the disclosure, in any deliberation or decision of the Board in relation to that matter; and
  - b. while outside the room, shall be included as a non-voting member, for the purpose of constituting a quorum of the Board for any such deliberation or decision.

## **20. COMMITTEES OF THE BOARD**

- 1) The Board may establish such number of Committees as the Board considers necessary for the purposes of the Authority.
- 2) The Board may;
  - a. appoint persons (including members of the Board) to be members of the Committees; and
  - b. prescribe the powers, functions and procedures of the Committees.
- 3) A member of a Committee shall be paid such fees and allowances as are determined under the *Board (Fees and Allowances) Act*.

## **21. PROTECTION FROM PERSONAL LIABILITY**

- 1) A member of the Board or of a Committee, or the Chief Executive Officer or an officer, employee, servant or agent of the Authority is not personally liable for any act or default of



himself or the Authority done or omitted to be done in good faith in the course of the operations of the Authority, or for the purposes of the Authority.

### **Division 3 the Chief Executive Officer**

#### **22. CHIEF EXECUTIVE OFFICER**

In accordance with law, the Board may appoint a Chief Executive Officer on a contract of work agreed between the parties, on terms and conditions, and with such benefits, as are similar to such contracts of work, at such similar level as are currently available within the private-sector of business in Papua New Guinea.

The recruitment of a Chief Executive Officer should be delegated to one of the leading accounting firms in Port Moresby. The CEO should have appropriate commercial management qualifications, including an MBA, and at least seven (7) years' experience at a corporate executive level.

The Board shall not be bound in fixing such terms and conditions with other benefits, by the *Salaries and Conditions Monitoring Committee Act 1988*, or any similar public sector laws, but only by laws that affect private-sector business employment at a level appropriate to the Chief Executive Officer.

- 1) The Chief Executive Officer shall be formally qualified with either a Master's degree or similar degree in business or management, or as a lawyer or accountant being admitted to practice in Papua New Guinea, or an area relevant to the functions of the Authority, with at least seven (7) years managerial experience in business.
- 2) The Board may seek donor funding from external donors to fund the employment conditions of the Chief Executive Officer subject to negotiation and agreement of terms with the overseas partner.
- 3) The Minister may appoint a person who in the opinion of the Minister is qualified, as described in (3), to act as the Chief Executive Officer, until any Chief Executive Officer is appointed by the Board, for a period of not more than 12 months.
- 4) The Chief Executive Officer, or acting Chief Executive Officer;
  - a. is the chief executive of the Authority; and
  - b. is the head of the staff of the Authority; and
  - c. shall manage the Authority in accordance with the policy and directions of the Board; and
  - d. shall advise the Board on any matter concerning the Authority referred to him by the Board.
- 5) The Chief Executive Officer;
  - a. shall carry out and perform the duties required of him under this Act and his contract of employment; and
  - b. shall appoint staff to carry out the functional work of the Authority and be responsible for the employment of those staff; and
  - c. has such functions as the Board may, from time to time, determine.

The primary role of the Chief Executive Officer is to manage Kokoda tourism on a commercial basis and implement management systems that allow for the proper licensing of Kokoda tour operators; the development of a professional website, database and social media strategy; a campsite booking system; a trek itinerary management system, a trail maintenance management system; a welfare system for guides and carriers; and an effective accounting system.

- 6) Notwithstanding section 28 of this Act (Protection from Personal Liability) it is the duty of the Chief Executive Officer, and any other person, whether acting in that capacity, or otherwise, who has the control of the management of the Kokoda Track, to use reasonable care and take reasonable precautions to avoid damage to the environment and national heritage.

The desecration of significant military heritage sites and the degradation of the environment in sensitive areas has already occurred and continued unabated under the watch of the Kokoda Initiative-CEPA-KTA alliance.

- 7) The person on whom a duty is imposed by Subsection (8) shall be deemed to have caused any consequence that results to the environment and cultural heritage of the Owen Stanley Ranges, Brown River Catchment and Kokoda Track region by reason of any omission to perform that duty.

**COMMENT:**

The CEO should be responsible for the commercial management of the Kokoda Trail between Owers Corner and Kokoda – he should have no jurisdiction over any wider ‘*Brown River Catchment*’, or ‘*Kokoda Region*’, as defined by the KI-CEPA-KTA Alliance as it requires a different skill-set.

**Division 4 Special Duties of the Authority**

**23. AUTHORITY TO PROVIDE SERVICES, PUBLIC SAFETY, HEALTH ETC.**

- 1) The Authority, shall ensure within 12 months of the coming into effect of this Act, a database is established and maintained in accordance with the Regulations, of the Kokoda Track community and landowners, to facilitate and enhance consultation as required in s.36, s.37 and s.41.

**COMMENT:**

The first priority of the commercial management body should be to establish a database which captures the following information in regard to trekkers, trek itineraries, campsites and landowners and additional contact information for key contacts along the Trail?

- 1) First Name
- 2) Second Name
- 3) Age
- 4) Gender
- 5) Postal Address (PO Box No–Town/City–State–Postcode)
- 6) Phone Numbers (Mobile–Home–Work)
- 7) Email Address
- 8) Website Address
- 9) Trek Company (IPA Foreign Enterprise No–ABN/ACN–KTMA License No–Public Liability Insurance Coy–Public Liability Insurance No–Travel Insurance Company–Travel Insurance Policy No)
- 10) KTMA Trek Permit No.
- 11) Date of Trek (Start–Finish)
- 12) Campsites (Goldie River–Goodwater–Imita Base–Va Ule Ck–Ioribaiwa–Ofi Ck–Nauro–Agulogo Ck–Menari–Brigade Hill–Efogi–Naduri–Kagi–Diggers–Bombers–1900 Crossing–Crossing 1; Templeton’s Crossing–Eora Creek–Alola–Abuari–Isurava Memorial–Isurava Village–Deniki–Kovello–Kokoda)
- 13) Landowners (Name–Campsite–Mobile)
- 14) Trek Itinerary (Day 1, Day 2, Day 3, Etc)
- 15) Emergency Contact (Name, Mobile Phone, Email Address)

- 16) Operator transgressions and any actions arising – noting ‘three strike and you’re out’ policy

## **Division 5 Finances of the Authority**

### **24. APPLICATION OF PUBLIC FINANCES (MANAGEMENT) ACT**

- 1) Part VIII of the *Public Finances (Management) Act 1995* applies to and in relation to the Authority.
- 2) The Authority is a trading enterprise for the purpose of Section 62 of the *Public Finances (Management) Act 1995*.

### **25. MONEYS OF THE AUTHORITY GENERALLY**

- 1) The Authority shall open and maintain such bank accounts, with such bank or banks as the Minister for Finance approves for the purpose of the Authority, and shall pay into them;
  - a. all moneys appropriated by Act for the purposes of carrying out or giving effect to this Act; and
  - b. all moneys received by the Authority from;
    - i. Trek fees; and
    - ii. Trek related income; and
    - iii. the sale, leasing or hire of property; and
  - c. all other moneys received by the Authority in the exercise and performances of its powers and functions.

#### **COMMENT:**

Management has an obligation to provide basic financial advice to guides, carriers, campsite owners and landowners and to assist them in setting up bank accounts to enable direct payments to be made.

This could be done in partnership with Kina Bank or a local alternative.

- 2) Out of the moneys standing to the credit of the accounts, but not including monies collected as trekking permit fees, or tour operator license fees, of the Authority referred to in Subsection (1), the Authority shall pay;
  - a. all moneys payable by it in repayment of advances or loans under this or any other Act; and
  - b. the costs, charges and expenses incurred by the Authority in the performance of its functions under this Act; and
  - c. the costs, charges and expenses incurred by the Authority after consultation with the Minister for Finance, in establishing and maintaining tourism and development and in giving effect to the functions of the Authority; and
  - d. the remuneration and allowances of the members of the Board and of the Chief Executive Officer and officers and employees of the Authority; and
  - e. any other payments that the Authority is authorized or required to make under this Act or any law.
- 3) In respect of moneys advanced or borrowed under this or any other Act, the Authority shall maintain a separate account in respect of the moneys that are related to each such purpose, and shall cause proper entries of;
  - a. all moneys so advanced or borrowed for a particular purpose of the Authority; and
  - b. the purpose to which the moneys have been applied,to be made in the account maintained in respect of that purpose.

- 4) The Regulations may provide for the manner in which monies collected from trekking permit fees and tour operator licensing fees, shall be distributed for community development.

**COMMENT:**

According to [KTA Newsletter No 1 of March 2005](#):

***'Trek Permit Fee income is collected for funding community infrastructure projects with 20% being set aside for administration expenses.'***

This ruling is still valid because it has never been reviewed, repealed, amended or updated.

Since the Kokoda Initiative assumed responsibility for the Kokoda Trail in 2009 trekker numbers have dropped by 46% from 5621 to 3300 despite an injection of more than \$50 (PNGK135 million) in Australian aid funding for the Kokoda Initiative and a substantial increase in staff numbers.

The original disbursement of trek fees which required 80% of trek fee income to be allocated towards '*community infrastructure projects*' decreased to almost nothing as all the money now seems to circulate in Port Moresby. There have been no campsite or community development projects initiated since DFAT assumed control of the Kokoda trekking industry in 2009.

It is not possible to monitor the disbursement of trek fees because there is no transparency within the KI-KTA-CEPA Alliance which has not produced an audited financial report since 2009.

The system of non-accountability worsened after a bitter dispute between the PNG CEO of the KTA and the Australian Strategic Management Advisor for the Kokoda Initiative. As a result, the Australian Strategic Management Advisor was declared *persona non grata* at the KTA Office.

This stalemate continued until the KTA CEO as '*offered*' a sideways promotion to an executive position at the National Capital District Commission (NCDC) . He was replaced by the Deputy Secretary of the Department of Provincial and Local Level Government, Mr Julius Wargiral, who was engaged as 'Acting CEO'. Mr Wargiral is a career bureaucrat with no experience in business, tourism, trekking, or pilgrimage. He has a genial personality and set about restoring good relations with local landowners.

However, there was a notable change in his demeanour after the Australian Strategic Management Advisor for the Kokoda Initiative was embedded back into the KTA office.

Soon after the trek operators were advised that K350,000 of the trek fee income they had paid to the KTA in good faith had been withdrawn from the KTA Bank Account and '*donated*' to an Australian NGO (KTF<sup>ii</sup>) for disbursement to support the payment of '*educational supplements*' for villagers on and off the trail.

In the recent Annual Review of [the Papua New Guinea Australian Governance Partnership 2019](#) the author described the transfer as such:

*'The program has entered a pivotal phase due to changes in key personnel within the Kokoda Track Authority, particularly the secondment of a chief executive officer (CEO) from DNPM. The change in approach is evidenced by recent efforts of the Kokoda Track Authority to **channel undistributed revenue** into school fees (through an NGO partner) and by the revival of a Technical Working Group (including agency CEOs of the Kokoda Track Authority, National Museum and Art Gallery and CEPA, and DDAs) which has met four times in the past six months. These shifts have seen a sharp upturn in*

*relationships between the Kokoda Track Authority and the other multiple stakeholders, including DFAT and the KIP delivery team.'*

The author's assertion that the funds represented 'undisbursed revenue' is false. The revenue from trek fees had not been disbursed because of internal dysfunction within the KTA – this would be verified by a forensic external audit.

The Acting CEO had not yet come to terms with his job because of the competing pressures he was confronted with on a daily basis which included:

- a dysfunctional Board of Directors which has never met since he was appointed and which has never produced an Annual Report, a financial statement, or a set of Board Minutes;
- at least three Government Departments (Provincial and Local Level Government, CEPA, and PNG Tourism);
- two Provincial Governments (Central and Northern);
- two Local Level Governments (Koiari and Kokoda);
- 14 Ward Councillors;
- numerous landowners;
- up to 33 trek operators; and
- an aggressive Kokoda Tour Operators Association (KTOA) which had been established to protect the financial interests of a select group of Australian eco-tour operators.

As a result, he did not have the time or the resources to produce newsletters, financial statements or even answer emails.

The 'educational' needs of remote families on and off the trail would not have featured as an issue for him in view of these competing demands at the time.

The claim that the transfer of funds to an Australian NGO represented 'undisbursed revenue' was contradicted by an email from Mr Wargiral on 26 June 2019 he stated:

***'When I took office in November 2018, KTA was already without funds due to the closure of the track in mid 2018. KTA is a Special Purposes Authority established under the Organic Law on Provincial and Local Level Governments (does not have its own Act) and it does not receive direct Funding from the National Government, although it can be supported by departments and Provincial Governments that plays some role in the Management and Administration of the Track.***

*'I have to run around seeing heads of relevant departments (DPLGA, Finance, Treasury, Planning and CEPA and TPA) to seek funding to get the operations of KTA going. I presented to them the status of KTA which convinced them to jointly agree and provide the support through properly approved release of government funds to get KTA operational until this year when it is anticipated to start tracking season again and commence receiving trekking fees (revenue) to support itself.'*

Mr Wargiral commenced his tenure as 'Acting CEO' of the KTA in November 2018.

Kokoda tourism goes into hibernation during the wet season from November through to April each year. As a result, there would have been no income from the time Mr Wargiral was first employed in November until the following April.

If the KTA was 'without funds' in November 2018 as stated by Mr Wargiral, and there

was no income from trek permit fees, where did they find K350,000 to give to a ‘friendly’ Australian NGO, who is not associated with trekking, in March 2019?

The transfer was in contravention of the rules for the disbursement of funds advised by the KTA on 1 March 2005. It could not have been approved by the Board of Directors due to the dysfunction of that group at the time, and Mr Julius Wargiral was not authorised to approve such a large transfer of funds as he was seconded to his role in an acting capacity.

The approval process for the transfer apparently involved the Director of the National Museum and Art Gallery (NMAG), Dr Andrew Moutu; the Director of KTF, Dr Genevieve Nelson; and the DFAT Strategic Management Advisor, Mr. Mark Nizette.

KTF is an Australian NGO which has no association with the Kokoda Tourism Industry or the commemoration of our shared wartime heritage. Mark Nizette is closely associated with both Dr Moutu, CEO of NMAG, and Dr Nelson, an Australian academic ‘educator’.

Dr Moutu failed to declare he was a Director of KTF in the ‘approval’ process for the transfer of funds from the KTA to the KTF.

DFAT, the Kokoda Initiative, and KTA are listed as ‘Partners’ of the KTF [on their website](#).

This ‘partnership’ was not declared as part of the approval process.

Efforts to seek a response regarding the justification for the transfer of trek fee income and the approval process have been stonewalled by the KTA.

The transfer process should therefore be subject of a formal investigation to ascertain:

1. Who was the author of the Papua New Guinea Australian Governance Partnership Report, 2019?
2. Why was the ‘undisbursed revenue’ discovered by the DFAT Strategic Management Advisor not disbursed towards the upgrade of the Third World toilets across the Trail to meet the most basic hygiene standards for trekkers who paid the fees and/or to improve the basic standards of campsites along the Trail?
3. According to the email received by the Acting CEO on 26 June 2019 he was not aware of any ‘*undispersed income*’ when he was appointed in November 2018 – who is telling the truth, the DFAT Strategic Management Advisor or the Acting CEO?
4. Was a formal application submitted by KTF for a donation of K350,000?
5. Does the Constitution of the KTA provide for the approval of donations to NGOs?
6. How did KTF justify the figure of K350,000?
7. Did KTF provide a detailed list of recipients, their contact details and the amount to be paid to or on behalf of each student?
8. Did the Acting CEO of the KTA submit a formal request for the donation to the KTA Board of Directors for approval?
9. Is there a Board Minute which records their approval of the donation?
10. If the KTA Board did not approve the donation, who did?
11. Was the person who approved the transfer of funds authorised to do so?
12. Given that the donation contradicts the information on the KTA website regarding the expenditure of trek fee income - did the Acting CEO of the KTA or the DFAT Strategic Management Advisor seek legal advice to ensure there was no breach in governance because of the donation? If not – why not?
13. If legal advice was provided is there a record of that advice?
14. If it is claimed that Trek Permit Fees were not used for the donation, which Government Department was the source of the funds?



15. If the funds were provided by a PNG Government Department, why would they not have provided them directly to their schools in accordance with normal National and Provincial Government procedures?
16. Who decided that the transfer of trek fees for philanthropic purposes was more important than meeting the urgent needs of the people who paid the fees i.e., trekkers; or for local village communities who have not received their fair share of benefits from the Kokoda tourism industry for more than five years?
17. Has KTF acquitted the K350,000 they received?
18. Why did Dr Moutu fail to declare that he is a Director of KTF?
19. Why did KTA fail to declare their partnership with DFAT, the Kokoda Initiative, and KTF?
20. If the transfer of funds was not in accordance with the KTA constitution will the KTF be required to repay the funds?

## **26. AUTHORITY LIABLE TO TAXATION**

- 1) Income, property and operations of the Authority are subject to the provisions of the *Income Tax Act 1959*;
- 2) Income or capital accretions to the Authority from the Government of Australia, or other governments approved by the Minister, shall be exempt income within the meaning of the *Income Tax Act 1959*
- 3)

## **PART V. – THE PEOPLE**

### **Division 1 Sustainable Livelihoods**

#### **27. SHARED DUTY ON SUSTAINABLE LIVELIHOODS FOR COMMUNITIES.**

- 1) The Authority shares the duty with the provincial administrations and other stakeholders, including the State, through appropriate budgetary allocations, to facilitate funding and human resources for the sustainable livelihood of communities in the Kokoda Track Protected Area, for their capacity building, training, and infrastructure needs.
- 2) The Authority shall;
  - a. collect and bank trekking permit fees and tour operator licencing income; and
  - b. hold the balance for distribution for community development in accordance with the Regulations.

#### **COMMENT:**

Trek fees should be dedicated to the management and administration of the Kokoda Tourism Industry. Detailed annual reports should be produced and published in accordance with the provisions of the IPA Act.

Trek Levies should be considered to cover the cost of environmental trail maintenance; welfare insurance for guides and carriers; and community development.

#### **28. DUTY OF THE CHIEF EXECUTIVE OFFICER FOR SUSTAINABLE LIVELIHOODS**

- 1) In accordance with s.34(1), the Chief Executive Officer shall take such action as is necessary to ensure;
  - a. the People in the Kokoda Track Protected Area prosper, and that all adequate arrangements are made for them to develop and maintain their capacity to manage their land on the Kokoda Track, through their ward committees which may be established and



so the people have the knowledge and skills to benefit from the income flows from the Kokoda Track; and

- b. where insufficient funds are available to the Authority in its budgetary allocation from the State, for administering compliance with this Act funds for such, including capacity-building, training, infrastructure, may be sought from overseas governments, multilateral, or private sources; and
- c. funding not from the budgetary allocation by the State, shall be for specific wards, with a limitation that 10 percent thereof may be used for administrative over heads including salaries, wages and payments for contracts for service in the nature of consultancies; and
- d. subject to the Authority's obligation to comply with the *Auditor-General's Act*, all funding and donations to the Authority shall be audited annually by the Authority's internal auditor, and;
  - i. be subject to an annual audit by a registered auditor; and
  - ii. a certificate of audit by the auditor, shall be lodged with the Authority by the 30<sup>th</sup> June following the year of audit, and
  - iii. the audit report and the certificate is a public document.

**COMMENT:**

The KI-CEPA-KTA Alliance has been responsible for the management of the Trail for more than 10 years.

They should be called to explain why they have failed to ensure the KTA has refused to publish any financial reports in accordance with the requirements of their own constitution, and in contravention of the IPA Act, during this period.

- 2) All local management arrangements and distributions, for the use of, and benefit from natural resources, or ecosystems services, shall be fair and sustainable, and particularly in regard to distributions of surpluses, to include all genders and ages groups, resident on the land or who otherwise are part of the landowners of the Kokoda Track.

**COMMENT:**

This is irrelevant to the management of the Kokoda Tourism Industry and should be deleted.

The new management body should not be engaged in the management of natural resources or ecosystems services, or any other issue that is likely to distract them from their primary role of managing the Kokoda Tourism Industry.

## **Division 2 Rights of Landowners and other Stakeholders**

### **29. RIGHT TO BE CONSULTED**

- 1) In accordance with the Act, a landowner has a right to be consulted on matters affecting customary land rights, real property rights, personal property and the environment and national heritage of the Kokoda Track and the Kokoda Track Protected Area, and the Chief Executive Officer, may issue general orders to implement this right.

**COMMENT:**

The first step in ensuring the '*right to be consulted*' is identifying the TRCs to consult with.

The KI-KTA-CEPA Alliance should be asked to explain why the TRCs across the Trail between Owers Corner and Kokoda not been identified over the past decade.

### **30. RIGHT TO PARTICIPATE IN DECISION-MAKING**

- 1) In accordance with the provisions of this Act, a landowner of the area has a right to participate in the management and business of the Authority, and the Chief Executive Officer shall establish a

consultative committee that will hold meetings at least once every three months for the purpose of consulting with landowners and all other community members.

- 2) No less than 49 percent of the members of the consultative committee shall be women.
- 3) The consultative committee may make recommendation to the Chief Executive Officer on the management and business of the Authority and the Chief Executive Officer shall cause to be maintained a public website and/or a social media page on the business of the consultative committee.

**COMMENT:**

There is no record of any action resulting from a committee meeting regarding the management of the Trail by the KI-CEPA-KTA Alliance over the past 10 years.

The only agenda item ever agreed on is usually the date of the next meeting!

The most effective means of engaging landowners and villagers in decision-making is via the conduct of annual village workshops planned, organized, and conducted by professional facilitators familiar with Melanesian culture.

### 34. CONSULTATIVE COMMITTEE FOR TOUR OPERATORS

In accordance with the Regulations, the Chief Executive Officer shall establish a consultative committee for tour operators.

**COMMENT:**

The Kokoda Tourism industry comprises competitive private enterprise companies who invest a considerable amount of their resources in compliance, marketing, logistics and operations.

The primary responsibility of the management body is to ensure there is a level playing field for these companies regarding the development, application and enforcement of rules and regulations, without exception.

Draft discussion papers for any issues requiring consideration or clarification should be prepared and circulated by the CEO for comment.

After comments have been received a final draft can be circulated which would then be discussed and approved by the Board.

### 31. ECOSYSTEM SERVICES

- 1) This Act recognises the rights of landowners of the area, individually or collectively, to own *a profit a prendre*, the right to participate in the profits of the soil that run with the land in relation to a condition, natural process, or natural activity supporting the environment, inherent in the land, or the value in the preservation of such a natural process, or a natural activity, to the benefit of other persons, and this right includes;
  - a. the ability of trees and forests to photosynthesize and provide clean air, and a sink for carbon through the sequestering and storage of carbon dioxide from the atmosphere, consistent with the definition of REDD+; and a habitat for living organisms; and
  - b. the quality of the land to capture rain and secure fresh water, before the water enters a water course; and
  - c. the rights to bio-genetic materials derived, or deriving from the Owen Stanley Ranges, Brown River Catchment and Kokoda Track Protected Area; and fairly distributing eco-service payments among stakeholders including landowners, local level governments, provincial governments and the Authority.

**COMMENT:**

CEPA is already responsible for the provision of ‘Ecosystems Services’ – this section is therefore irrelevant to the management of the Kokoda Tourism Industry.

**32. QUIET ENJOYMENT**

- 1) Landowners have a right to the quiet enjoyment of their lands, and at least, modern, efficient standards of public safety, health care, and education comparable to similar locations in Papua New Guinea.

**COMMENT:**

This is a self-evident fact along the Kokoda Trail. It seems to be a superfluous statement of the obvious.

**33. LANDOWNER'S RIGHT FREE PRIOR INFORMED CONSENT**

- 1) Subject to the *Constitution*, and this Act, community members, including landowners from the Kokoda Track and the Kokoda Track Protected Area, in respect to their lands therein, and other property therein, or rights attributable from the benefits of the Kokoda Track Protected Area have a right to Free Prior Informed Consent set out more fully in Schedule 4.

**COMMENT:**

References to a ‘Kokoda Trail Protected Area’ are irrelevant to the Kokoda Tourism Industry because no such area has been gazetted by the PNG Government.

**Division 3 Duties of Landowners**

**34. REASONABLE ADVICE GIVEN TO LANDOWNERS**

- 1) The landowners will abide by any reasonable advice, whether legal, technical, financial, or administrative given to them by the Authority in respect of the Kokoda Track and the Kokoda Track Protected Area, and not unreasonably reject such advice from the Authority.

**COMMENT:**

Who will define the meaning of the terms ‘reasonable’ and ‘unreasonable’?

**Division 4. Dispute Resolution Procedures**

**35. DISPUTE RESOLUTION.**

- 1) Stakeholders, including landowners, will cooperate in all dealings, negotiations, and in any dispute resolution, with each other, or with government bodies or other stakeholders.
- 2) In the event of a dispute all parties to the dispute, including landowners, are bound to follow the dispute resolution procedure in section 9, and Part VII Miscellaneous Division 1 Dispute Resolution of this Act.
- 3) Where a dispute arises as to interests in customary land, or between landowners over the position of boundaries of customary land, the dispute shall be settled as provided for by the *Land Disputes Settlement Act*.

**COMMENT:**

Words! Words! Words!

They may have some meaning amongst Port Moresby based DFAT officials – but the reality across the Kokoda Trail is much different.

An incident involving the Ofi Creek campsite, which had been carved out of the jungle by the local landowner and his wife over a 10-year period, illustrates the gap between the office

managers in Port Moresby and the reality of life along the Kokoda Trail.

After the campsite was established over a two-year period of hard manual work, the owner was confronted by a rogue, non-Koiari villager who had previously shot and killed one of his fellow villagers in a previous dispute in the nearby Ioribaiwa campsite area.

As a result of the confrontation the rogue non-Koiari villager and his local *wan-toks* burnt the Ofi Creek campsite to the ground.

Our pleas to have the KTA resolve the issue were ignored as can be seen from the following email trail:

**From:** Rod Hillman [<mailto:rod@daltron.com.pg>]

**Sent:** Tuesday, 13 October 2009 3:41 PM

**To:** 'Volker Scholz'; [robyn.kruk@environment.gov.au](mailto:robyn.kruk@environment.gov.au); [hollway@ozemail.com.au](mailto:hollway@ozemail.com.au); James Enage; Minouschka Lush; [pvincent@pngtourism.org.pg](mailto:pvincent@pngtourism.org.pg); [rhillman@online.net.pg](mailto:rhillman@online.net.pg); [kate.bowmaker@environment.gov.au](mailto:kate.bowmaker@environment.gov.au); Charlie. Lynn; [chris.moraitis@dfat.gov.au](mailto:chris.moraitis@dfat.gov.au); [aidan@ourspirit.com.au](mailto:aidan@ourspirit.com.au); 'Warren R Bartlett'

**Subject:** Land Ownership dispute - Ofi Creek

All,

A meeting was held today, 13<sup>th</sup> October, to mediate the Ofi Creek situation, chaired by Mr. Ogi David – KTA Management Committee member and President of the Koiari LLG.

A resolution was reached, and formalized through a signed agreement, whereby the Ofi creek campsite would

- Reopen today
- Be operated by Mr. Dobo Buai until at least 31<sup>st</sup> December 2009
- Mr. Dobo Buai will vacate Ofi Creek campsite after a community meeting is held (but not before 31<sup>st</sup> December)
- K420 of campsite fees from Adventure Kokoda has been handed to Mr. Peter Malik.
- Campsite is property of the Aihai Land Group Inc. represented by Mr. Peter Malik (Chairman)

We hope this situation is now resolved.

**Rod Hillman**  
**Chief Executive**

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**From:** Charlie Lynn [[charlie@charlielynn.com.au](mailto:charlie@charlielynn.com.au)]

**Sent:** Tuesday, 13 October 2009 6:48 PM

**From:** Charlie Lynn [<mailto:charlie@charlielynn.com.au>]

**Sent:** 14 October 2009 04:52

**To:** 'Rod Hillman'; 'Volker Scholz'; [robyn.kruk@environment.gov.au](mailto:robyn.kruk@environment.gov.au); [hollway@ozemail.com.au](mailto:hollway@ozemail.com.au); 'James Enage'; 'Minouschka Lush'; [pvincent@pngtourism.org.pg](mailto:pvincent@pngtourism.org.pg); [rhillman@online.net.pg](mailto:rhillman@online.net.pg); [kate.bowmaker@environment.gov.au](mailto:kate.bowmaker@environment.gov.au); [chris.moraitis@dfat.gov.au](mailto:chris.moraitis@dfat.gov.au); [aidan@ourspirit.com.au](mailto:aidan@ourspirit.com.au); 'Warren R Bartlett'

**Cc:** 'John Miles'; 'Frank Taylor'; 'Carol Kidu'; 'Jason Clare MP'; 'Scott Morrison MP'

**Subject:** RE: Land Ownership dispute - Ofi Creek

*This as an absolute disgrace – I watched Dobu and his wife carve this campsite out of the jungle on a steep hillside **by hand** over the past 10 years. His two daughters were not even born when he first started.*

*Adventure Kokoda has contributed around K3000 to Dobu and his family to build the site over the years – and a further K50,000 in campsite fees. Another trek operator, Frank Taylor, generously contributed to the construction of the helipad which has saved more than one life as a result of emergency evacuations.*

*Peter Malik, who I understand is from Madang, watched Dobu build the site over the past decade – did anybody ask why he did not lodge a land claim then?*

*I am saddened and sickened at this result – we should all hang our heads in shame.*

*Charlie*

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**From:** Charlie Lynn [<mailto:charlie@charlielynn.com.au>]

**Sent:** 14 October 2009 04:52

**To:** 'Rod Hillman'; 'Volker Scholz'; [robyn.kruk@environment.gov.au](mailto:robyn.kruk@environment.gov.au); [hollway@ozemail.com.au](mailto:hollway@ozemail.com.au); 'James Enage'; 'Minouschka Lush'; [pvincent@pngtourism.org.pg](mailto:pvincent@pngtourism.org.pg); [rhillman@online.net.pg](mailto:rhillman@online.net.pg); [kate.bowmaker@environment.gov.au](mailto:kate.bowmaker@environment.gov.au); [chris.moraitis@dfat.gov.au](mailto:chris.moraitis@dfat.gov.au); [aidan@ourspirit.com.au](mailto:aidan@ourspirit.com.au); 'Warren R Bartlett'

**Cc:** 'John Miles'; 'Frank Taylor'; 'Carol Kidu'; 'Jason Clare MP'; 'Scott Morrison MP'

**Subject:** RE: Land Ownership dispute - Ofi Creek

*I hope everybody had a better sleep than I did last night – I just haven't been able to get a very sick feeling out of my stomach.*

*I can only wonder how Dobu Buai, his wife Esther and their two beautiful daughters, Brenda and little Esther handled the dark hours of last night.*

*They would have pondered 10 years of sacrifice, isolation and loneliness as they toiled to carve their future out of the savage jungle at Ofi Creek.*

*They would have reflected on the number of times they walked around the site with white men discussing the location of toilets and the 'Westerners' need for modesty screens. Then it would be off on a two hour climb up the Maguli Range to find the bamboo necessary to have it ready in time for the next group. Then 'white man' would then discuss the need for a drying hut for trekkers – so it would be back up the mountain again!*

*Dobu never shied away from any task – many white men had passed through his village since the goldmine that threatened the health of his pristine creek was scuttled. They said they were from a faraway village called Canberra and they all muttered the same phrase – something about a sustainable economic future for the Koiari and Orokaiva people who live along the Kokoda Trail.*

*Those words would seem hollow to Dobu this morning. After 10 years of backbreaking work he has been dispatched to God knows where – without hope - by a KTA 'court' without any grounds of appeal. No payout. No goodwill. No welfare system to tide him over – he didn't even get to keep the K420 for hosting his last trek group. A cruel piece of Jungle justice!*

*And for Peter Malik - the victor from Madang – comes the realisation that standover tactics and extortion can pay handsomely under the new regime.*

*Anyway it's back on the plane for the consultants – back to the air-conditioned officers for the decision-makers – and back to the despair of the jungle for Dobu and his family.*

*I'll get over it no doubt – in fact I'll go and plug the kettle in right now.*

*Lukim,*

*Charlie*

### **36. STAKEHOLDERS COOPERATION**

- 1) All stakeholders affected by this Act shall cooperate between themselves to achieve the intention of the Act.

## **PART VI. – ENVIRONMENT, CLIMATE CHANGE AND NATIONAL HERITAGE**

### **37. ENVIRONMENT CLIMATE CHANGE AND NATIONAL HERITAGE**

- 1) Notwithstanding any other law to the contrary, and for the sake of clarity;
  - a. the power to manage the Kokoda Track is vested by this Act in the Authority; and
  - b. the power to manage the environment is vested by law in the Conservation Environment Protection Authority; and
  - c. the power to manage climate change is vested by law in the Climate Change and Development Authority; and
  - d. the power to manage the national heritage, culture and war relics is vested by law in the National Museum and Art Gallery.
- 2) The four authorities, aforesaid, shall enter into a written agreement on how they lawfully shall share their powers and responsibilities in the Kokoda Track Protected Area in accordance with, and following the form set out in Schedule 6.

#### **COMMENT:**

*'Environment and Climate Change and National Heritage'* are irrelevant to the management of the Kokoda Tourism Industry.

Issues impacting on these areas should be managed by the CEO in compliance with environmental policy established by CEPA which includes the recent establishment of a Climate Change Authority within CEPA.

### **38. ESTABLISHMENT OF THE KOKODA TRACK PROTECTED AREA**

- 1) Notwithstanding any other law, a protected area is established, to be known as the Kokoda Track Protected Area; and
- 2) Following;
  - a. consultation; and
  - b. a written agreement in relation to the manner of the coordination of their respective lawful mandates, between the Authority, the Conservation and Environment Protection Authority National Museum and Art Gallery and the Climate Change and Development Authority in accordance with Schedule 6,the Kokoda Track Protected Area, managed in accordance with section 45(2), may be registered under an Act of Parliament, the manner and form of the protection to be agreed by the four authorities.



- 3) Nothing in (2) affects the validity of the establishment of the Kokoda Track Protected Area, under (1).

**COMMENT:**

Establishment of a '*Kokoda Trail Protected Area*' is not required because responsibility for the harvesting of natural resources is already protected by the provision of the *Mining Act*; the *Oil and Gas Act*; the *Forestry Act*, the *Fauna (Protection and Control) Act*; the *Conservation Areas Act*; the *National Parks Act* and the new *Climate Change Authority*.

It does not need another bureaucratic layer imposed by foreign DFAT officials.

**39. AREA AND DESCRIPTION OF BOUNDARIES OF THE KOKODA TRACK PROTECTED AREA**

- 1) The coordinates and map of the boundaries of the Kokoda Track Protected Area are set out in full in Schedule 3.
- 2) The Minister for the Conservation and Environment Protection Authority shall publish a notice in the National Gazette establishing the Kokoda Track Protected Area and giving notice of the coordinates and map set out in full as in Schedule 3.
- 3) Until a law is enacted on protected areas the Minister for the Conservation and Environment Protection Authority shall administer the protected area to the extent that it is practical so to do, subject to the agreement in section 46(2)(b).

**COMMENT:**

The only relevant area for any sort of '*Kokoda Trail Management Act*' should be the gazetted Kokoda Trail between Owers Corner and Kokoda.

Areas beyond the gazetted areas should be the focus of a separate '*Owen Stanley Ranges Management Authority*'.

**40. THE PRIMACY AND PRIORITY OF THE CONSERVATION OF NATURE AND CULTURAL HERITAGE**

- 1) Subject to law, and in accordance with the Protected Area Management Plan, and to the obligation of the Authority to develop livelihoods for the landowners of the Kokoda Track, and any zoning by the Authority in the Kokoda Track Trail, and in the Kokoda Track Protected Area, primacy and priority shall be given to the conservation of nature and national heritage.

**COMMENT:**

'*Livelihoods for landowners of the Kokoda Trail*' is provided by the Kokoda Tourism Industry which generates economic opportunities and social benefits for villagers.

Previous attempts by KI-CEPA-KTA Alliance to develop '*livelihoods*' programs have failed due to their lack of consultation with the Kokoda Tourism Industry and the lack of their understanding of the needs of their paying customers.

- 2) Development may be allowed in special circumstances, as a non-conforming use to the primacy and priority of the conservation of nature and cultural heritage, if it may be shown to be for community benefit and of an area whose total impact on the Kokoda Track Protected Area is less than 5 per cent of area of the Kokoda Track Protected Area.
- 3) Any economic return from the special circumstances for the non-conforming use in the protected area shall be shown to be of a higher economic value than the economic value of the natural and cultural values which would be lost.

- 4) The onus of showing the special circumstances, the community benefit, the economic benefit and the proportion of the area covered by the special circumstances are on the person asserting the special circumstances.
- 5) Subject to any agreement between the Authority and any government body, any forest development in a forested area within the Kokoda Track Protected Area must obtain the prior approval of the Minister, the Minister for Forests, the Minister for Conservation and Environment Protection and Climate Change and Development, and the Regulations may provide for such approval.

**COMMENT:**

PNG has already established Government departments and Acts of Parliament to approve '*any forest development in a forested area*' – they do not need another layer of bureaucracy imposed by DFAT officials.

- 6) Subject to any agreement and prior approval under (5) between the Authority and any government body, the Climate Change and Development Authority may facilitate REDD+ projects for forest conservation in the Kokoda Track Protected Area, and an agreement between the Authority and the Climate Change and Development Authority may provide for such facilitation.

**COMMENT:**

This is not relevant to the management of the Kokoda Tourism Industry.

The CEO will obviously ensure any activities across the Kokoda Trail comply with the relevant departments responsible for Climate Change and REDD+ projects as a normal part of his management charter.

- 7) To the extent that any other law, not including a constitutional law, provides for anything touching or affecting the Kokoda Track or the Kokoda Track Protected Area, the Regulations may ensure the primacy and priority of nature and conservation in the protected area, including the provision of security bonds, an Environmental Code of Practice, clean-up capability within the area, and conservation benefit sharing agreements with affected customary landowners in the area.

**COMMENT:**

This is irrelevant to the management of the Kokoda Tourism Industry.

- 8) This Act respects and protects the rights of existing mineral and petroleum exploration and production licenses, leases or of other tenement holders, including existing operating facilities and supporting infrastructure and developments that are under construction or expansion on the promulgation date of this Act.

#### **41. COOPERATION AND AWARENESS**

- 1) The Authority shall consult with the Conservation and Environment Protection Authority, and the Climate Change and Development Authority, and the National Museum and Art Gallery on all matters touching the conservation of nature, climate change and national heritage.

**COMMENT:**

A Joint Ministerial Committee comprising members from CEPA, the Climate Change and Development Authority; PNG Tourism Promotion Authority, and the two Provincial Governments, would be a more effective means of consultation.

- 2) Notwithstanding section 46(2) (b), the Authority within six (6) weeks of the promulgation of the Act, shall provide to the Minister a protocol, jointly developed by the Authority, the Conservation

and Environment Protection Authority, the Climate Change and Development Authority, the Tourism Promotion Authority and the National Museum and Art Gallery, on the mechanisms for the drafting of a protected area management plan, consultation, funding, staffing and other relevant matters relating to the Kokoda ~~Track~~ Trail and the Kokoda Track Protected Area; and

- a. the Authority shall note any response to the protocol received within 28 days of its being provided to the Minister, and shall act in accordance with the response of the Minister; and
- b. the Chief Executive Officer shall issue a general order to that effect, describing the procedures for major matters of importance, and for routine matters, and how responsibility may, as the case maybe, be shared between the Authority, the Conservation Environment Protection Authority, the Climate Change and Development Authority, the Tourism Promotion Authority and the National Museum and Art Gallery, and where any such lines of demarcation in the sharing of responsibility maybe.

**COMMENT:**

The primary purpose of any Act regarding Kokoda Trail tourism should be to provide for the economic and social development of village communities along the Trail.

The CEO should ensure compliance with other Acts of Parliament relating to the protection of the environment, and respect for the local culture, in managing the Kokoda Tourism Industry on a commercial basis.

3) The Authority shall;

- a. put in place and complete, within 12 months of the promulgation of this Act, educational briefings, for public awareness on the Kokoda Track, on the terms of this Act, for landowners, leaders and other stakeholders; and
- b. at any meetings hereunder, of the rural attendees, at least 49 per cent of attendees shall be women; or special sessions shall be allowed for women to caucus; and
- c. special briefings may be made available for school teachers, and as appropriate, pupils, from the Kokoda Track and the Kokoda Track Protected Area.

## PART VII. – MISCELLANEOUS

### Division 1 Dispute Resolution

#### 42. DISPUTE RESOLUTION

- 1) In relation to a matter affected by this Act, all stakeholders, whether from the public sector or the private sector, shall follow the dispute resolution procedures of the Act.

**COMMENT:**

It will be necessary to explain the difference between the ‘*public sector*’ and ‘*private sector*’ to subsistence villager across the Trail (many of whom are illiterate in the English language) as they are foreign terms to them – they are more familiar with terms such as ‘clan’, ‘*wan-tok*’ and ‘community’.

- 2) Notwithstanding (1), a person aggrieved of these dispute resolution procedures, or on a matter of either fact or law, arising from the dispute resolution procedures, may apply to the National Court to seek redress for any wrong or violation of their rights.

**COMMENT:**

In view of the average lifespan of a Papua New Guinean, and the time it would take for the

National Court to adjudicate on the dispute under the current system, there is a good chance that the parties to the dispute would have passed on by the time it was resolved.

- 3) Nevertheless, for the purpose of clarity, the Dispute Resolution Procedures hereunder should be followed, and redress in the courts should be of a last resort.

**COMMENT:**

*'For the purposes of clarity'. C'mon!*

Landowners across the Trail are usually fluent in at least three languages – *Tok Pisin*, *Motu* and their *Ples Tok*.

They are also masters of their own environment and use customary methods of harvesting their land and resolving disputes which have been passed down through the generations.

They have little understanding of Western 'Dispute Resolution Procedures' and would therefore ignore or undermine them.

Koiari and Orokaiva clan leaders from across the Trail should be engaged to develop a traditional system to resolve disputes.

#### **43. DISPUTE RESOLUTION PROCEDURES**

- 1) Stakeholders, or persons affected by this Act, shall follow four steps of dispute resolution;
- a. the notification of a dispute; and
  - b. informal discussions between the Parties to settle the dispute; and
  - c. mediation; and
  - d. arbitration.

#### **44. NOTIFICATION OF A DISPUTE.**

- 1) In relation to a matter affected by this Act, a party, being a stakeholder, or person affected by this Act, who is aggrieved of a decision, or a course of action of another party, shall notify the other party of the grievance by word of mouth, or by telephone, or email, as soon as the grievance becomes apparent to the aggrieved Party.
- 2) An unreasonable delay in the notification of a grievance may be a breach of the dispute resolution procedure.

#### **45. DEFINING THE DISPUTE AND EARLY SETTLEMENT**

- 1) The Parties shall consult each other so as to clarify or define any dispute.
- 2) A Party may then reduce the verbal notification of the dispute to writing.
- 3) Where there is no agreement between the Parties as to the definition of the dispute, or the dispute itself, the Parties shall appoint a mediator.

#### **46. MEDIATION**

- 1) Where within 28 days of any notification of a grievance, there is no settlement of the dispute between the Parties, and the Parties jointly do not appoint a mediator for the dispute, a Party may request a senior magistrate in the province where the dispute occurs to appoint a mediator, and the senior magistrate shall appoint a mediator.
- 2) The Authority shall pay for such reasonable costs as may arise from the mediation of the dispute.
- 3) The mediator shall mediate the dispute between the Parties.
- 4) The mediator shall reduce to writing;
- a. any agreement to the settlement of the dispute; and
  - b. the Parties shall sign the agreement.
- 5) A signed agreement in settlement of a dispute under this Act is a binding agreement.

## 47. ARBITRATION

- 1) Where the mediator is of the opinion that the Parties cannot agree to settle the dispute by mediation, the mediator shall;
  - a. talk with the Parties and such lawyers as the Parties chose, and produce a statement of facts and issues not in dispute, and a statement of facts and issues in dispute, and an agreement on the appointment of an arbitrator under the *Arbitration Act*; and
  - b. refer the dispute to arbitration under the *Arbitration Act*; and
  - c. in default of an agreement, or dilatoriness of any Party, under (a), the Chief Executive Officer may write a statement of facts and issues not in dispute, and a statement of facts and issues in dispute for arbitration; and
  - d. if there is no agreement between the Party on the appointment of an arbitrator, an arbitrator shall be appointed by the President of the Law Society of Papua New Guinea; and
  - e. the arbitrator shall arbitrate the dispute under the *Arbitration Act*.
- 2) The Authority shall under-write the arbitrator's fee and out of pocket expenses, such as travel, and accommodation costs, and other consequent costs, but the arbitrator, on hearing the parties on the issues of the apportionment of fees and costs, shall apportion such fees and costs in such a manner as shall appear to be just, at the end of the arbitration, including, where it appears reasonable to the arbitrator, costs arising from any breaches of these dispute resolution procedures, and make orders as appropriate as to the apportionment of the costs, and of any debt owing to the Authority arising from this clause.

### Division 4 Special Rights and Duties of Stakeholders

## 48. NO DEROGATION FROM RIGHTS TO ACCESS THE COURTS

- 1) In respect of this division, and in particular, concerning the Special Rights and Duties of landowners from the Kokoda Track, and the Kokoda Track Protected Area, no alteration to those rights as they existed at the time of the promulgation of this Act, by statute, may be affected to the said right.

### COMMENT:

One can only imagine the look of bemusement on the face of a subsistence villager as the meaning of this was being explained to them.

- 2) Notwithstanding (1), a person aggrieved of the dispute resolution procedures in this Act, or a matter of either fact or law, arising from the dispute resolution procedures, may apply to the National Court to seek redress for any wrong or violation of their rights.

## 49. SPECIAL RIGHTS OF LANDOWNERS AND OTHERS TO ACCESS THE COURTS

- 1) Notwithstanding the dispute resolution procedures of this Act, landowners and other community members have a special right to access the District, National and Supreme Courts, and have standing (*locus standii*) to join any litigation they have otherwise not been joined as a party to, and so to be joined as a party, in an action to which they are not named as a party, if, in the opinion of the Court, the rights of landowners or other community members are affected by the proceedings before the Court.
- 2) Where, in accordance with this provision, a Court orders that a landowner or other community member shall be joined in a proceeding or an action before it, no security of costs, and no security against damages in such cases maybe ordered, if in the opinion of the court, the rights of landowners are affected by the matter before it.

## 50. THE RIGHT TO COMMENCE AN ACTION.

- 1) A person, including a landowner from the Kokoda Track and the Kokoda Track Protected Area, with a genuine interest in the protection of the national heritage or environment of the Kokoda Track and the Kokoda Track Protected Area, acting;
  - a. on their own behalf; or
  - b. on behalf of customary landowners; or
  - c. on behalf of an Incorporated Land Group; or
  - d. on behalf of future generations; or
  - e. on behalf of particular life-forms and species,
 may commence an action in the National Court
  - a. to enforce this Act; or
  - b. to claim damages in relation to a matter arising from the environment, national heritage affecting the Kokoda Track and the Kokoda Track Protected Area; or
  - c. to seek orders that;
    - i. protect the Kokoda Track and the Kokoda Track Protected Area; or
    - ii. protect a species of nature in the Kokoda Track and the Kokoda Track Protected Area; or
    - iii. protect a cultural heritage place or object; or
    - iv. enforce a Conservation Benefit Sharing Agreement.
- 2) On an undertaking to commence an action in the National Court, temporary orders restraining parties may be made by a District Court Magistrate.
- 3) Temporary orders restraining parties by the District Court, under this provision lapse after 28 days unless renewed by the National Court.
- 4) In any action, whether civil or criminal, brought on a matter arising from this Act;
  - a. costs shall be borne by the parties, and the “*costs follow the event*” rule shall not apply; and
  - b. a court, tribunal or other judicial body shall not require a party to enter into a security for costs, or for damages.

**COMMENT:**

The KI-KTA-CEPA Alliance has failed to identify ‘customary landowners’ and failed to establish a single Incorporated Landowner Group (ILG) anywhere across the Kokoda Trail since 2009.

## **51. ACTIONS ON BEHALF OF FUTURE GENERATIONS**

- 1) In a matter pertaining to;
  - a. the enforcement of this Act; or
  - b. a claim of damages founded in a breach of this Act,
 a landowner from Kokoda Track and the Kokoda Track Protected Area being person of good repute may bring an action, on behalf of future generations in relation to a matter affecting the property rights of persons indigenous to, and or within the Kokoda Track and the Kokoda Track Protected Area.

## **52. DUTY NOT TO CAUSE DAMAGE ON THE KOKODA TRACK AND IN THE KOKODA TRACK PROTECTED AREA**

- 1) It is the duty of every person, who has in their charge or under their control anything whether living or inanimate, and whether moving or stationary, of such nature that in the absence of care or precaution in its use, or management, the environment, nature, or a living species, or a cultural heritage place, or any wartime object in the Kokoda Track and the Kokoda Track Protected Area, may be endangered, to use reasonable care, and take reasonable precautions, to avoid that danger.



- 2) A person on whom a duty is imposed by Subsection (1) shall be deemed to have caused any consequence that results to the environment or national heritage value of the Kokoda Track and the Kokoda Track Protected Area, by reason of any omission to perform that duty.

**COMMENT:**

What does this piece of legalese mean?

**53. ACTIVITY PUTTING THE KOKODA TRACK, KOKODA TRACK PROTECTED AREA IN PERIL**

- 1) A person, who for his own purposes, allows on his land, or on the land of another, an operation, or process, or flora or fauna species that;
- a. does mischief, is likely to do mischief if it escapes onto, or into the Kokoda Track, or the Kokoda Track Protected Area; or
  - b. is likely to directly, or indirectly, to cause harm, or contribute to harm, by environmental or species degradation, pollution, fire, increased risk of fire, flooding, or increased risk of flooding, in the Kokoda Track or the Kokoda Track Protected Area, does so at their peril, and is *prima facie* answerable for all the damage which is the natural consequence of its impact in the Kokoda Track and the Kokoda Track Protected Area; and

**COMMENT:**

'Fire' and 'increased risk of fire' are not regarded as a threat in the tropical rainforest of the Owen Stanley Ranges.

- 2) The Chief Executive Officer, or a landowner of the Kokoda Track and the Kokoda Track Protected Area, may issue a written notice, notifying the person of the likely mischief and harm from the operation or process, and;
- a. where the mischief or harm continues; or
  - b. there is no abatement thereof of any risk of the mischief or harm,

then the Chief Executive Officer, or a landowner of the Kokoda Track and the Kokoda Track Protected Area, may apply to the National Court for an order for the protection of the Kokoda Track and the Kokoda Track Trail Protected Area, or such part thereof, from the mischief or harm, and the Court may make such orders to stop the mischief or harm, and for damages, as seems just.

**Division 5. - Offences**

**54. OFFENCES.**

- 1) Unless stated otherwise, any person who contravenes this Act commits an offence and shall be liable;
- a. in the case of an individual, to a fine not exceeding K500,000.00 or to imprisonment for a term not exceeding 5 years; and
  - b. in the case of a body corporate, a fine not exceeding K1,000,000.00; or
  - c. where a Court, determines the nature of the offence, or the effect of the offence in Owen Stanley Ranges, Brown River Catchment and Kokoda Track region is minor, or summary in its nature, a fine of K1,000.00 or imprisonment for a term not exceeding one year.

**COMMENT:**

These seem excessive within the context of a subsistence-based economy.

- 2) Where an offence committed by a body corporate under the Act or any Regulations made under the Act is proved to have been committed with the consent or connivance of, or attributable to any neglect on the part of;

- a. a director, manager, secretary or other similar offices of the body corporate; and
- b. a person purporting to act in any such capacity,

that person specified in Paragraph (a) or (b) or the body corporate, commits an offence and shall be punished accordingly.

- 3) Where affairs of a body corporate or an unincorporated partnership, association or like entity under the laws of Papua New Guinea, or elsewhere, are managed by its members, Subsection (2) shall apply in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of a body corporate.
- 4) A person, body corporate, a director, manager, secretary or other similar officers of the body corporate, or its directors, managers, and the designated officer, or other government officers responsible for policing an operation or process, affecting the Kokoda Track and the Kokoda Track Protected Area, who fails to take action to stop any mischief or harm in a Protected Area, following a notification under Section 66 (2), and orders by the National Court, protecting the Protected Area, shall be liable to punishment in accordance with Subsection (1).

## **55. AGGRAVATED OFFENCE CAUSING POLLUTION ETC**

- 1) A person commits an aggravated offence, if the conduct the person engaged in that constituted the offence;
  - a. resulted in pollution or serious harm to the Kokoda Track and the Kokoda Track Protected Area; or
  - b. had the potential to cause pollution or serious harm to the Kokoda Track and the Kokoda Track Protected Area; or
  - c. caused, or had the potential to cause the destruction or serious harm to national cultural or military heritage, to the Kokoda Track and or the Kokoda Track Protected Area.
- 2) In determining whether the conduct has resulted in pollution or serious harm to the Kokoda Track and the Kokoda Track Trail Protected Area, the Court may have regard to any of the following:
  - a. the harm or potential harm to the environment or cultural heritage; and
  - b. the size of the affected environment or potentially affected environment; and
  - c. the sensitivity of the affected environment, or potentially affected environment; and
  - d. the significance of the affected environment; and
  - e. the prohibition of certain activities; and
  - f. whether the harm is irreversible; and
  - g. the measures required to remedy the harm; and
  - h. the carrying out of certain activities subject to certain conditions; and
  - i. the precautionary principle; and
  - j. whether or not any harm or potential harm arose from any recklessness, or in any negligent manner, according to the principles of law of standards of care of a reasonable person and the risks that gave rise to the harm or potential harm.
- 3) A person convicted of an aggravated offence shall be liable upon conviction, to a fine not exceeding K5,000,000.00 or a term of imprisonment not exceeding five years.

## **56. NO-TAKE OR PROSPECTING IN THE KOKODA TRACK, KOKODA TRACK PROTECTED AREA**

- 1) A person who takes, or removes, anything naturally occurring being matter whether, biological or inanimate, or a national heritage object, from the Kokoda Track or the Kokoda Track Protected Area, without the written consent of the Chief Executive Officer or his delegate, shall be liable;
  - a. where the taking or removal has little or no impact on the biological integrity or cultural heritage value of the Kokoda Track or the Kokoda Track Protected Area, to a fine not

exceeding K1,000.00 or to imprisonment for a term not exceeding one year, or when involving customary landowners may be dealt with in a Village Court; and

- b. where the taking;
  - i. is collecting, in the nature of bioprospecting, of animate or biological matter; or
  - ii. is the prospecting of geology, for minerals, earths, or hydrocarbons; or
  - iii. removes items of cultural heritage value,

the person shall be liable in the case of an individual, to a fine not exceeding K500,000.00 or to imprisonment for a term not exceeding 5 years, and in the case of a body corporate a fine not exceeding K1,000,000.00.

- 2) The onus of showing the written consent of the Chief Executive Officer or his delegate, is on the accused.

#### **57. DESTRUCTION, DEGRADING POLLUTION IN THE KOKODA TRACK, KOKODA TRACK PROTECTED AREA**

- 1) A person who, directly or indirectly, causes pollution in the Kokoda Track or the Kokoda Track Protected Area, or causes the destruction, degrading or lessening of the protections relating to the Kokoda Track or the Kokoda Track Protected Area, or its area of land, or landscape, or any species protected by this Act, or by law, is guilty of an offence.
- 2) If a person is charged with an aggravated offence, the charges in relation to the offence shall specify the relevant aggravated offence.
- 3) If, in the prosecution for an aggravated offence, the Court;
  - a. is not satisfied that the person has committed an aggravated offence; and
  - b. is satisfied beyond reasonable doubt, that the person has caused pollution in the Kokoda Track or the Kokoda Track Protected Area, or caused the destruction, or degrading or lessening of protections to the Kokoda Track or the Kokoda Track Protected Area or to its landscape, or any species in the area protected by this Act, or any cultural heritage object, or place,

the Court may enter a conviction against the person, not for the aggravated offence, but for any other offence under this Act.

- 4) Subject to any intervention by the Public Prosecutor who may proceed or withdraw the proceedings, proceedings maybe commenced by a private citizen, or corporation.
- 5) Where a person has been convicted of directly or indirectly causing pollution in the Kokoda Track or the Kokoda Track Protected Area, or the destruction, or degrading or lessening of protections to an area of land, or landscape or a species protected by this Act, or any other Act, or to a cultural heritage place or object therein, the Court, on application by the Authority, or a person with a right to commence and action under Section 59(1), may by Notice of Motion, by the Chief Executive Officer, or a person with a right to commence an action under Section 59(1), make an order on directions for the assessment of damages, and on hearing all parties, the National Court may make an assessment of damages, and order that such lawful and just damages be paid to such persons as the Court deems just.
- 6) A person who by their acts or words, directly or indirectly counsel, aids, abets, lobbies for, or procures the destruction, degrading or lessening of protections to the Kokoda Track or the Kokoda Track Protected Area, or over areas protected by this Act, is guilty of an offence.

#### **58. CAUSING DAMAGE ETC**

- 1) A person who has in their charge or under their control, anything whether living or inanimate, and whether moving or stationary, or any system of business, or system of government power, of such

nature that in the absence of care or precaution in its use, or management thereof, the environment or cultural heritage of the Kokoda Trac, and the Kokoda Track Protected Area, may be endangered, who recklessly, or negligently fails to use reasonable care and take reasonable precautions to avoid that danger, commits an offence.

- 2) A person on whom a duty is imposed by Subsection (1) shall be deemed to have caused any consequence that results to the environment of the Kokoda Track, and the Kokoda Track Protected Area, by reason of any omission to perform that duty.
- 3) Where a Court is of the opinion that the failure in (1), or other recklessness or gross negligence, has resulted in substantial damage to the Kokoda Track, and or the Kokoda Track Protected Area, the Court may convict an accused person of an aggravated offence, and sentence the accused to not more than 5 years imprisonment.

#### **59. FAILURE TO PROVIDE CLEAN-UP EQUIPMENT**

- 1) A person, or corporate body, whether public or private, who has a duty under statute, or by law, to ensure safety, and or the protection of the environment, in the Kokoda Track or the Kokoda Track Trail Protected Area, who fails to provide adequate equipment, and systems of their management, for the clean-up of pollution in the Kokoda Track or the Kokoda Track Protected Area, is guilty of an offence.

#### **60. SUMMARY OFFENCES RELATING TO THE KOKODA TRACK**

- 1) The Kokoda Track is a wartime memorial, and cemetery for the wartime dead and the fallen whose bodies may not yet have been recovered, and due respect is to be observed and the summary offences hereunder may be tried in the District Court or Village Court, as is appropriate, in accordance with law.

##### **COMMENT:**

The proponents of this Bill should have been aware that the Kokoda Trail is neither a ‘*wartime memorial*’ nor a ‘*cemetery*’ for the wartime dead’.

It is a gazetted Trail between Owers Corner and Kokoda which contains a number of significant battlesites. The KI-KTA-CEPA Alliance have neglected to invest in a single interpretive memorial across the Trail. All known KIA along the Trail have been re-interred at Bomana War Cemetery.

- 2) Without lawful excuse, the burden of which is on them, a person who;
  - a. has a duty to keep the Kokoda Track open, who fails to keep the Kokoda Track open; or
  - b. obstructs or blocks the Kokoda Track; or
  - c. interferes with, or defaces the pavement, bridging, safety rails or equipment, or the signs of, and along, the Kokoda Track; or
  - d. takes, defaces, damages, or inappropriately interferes with any item of national heritage, or war relic on the Kokoda Track; or
  - e. is under the influence of alcohol or drugs on the Kokoda Track; or
  - f. where required to register a walk or a trek, or to possess a permit, on the Kokoda Track, fails to register a walk, or a trek, with the Authority, and does not have on their person a permit for such; or
  - g. communicates falsely, including by electronic message, words or signs, likely to activate emergency and call-out procedures on the Kokoda Track; or
  - h. willfully neglects, or deliberately fails to follow Kokoda Track rules; or
  - i. litters the Kokoda Track; or
  - j. causes a breach of the peace on the Kokoda Track,

commits an offence.

## **Division 6. Miscellaneous**

### **61. PROOF OF CERTAIN MATTERS**

- 1) In any proceedings by or against the Authority, proof is not required, unless evidence is given to be contrary of;
  - a. the constitution of the Board or a Committee; or
  - b. a resolution of the Board or a Committee; or
  - c. the appointment of a member of the Board or a Committee or the Chief Executive Officer or an officer, employee, servant or agent of the Authority; or
  - d. the presence of a quorum at a meeting at which a determination is made or an act done by the Board or a Committee.

### **62. SERVICE OF PROCESS**

- 1) Any notice, summons, writ or other process required to be served on the Authority may be served by being left at the office of the Authority or, in the case of a notice, by registered postal delivery.

### **63. AUTHENTICATION OF DOCUMENTS**

- 1) Any document requiring authentication by the Authority is sufficiently authenticated without the seal of the Authority if signed by the Chair of Board or the Chief Executive Officer, as the case maybe.

### **64. APPOINTMENT OF ATTORNEYS**

- 1) The Authority may, by instrument under its seal, appoint a person to act as its attorney both inside and outside the country for the purpose of doing anything that the Authority itself might lawfully do.
- 2) A person appointed under Subsection (1), may, on behalf of, and in the name of the Authority, do any act, exercise any power and perform any function so authorized by the instrument to do, exercise or perform.

### **65. COMPENSATION**

- 1) Where loss or damage is suffered by any person by reason of the exercise, by or on behalf of the Authority, of a power conferred by or under this Act, compensation for the loss or damage is payable to the person by the Authority.
- 2) Subject to Subsection (3), the amount of compensation payable under Subsection (1), is as determined by the Minister.
- 3) A person, aggrieved by a determination of the Minister under Subsection (2), may appeal to the National Court.

### **66. RECOVERY OF MONEY DUE**

- 1) Any money due to the Authority under this Act may be recovered by the Authority as a debt.

### **67. REGULATIONS AND GENERAL ORDERS**

- 1) The Head of State, acting on advice, may make Regulations, not inconsistent with this Act, prescribing all matters and things 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, including, and in particular, may prescribe;
  - a. for the facilitation and coordination of the trekking businesses on the Kokoda Track; and

- b. in consultation with trekking businesses and landowners, trekking fees and other fees, charges, and levies payable in respect of services rendered, or goods supplied to, or by the Authority; and
  - c. other payments due landowners and community members; and
  - d. the facilitation and coordination of the activities of churches and non-government organizations on the Kokoda Track; and
  - e. the facilitation and coordination of scientific research on the Kokoda ~~Track~~ Trail; and
  - f. provisions for offenses against the Act, the penalties fines, and imprisonment for which should be consistent with the Act and the jurisdiction of the Village Court, under the *Village Court Act*, or of the District Court under the *District Court Act*, and penalties for indictable offences to reflect penalties similar to other modern environment laws, such as the *Maritime Zones Act*, or the *Environment Act*, as the case maybe.
- 2) Until such times as the Regulations are promulgated, the Chief Executive Officer may make general orders consistent with the Act for;
- a. the promotion of the rights of the women and children of the Kokoda Track; and
  - b. the facilitation and coordination of the business of the Kokoda Track, and the business of trekking companies; and
  - c. the health safety and welfare of Kokoda Track workers and porters including;
    - i. retirement age; and
    - ii. pensions and National Provident Fund; and
    - iii. the health and safety of porters, including limits to the weights of the loads that porters carry; and
    - iv. workers compensation, public liability insurances; and
    - v. without limitation, the promotion of workers associations and trade unions on the Kokoda Track; and
  - d. the setting of fees and charges; and
  - e. a one-stop facilitation centre for non-government organizations, and scientific research on the Kokoda Track.\

## **SCHEDULE 1**

### section 6

## INDEPENDENT STATE OF PAPUA NEW GUINEA *KOKODA TRACK MANAGEMENT AUTHORITY ACT*

### **FORMAL NOTICE OF CONSULTATION**

To *(insert name the officer and government body to which the Notice is addressed)*

The Authority wishes to enter into a genuine consultation process with you on proposals associated with the management of the Kokoda Track in accordance with section XX of the *Kokoda Track Management Act*.

This formal notice of consultation is evidence that the Authority is consulting with you on its proposal to *(herein state what is proposed)*

The officer of the Authority charged with this consultation is *(insert name the officer)* who may be contacted on *(provide telephone numbers, email address, postal address)*.

The Authority wishes to fully cooperate with all other levels of government and accordingly we request that you initially contact us by either telephone or email, to enable the consultation to proceed.



Dated this *(insert day, month and year)*

signed for/by the CEO of the Authority.\

## **SCHEDULE 2**

section 13(1)

### **INDEPENDENT STATE OF PAPUA NEW GUINEA KOKODA TRACK MANAGEMENT AUTHORITY ACT**

#### **DECLARATION**

#### **THE COORDINATES AND BOUNDARIES OF THE KOKODA TRACK**

1. The coordinates for the Kokoda Track are shown at Schedule 1 to this Schedule.
2. A map of the Kokoda Track is shown at Schedule 2 of this Schedule.

Dated this *(insert day, month and year)*

Signed

(MINISTER)

#### **Schedule 1**

The coordinates for the boundary of the Kokoda Track are; *(insert list of coordinates)*

#### **Schedule 2**

Sketch map showing the approximate location and size of the Kokoda Track the subject of this Declaration hereunder:

*(attach map)*

### **SCHEDULE 3**

section 47(1) (2)

INDEPENDENT STATE OF PAPUA NEW GUINEA  
*KOKODA TRACK MANAGEMENT AUTHORITY ACT*

DECLARATION

**THE COORDINATES AND BOUNDARIES OF THE KOKODA TRACK TRAIL  
PROTECTED AREA**

1. The coordinates for the Kokoda Track Protected Area are shown at Schedule 1 to this Schedule,
2. A map of the Kokoda Track Protected Area is shown at Schedule 2 of this Schedule

Dated this *(insert day, month and year)*

Signed

(MINISTER FOR ENVIRONMENT AND CONSERVATION)

#### **Schedule 1**

The coordinates for the Kokoda Track Protected Area are: *(insert list of coordinates)*

#### **Schedule 2**

Sketch map showing the approximate location and size of the Kokoda Track Protected Area the subject of this Declaration hereunder:

*(attach map)*

### **SCHEDULE 4**

section 41(1)

INDEPENDENT STATE OF PAPUA NEW GUINEA  
KOKODA TRACK MANAGEMENT AUTHORITY ACT

**FREE PRIOR INFORMED CONSENT**

- 1) “free prior informed consent” includes;
  - a. the provision to a person of information necessary to make an autonomous decision; and
  - b. a person having adequate comprehension of the information provided; and
  - c. any consent to be written in lay language suited for the comprehension skills of the general population of the area; and
  - d. the capacity and ability of a person to both understand the information provided and form a reasonable judgment based on the potential consequences of any decision made by the person; and
  - e. voluntariness and a person’s right to freely exercise any decision-making without being subjected to external pressure such as coercion, manipulation, or undue influence; and the

person having access to independent advice, including where any agreement touches land, land rights in custom or law, the advice of a qualified legal practitioner;

- 2) In the Kokoda Track and or Kokoda Track Protected Area, where a transaction or agreement touches land registered under the *Lands Registration Act*, all the parties shall be represented by a qualified legal practitioner.
- 3) In a protected area, where a transaction or agreement touches land registered under the *Lands Registration Act*, the property of an Incorporated Land Group, the Chief Executive Officer may fix an amount at no more than K5,000, CPI adjusted from the date of the effect of these Regulations as payment to a legal practitioner chosen by the Incorporated Land Group, and such an amount as fixed shall be payable from funds available to, or sourced through, the Authority.
- 4) In the Kokoda Track or Kokoda Track Protected Area where a transaction or agreement touches customary land and customary land owners, on the one part, and the Authority and government bodies on the other part, the Chief Executive Officer may fix an amount at no more than K10,000, CPI adjusted from the date of the effect of these Regulations, as payment to a legal practitioner chosen by the customary landowners, and such an amount as fixed shall be payable from funds available to, or sourced through, the Authority.
- 5) Where the exigencies of the transaction may involve a greater sum owing to the complexity of the legal matters in the transaction, the remoteness of the location, access, and difficulty in obtaining instructions by a qualified legal practitioner, the Chief Executive Officer may increase the amount payable by an amount that in the opinion of the Chief Executive Officer, is a reasonable amount.
- 6) Where the subject matter of a Conservation and Benefits Sharing Agreement is valued at less than K500,000, CPI adjusted from the date of the effect of these Regulations, per year it may be concluded with customary landowners providing there is free prior informed consent, and the Chief Executive Officer shall certify there is free prior informed consent in writing.
- 7) Where the subject matter of a Conservation and Benefits Sharing Agreement is valued in excess of K500,000 CPI adjusted from the date of the effect of these Regulations, per year it shall be concluded with customary landowners who are advised by a qualified legal practitioner.
- 8) The Chief Executive Officer may fix an amount at no more than K10,000, CPI adjusted from the date of the effect of these Regulations, as payment to a legal practitioner chosen by the customary landowners, to advise them on a Conservation and Benefits Agreement, valued in excess of K500,000 per year, and such an amount as fixed shall be payable from funds available to, or sourced through, the Authority.
- 9) Where the exigencies of the transaction may involve a greater sum owing to the complexity of the legal matters in the transaction, the remoteness of the location, access, and difficulty in obtaining instructions by a qualified legal practitioner, the Chief Executive Officer may increase the amount payable to a reasonable amount.

## SCHEDULE 5

### section 2

#### INDEPENDENT STATE OF PAPUA NEW GUINEA KOKODA TRACK MANAGEMENT AUTHORITY ACT

#### **"Kokoda Initiative Master Plan on the Owen Stanley Ranges, Brown River Catchment and the Kokoda Track"**

means the report, cited and referred to as Government of Papua New Guinea, *Kokoda Initiative Master Plan Final Report 2015 on the Owen Stanley Ranges, Brown River Catchment and the Kokoda Track*, TRIP Consultants, [www.tripconsultants.co](http://www.tripconsultants.co) Port Moresby, August 2015.

The 'Kokoda Initiative Master Plan' developed by Australian consultants should be revoked as it did not consult with TRCs insitu across the Trail and did not include 'commemoration' as a major pillar of the plan.

## SCHEDULE 6.

Act, Sections 9(2), 45(2), 46

#### INDEPENDENT STATE OF PAPUA NEW GUINEA KOKODA TRACK MANAGEMENT AUTHORITY ACT **AGREEMENTS, GOVERNMENT BODIES, STAKEHOLDERS.**

#### **DEED**

This Deed between the Kokoda Track Management Authority and the xyz Government body, or stakeholder sets out the covenants of the Parties that will promote the governance of the Kokoda Track / Kokoda Track Protected Area in accordance with the *Kokoda Track Management Authority Act*.

#### **1. THE BINDING NATURE OF THE DEED**

- 1) This Deed is binding in law and shall be recognized by all courts.

#### **2. THE PARTIES**

- 1) The Parties to this Deed are as set out in Schedule 1 to this Deed.

#### **3. THE LAND**

- 1) The land referred to in this Deed is described in Schedule 2 to this Deed. *(delete as necessary)*

#### **4. THE DURATION OF THE DEED**

- 1) The duration of the Deed shall be for the period described in Schedule 3 to this Deed.

#### **5. THE COVENANTS**

#### **The Covenants of both Parties**

- 1) **Cooperation:** Parties covenant to use their best endeavors to abide by the terms of this deed, to consult one another, to work cooperatively to promote the Protected Area in accordance with the spirit and the letter of the *Kokoda Track Management Authority Act* and the law.
- 2) **Account for monies:** The Parties covenant to abide by all laws affecting the custody of monies and property, accounting, financing, borrowing and lending.

- 3) **Reporting:** The Parties covenant to abide by all obligations under the *Kokoda Track Management Authority Act* and Regulations relating to their obligations to report, and reporting for Protected Areas.

#### **The Covenants of the Authority**

*(insert as relevant)*

#### **The Covenants of the xyz Government body, or stakeholder**

*(insert as relevant)*

- 4) **Support by the xyz Government body, or stakeholder:** The xyz Government body, or stakeholder will recognize, and within the limits of its resources, support and promote, the Kokoda Track /Kokoda Track Protected Area.
- 5) **Reasonable advice given to xyz Government body, or stakeholder**
  - a. The xyz Government body, or stakeholder will abide by any reasonable advice given, whether legal, technical, financial, or administrative, given to it by the Authority in respect of Kokoda Track /Kokoda Track Protected Areas and not unreasonably reject such advice from the Authority.
- 6) Other covenants of the xyz Government body, or stakeholder

### **6. DISPUTE RESOLUTION**

- 1) The Parties will cooperate in all dealings, negotiations, and in any dispute resolution, with each other, government bodies or other stakeholders.
- 2) In the event of a dispute between the Parties they are bound follow this dispute resolution procedure.
- 3) The Parties acknowledge where a dispute arises as to interests in customary land or the position of boundaries of customary land, the dispute shall be settled as provided for by the *Land Disputes Settlement Act*.

### **7. DISPUTE RESOLUTION PROCEDURE**

- 1) The Parties will follow four steps in the resolution of any dispute;
  - a. the notification of a dispute; and
  - b. informal discussions between the Parties to settle the dispute; and
  - c. mediation; and
  - d. arbitration.

### **8. NOTIFICATION OF DISPUTE**

- 1) A Party aggrieved of a decision or course of action of another party shall notify the other party of the grievance by word of mouth, or by telephone, as soon as the grievance becomes apparent to the aggrieved Party.
- 2) An unreasonable delay in the notification of a grievance may be a breach of the Dispute Resolution Procedure.
- 3) The Parties shall consult each other so as to clarify or define any dispute.
- 4) A Party may then reduce the verbal notification of the dispute to writing.
- 5) Where there is no agreement between the Parties as to the definition of the dispute, or the dispute itself, the Parties shall appoint a mediator.

- 6) Where within 28 days of any notification of a grievance, there is no settlement of the dispute between the Parties, and the Parties jointly do not appoint a mediator for the dispute, a Party may request a senior magistrate in the province where the dispute occurs to appoint a mediator, and the senior magistrate shall appoint a mediator.
- 7) The Authority agrees to pay for such reasonable costs as may arise from the mediation of the dispute.
- 8) The mediator shall mediate the dispute between the Parties.
- 9) The mediator shall reduce to writing;
  - a. any agreement to the settlement of the dispute; and
  - b. the Parties shall sign the agreement.
- 10) Where the mediator is of the opinion that the Parties cannot agree to settle the dispute by mediation, the mediator shall;
  - a. talk with the Parties and such lawyers as the Parties chose, and produce a statement of facts and issues not in dispute, and a statement of facts and issues in dispute, and agreement on the appointment of an arbitrator under the *Arbitration Act*; and
  - b. refer the dispute to arbitration under the *Arbitration Act*; and
  - c. in default of an agreement, or dilatoriness of any Party, under (a), the Managing Director may write a statement of facts and issues not in dispute, and a statement of facts and issues in dispute for arbitration; and
  - d. if there is no agreement between the Parties on the appointment of an arbitrator, an arbitrator shall be appointed by the President of the Law Society of Papua New Guinea.
- 11) The Authority shall under-write the arbitrator's fee and out of pocket expenses such as travel and accommodation costs, but the arbitrator shall apportion such fees and costs in such a manner as shall appear to be just, at the end of the arbitration, including, where it appears reasonable to the arbitrator, costs arising from any breaches of these dispute resolution procedures, and make orders as appropriate as to the apportionment of the costs, and of any debt owing to the Authority arising from this clause.

## **The Schedules**

### **Part 1. - The Parties.**

The parties to this Deed are:

1. The ***Kokoda Track Management Authority***, the First Party; and
2. *(insert name of government body, or stakeholder)* the Second Party.

### **Part 2. - The Land. *(delete as applicable)***

1. The land referred to and described in this Deed is shown herein the Map and described by the coordinates.
2. The Map.
3. The Coordinates.

### **Part 3. - The Duration of the Deed.**

The duration of the Deed is for a period of *(insert number of years)* from the signing of this Deed.

SIGNED AND SEALED this *(insert day, month and year)*



.....

Signed for the ***Kokoda Track Management Authority***

The Seal of the ***Kokoda Track Management Authority***

.....

Signed for the *(insert name of government body, or stakeholder)*

The Seal of the *(insert name of government body, or stakeholder)*

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<sup>i</sup> Traditional Resource Custodians across the Kokoda Trail have been harvesting and nurturing their local environments for generations – they do not need foreign academic advisors in this regard.

<sup>ii</sup> The Kokoda Track Foundation was established and funded by Charlie Lynn who was the Founding Chairman. The objective was to protect the wartime heritage of the Kokoda Trail through the development of a Strategic Plan which was completed and presented to the PNG Prime Minister, Sir Michael Somare, in 2006. Lynn resigned from the Board after this as they wanted to move towards philanthropy rather than our shared military heritage. As a result, they changed their name to 'KTF' and replaced the logo which was based on George Silk's famous photo of the 'fuzzy-wuzzy angel escorting a wounded digger with a butterfly.