



THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS  
THE REPUBLIC OF NAURU

# PROSECUTIONS POLICY

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## Message from the Honourable Minister for Justice and Border Control

**[insert photo]**

I am pleased to present this Prosecution Policy Manual for the Republic of Nauru. The prosecution of offences has broadened into many different activities. The Office of the Director of Public Prosecutions is established under the *Criminal Procedure Act 1972*. Every effort is made to ensure that the Office of the Director of Public Prosecutions operates independently. This Policy instrument is a testament to Nauru's commitment to ensure that not only the rule of law is observed but, every person charged must be tried fairly and justly. The *Constitution of the Republic* provides for equality before the law of all the people.

Our international obligations including the requirements of the Extradition of Fugitive Offenders Act 1973 and Mutual Assistance in Criminal Matters Act 2004, has changed the face of prosecutions in the Republic.

This Policy provides a guide to the prosecutors as well as other legal practitioners on the procedure and process of the Office of the Director of Public Prosecutions from initiating to finalisation of prosecutions.

I acknowledge the effort that has been committed to deriving this instrument which is designed to bring transparency, fairness and effective prosecution. It is the duty of the Republic to ensure that those members of our community who do not comply with the laws must be prosecuted. This Policy is not to override the *Constitution* or any other written law nor should it undermine the current work undertaken by the Office of the Director of Public Prosecutions. In saying so, I encourage the prosecutors to follow the useful guide it provides so that any discrimination in prosecution is avoided. A democratic society, like ours is built on the foundation of an uniform enforcement of laws. This duty is cast on the independent functioning of the Office of the Director of Public Prosecutions.

I look forward to seeing the implementation of this Policy and further development of the Office of the Director of Public Prosecutions in the future.

## Message from the Secretary for Justice and Border Control

**[insert photo]**

It is a privilege that I have been given the opportunity to convey a message on the publication and implementation of the first ever *Prosecution Policy Manual for the Republic of Nauru*.

Under our administrative arrangements, the Office of the Director Of Public Prosecutions is part of the Department of Justice and Border Control. In 2016, the *Criminal Procedure Act 1972* was amended to allow for the establishment of an Office of the Director of Public Prosecutions. It was a fundamental development leading towards bringing greater independence to the Office of the Director Of Public Prosecutions in the performance of its prosecutorial functions. Whilst the administrative supervision is with the Secretary for Justice, the Director of Public Prosecutions is ordinarily given the requisite independence to decide on prosecution of offences.

This Policy instrument is another step towards the development of law in the Republic. Recently, a number of legislative developments were undertaken to ensure that justice is not only done, but is seen to be done. Prosecution is a specialised nature of work. Often, there is criticism as to the decision to or not to prosecute. While prosecutors are not advocates for victims of offences, their role is much wider in that in performing their prosecutorial duties, they represent the people of the Republic. The Police is to ensure that any person contravening the laws are investigated. The investigation process only crystallises into enforcement, where the Office of the Director of Public Prosecutions decides to prosecute.

One of the which the ODPP has always encountered is its own processes. Questions have been raised of its independence and the functions it carries out. This Policy Manual provides an insight of the workings of the Office of the Director of Public Prosecutions. It is a small step but a significant one and I hope to see greater accountability of the Office of the Director of Public Prosecutions and as reciprocation, better satisfaction from the members of the public. This Policy also reinforces the expectations which the Government has for all the prosecutors.

In implementing this Policy, I urge and request all decision makers including the members of the public for their support so that the rule of law is not only maintained but applied uniformly as noted by the Honourable Minister for Justice.

I am confident that the adherence with this Policy Manual by the prosecutors will bring a change in maintaining high quality of prosecution services, a renewed confidence in the people for the maintenance of law and generally in the legal profession.

Tubwa kor.

## **Message from the Director of Public Prosecutions**

It is often emphasized that prosecutors are lawyers for the people, they are gatekeepers of the Criminal Justice System. Equally important is their role as international actors, as it concerns the free flow of 'mutual legal assistance.'

As such, the responsibility of a prosecutor is perched on the peak of every other criminal justice agency within the Criminal Justice System. With that level of responsibility comes its shield, 'independence.' The independence of the Office of the Director of Public Prosecutions is an important element of the rule of law. I am grateful and wish to acknowledge with admiration the recognition by the Government of that important element. For without it, breeds compromise, leading to unfairness which will result in the rule of law being desecrated.

As the Director of Public Prosecutions and a person of foreign origin, I can assert that the office on a day to day basis is functioning absolutely independent of the Executive Legislature or the Judicial Branches of the Government. This manual therefore, manifests that position.

The vision and mission of the ODPP aspires to be a progressive national prosecutions service. The values compliment the vision and mission of the office and no doubt will be the foundation on which the officers will be conducting their daily prosecutorial work.

One of the most important aspects of the duties of a prosecutor is the decision to prosecute. The emphasis is how 'discretion' is exercised based on the merits of a case and not a personal or private opinion of a prosecutor.

This Manual also provides for the manner in which the Office handles victims of crimes. This includes also preparing for trials and daily court handling of matters involving domestic violence, sexual offences, economic crimes and other related matters.

The Manual also introduces a Code of Conduct for prosecutors in the Republic. This Code of Conduct is aligned to the International Association of Prosecutors.

A Manual of this nature in my view will set a guide for future but more so important to provide literature for all domestic and international community on the independent operations of the Republic's Office of the Director of Public Prosecutions. It is my humble plea to all the prosecutors who will venture through this Office now and in future to use this Manual to enhance prosecution so that the community is protected from crime.

**Ronald Bei Talasasa Jr**

**Director of Public Prosecutions**

## **PURPOSE OF POLICY**

The purpose of the Policy is to:-

- provide a guideline for the prosecution of criminal cases in the Republic;
- assist officers in the Office of the Director of Public Prosecutions in the performance of their prosecutorial functions and duties;
- promote uniformity, consistency and fairness in the prosecution of criminal cases;
- provide a broad guideline to the prosecuting officers for exercising their discretion for the purposes of prosecution;
- provide timely and efficient resolution of prosecutions; and
- provide transparency to the public in the workings of the Office of the Director of Public Prosecutions.

## OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

The Office of the Director of Public Prosecutions is established<sup>1</sup> under the *Criminal Procedure Act 1972*. The Director of Public Prosecutions is the Head of the Prosecutions Section within the Department of Justice and Border Control. The Director reports administratively to the Secretary for Justice and Border Control to the exclusion of the independent prosecutorial functions. The Director may where necessary delegate the prosecutorial functions to other public officers [barrister and solicitor, pleader or police officer]<sup>2</sup>.

### Duties and Responsibilities of a Prosecutor

The duties and responsibilities of a prosecutor are as follows:

- a prosecutor has the duty to ensure that the person who is prosecuted is based on the evidence produced by the police and the witnesses.
- a prosecutor at all times must act in the public interest;
- a prosecutor at all times maintain his or her independence at every stage of the prosecution process commencing from preliminary assessment of the information provided to the final appellate court;
- a prosecutor must be fair and objective and not be influenced by nationality, ethnicity, citizenship, gender, religious beliefs, political views or other associated matters;
- a prosecutor must review the evidence in accordance with applicable law when providing any advice;
- a prosecutor must treat victims of crimes with courtesy, respect and dignity;
- a prosecutor must maintain confidentiality and privacy of any information gathered or acquired which shall remain private and confidential of the victims of crime, witnesses or investigation;
- a prosecutor must not secure a conviction at any cost but present credible evidence fairly and to the best of his or her ability.

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<sup>1</sup> Section 45 CPA 1972 “The President shall appoint a public officer to be the Director of Public Prosecutions and such Director of Public Prosecutions shall be responsible for the representation of the Republic in criminal proceedings before the Courts. He shall be *ex officio* a public prosecutor.”

<sup>2</sup>Section 48 of the Criminal Procedure Act 1972



## **PROSECUTION VISION, MISSION AND VALUES**

### **1.1 Vision**

*Our vision is:*

A progressive national prosecutions service for effective enforcement and maintenance of law in the community through the criminal justice system.

### **1.2 Mission**

*Our mission is:*

- (a) practising fair and responsible prosecution in collaboration with other stakeholders in the criminal justice system;
- (b) maintaining peace and promote safety and security in the community by effective criminal prosecution; and
- (c) recruiting, retaining and training impartial and competent prosecutors for ensuring the integrity of prosecution.

### **1.3 Values**

*Our values are:*

- (a) upholding the rule of law;
- (b) to honour the fundamental human rights of all persons;
- (c) to recognise the diversity of the community;
- (d) to be fair, transparent and accountable;
- (e) maintain, instil and retain public confidence in the prosecution service;
- (f) to avoid impropriety or of impropriety to portray any semblance of biasness, favouritism or partiality;
- (g) not to use the prestige or position of a prosecutor for personal gain or advantage;
- (h) uphold the code of ethics of prosecutions; and
- (i) carry out the functions consistently, objectively and without fear, favour or prejudice.

## DECISION TO PROSECUTE

(1) The decision to prosecute any offence under the written laws of the Republic of Nauru is based on the following factors:

- (a) availability of *prima facie evidence* to establish each element of the alleged offence;
- (b) evaluation of the evidence to establish whether there is any reasonable prospect of a successful prosecution which requires:-
  - the relative strength of the admissible evidence;
  - the availability of credible, competent and compellable witnesses;
  - witnesses who are intellectually challenged are able to tender evidence for the purposes of prosecutions;
  - consideration of minor witnesses and their capability to give evidence;
  - any conflicting statements by a material witness;
  - the confession statement of the accused person capable of supported by objective evidence;
  - the reliability and strength of any identification evidence;
  - strict liability offences must be prosecuted;
  - the directions of the court in respect of certain offences or nature of evidence;
  - any possible defence that may be available to the accused; and
  - any statutory, administrative and policy requirements or restrictions;
- (c) whether or not the matter should proceed in the *public interest*, which may include the consideration of the following matters:-
  - the age, physical and mental capacity of the alleged offender or victim;
  - the alleged offender's antecedent;

- whether the offence was premeditated or in pursuit of an organised crime;
- the person was in the position of authority or trust which amounts to abuse of office;
- the use of weapon or other actions to incite fear, threat or restlessness in the community;
- any element of ;
- any information of coercion or threat used against the suspect in the alleged context of the offence;
- delay and prejudicial effects or impacts on prosecution or accused;
- the possibilities of resolving issues in other forms of proceedings;
- the prevalence of the nature of offence;
- deterrence of commission of criminal offences in the community;
- the conduct of the victim after reporting the matter to the Police and before charges are filed;
- the co-operation of the suspect in with the authorities in the investigation;
- vulnerability of the victims of crime;
- maintaining the rule of law and public confidence in the criminal justice system;
- likely length and expense of a trial having regard to the seriousness of the offence;
- the prospect of prosecution exposing confidential informants or national security at risk.

(d) The length of delay from the time of the commission of offence is a factor which must be taken into account by considering the following factors:-

- the delay was caused by the suspect;
- real and serious risk of an unfair trial;

- complex nature of investigation causing delay;
- the late revealing or coming to light of offences committed;
- the reason for the late reporting of the offence considering the age, relationship or vulnerability of the victim;
- the conduct of the suspect in admitting the offence;
- the prejudice of the trial being conducted due to the delay; and
- the availability of witnesses.

### *Determining charges*

(2) In determining the charges which may be laid against an accused person, a prosecutor has to consider a number of factors. When an offence is committed, it is recognised that it may: -

- (a) contravene many different provisions of one particular statute;
- (b) contravene a number of other statutes;
- (c) constitute a number of different offences or varying degrees of seriousness.

Therefore, it is important for a prosecutor to appropriately evaluate evidence including the applicable laws in considering the charge. In doing so a prosecutor must take the following into account:-

- where the particular conduct constitutes various alleged offences under the same or different statutes, multiplicity of charges is a factor to be taken into account together with any alternative lesser offences or the court convicting an accused person for the lesser offence;
- the seriousness of the charge and the consequent penalty.
- priority must be given to the specialised nature of the offence under a specific statute.
- the preference for the charge must adequately reflect the essential and overall criminality of the alleged offender's conduct.

- every charge must be considered based on the availability of evidence.
- where a large number of persons are to be charged<sup>3</sup>, prosecution must consider the circumstances and chain of events occurring at the same transaction, whether there is a need for a joint or separate trial.
- A charge filed in the District Court is usually referred to as a "Charge" whereas in the Supreme Court, it is called or referred to as the "Information." The Information is filed by the prosecutions after the matter is transferred to the Supreme Court.
- Once a person or suspect has been charged, he is called or referred to as "the accused."
- in considering the charge a prosecutor must take in account that the case is presented in a clear and coherent manner.
- In case of a charge of conspiracy, preference should be given to substantive charge and there is reliable evidence to support the charge to avoid a lengthy, complex and often running a trial with hostile witnesses.

### ***Nolle Prosequi and Withdrawal of Charges***

The Director of Public Prosecutions has the exclusive power to enter a *Nolle Prosequi* on any criminal proceeding<sup>4</sup>. *Nolle Prosequi* has the effect of discontinuing a criminal proceeding which will entitle the accused to be discharged of any charge and if remanded, to be released from custody forthwith. <sup>5</sup>Upon given consent by the Director of Public Prosecutions, a charge maybe withdrawn under Sections 153 or 46 (1) of the Criminal Procedure Act 1972 in the District Court and Supreme Court respectively.

As a general rule, the ODPP is not obliged to publish or provide any reason for its decision not to prosecute. However, the Director in his or her own discretion may inform or advice the reason to enter a *Nolle Prosequi* to:-

- (a) the victim or the complainant;
- (b) the Police;
- (c) the Parliament; or
- (d) any other relevant authority or where required by any written law.

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<sup>3</sup>Section 92 of the *Criminal Procedure Act 1972*

<sup>4</sup>Section 46(1), of the *Criminal Procedure Act 1972*

<sup>5</sup>Section 46(2), *Ibid*

***No requirement to publish reasons for not prosecuting***

The ODPP must not provide reasons for *Nolle Prosequi* in one or more of the following cases:-

- (a) threaten or compromise the national, economic or social security of the Republic;
- (b) impede the investigation of an alleged offence;
- (c) prejudice any ongoing prosecutions or proceedings; or,
- (d) the life, liberty and well-being of the accused person, victim, witnesses, police officers or any other relevant stakeholders.

## BAIL OR REMAND

The presumption in favour of the granting of bail is consistent with the constitutional requirements of ensuring that the right to liberty of any person is not unduly constraint. The Constitution allows for curtailing such a right of a person under a lawful authority. The Bail Act 2018 provides for the provisions of bail. The three classes of bail are as follows:-

- (a) general presumption in favour of the granting of bail;
- (b) statutory limitations in instances where bail is not allowed<sup>6</sup>; and,
- (c) statutory justification where bail is necessary in exceptional circumstances<sup>7</sup> involving identifiable or prevalent offences.

The ODPP may seek an order for remand in the following circumstances:-

- safety and interests of the accused person;
- where the accused person is likely to abscond or not surrender to the custody of the court;
- likely interference with an ongoing investigation or with witnesses;
- a frequent offender;
- sexual offences;
- assaulting or harming a police officer;
- public interest and the protection of the community; or
- where the presumption of bail is displaced; or
- where no exceptional circumstance exists.

The following factors must be considered in case of an arrest or detention beyond a period of 24 hours as required by *Article 5(3)*<sup>8</sup> of the *Constitution*:-

- that existing evidence has strongly shown that the defendant may have committed or is charged with murder, treason, or contempt of court;

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<sup>6</sup> Section 4A, *Bail (Amendment) Act 2020*

<sup>7</sup> Section 4B, *Bail (Amendment) Act 2020*

<sup>8</sup>Art. 5 (3.) “A person who has been arrested or detained in the circumstances referred to in paragraph (c) of clause (1.) of this Article and has not been released shall be brought before a judge or some other person holding judicial office within a period of twenty-four hours after the arrest or detention and shall not be further held in custody in connexion with that offence except by order of a judge or some other person holding judicial office.”

- the accused has in the past breached a bail undertaking or condition. ....*previously breached a bail undertaking or bail condition;*
- the accused is incapacitated either by use of drugs, intoxication or injury whether caused by someone else or caused by him or herself;
- the defendant needs protection from possible retaliation;
- *is a fugitive offender arrested under the Extradition Act 1973, Mutual Legal Assistance in Criminal Matters Act 2004 or Counter Terrorism and Transnational Crime Act 2004; or*
- *has been convicted and has appealed against conviction.*<sup>9</sup>

### ***Bail pending appeal (when offender is appealing against sentence)***

When the offender is sentenced by court and applies for bail pending appeal against sentence, the ODPP should immediately deal with the question of bail by reviewing its position and consider whether or not to object to the application for bail.

The prosecuting counsel should fully inform the Director prior to the Director making the consideration of bail.

In considering whether or not to oppose bail, the ODPP must take into account the following:-

- the length of sentence imposed by court and the seriousness of the offence;
- existence or presence of exceptional circumstances;
- relevant provisions in the Bail Act 2018 relating to bail pending appeal;
- impressions or concerns of the police, victim and family

In principle, a person who has been convicted of an offence and has appealed against that conviction does not have an automatic right to bail because the presumption for bail is displaced once he or she is convicted.<sup>10</sup> The Supreme Court has the power to admit a person who has been convicted and sentenced by the District Court and has filed and served a notice of appeal pending the outcome of the appeal with or without any sureties. The time spent on bail pending the appeal is omitted in determining the term of sentence he or she is subjected to.<sup>11</sup>

The Court of Appeal via a single Justice of Appeal has the discretion to grant bail to a person appealing against conviction and sentence from the Supreme Court pending

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<sup>9</sup> Section 4(4) of *Bail Act 2018*

<sup>10</sup> Section 4 (4) (e) of the *Bail Act 2018*

<sup>11</sup> Section 48 of *Supreme Court Act 2018*



the determination of that appeal. Similarly to the Supreme Court, the time spent on bail will not account for the term of sentence that he or she is ordered to serve.<sup>12</sup>

Section 17 (3) of the Bail Act 2018 provides for the considerations in which the both the Supreme Court and Court of Appeal must take into account as to whether or not to grant bail pending appeal. They are:

*(a) the likelihood of success in the appeal;*

*(b) the likely time before the appeal hearing; and*

*(d) the proportion of the original sentence which will have been served by the applicant when the appeal is heard.*

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<sup>12</sup> Section 42 of *Nauru Court of Appeal Act 2018*

## DISCLOSURES

The ODPP recognises the requirement of disclosure in criminal proceedings to ensure a fair and efficient trial and avoiding wrongful convictions. The requirement by section 176, of the Criminal Procedure (Amendment) Act 2020 on disclosures is to be complied with by prosecutors.<sup>13</sup>

As a matter of practice, a plea is not to be taken until the accused person is provided with the available disclosures and has had the opportunity to consider the same for the purposes of the plea.

The following constitutes initial disclosures:-

- (a) copy of charging documents;
- (b) all available witness statements;
- (c) the summary of facts prepared by Police;
- (d) Police's First Information Report;
- (e) caution statement or record of interview of the accused person;
- (f) Police Charge Statement;
- (g) any available documentary exhibits.

The ODPP must provide the following disclosures at least 14 days before the date the Court fixes the trial to commence:-

- list of prosecution witnesses;
- list of persons who gave statements to the Police which the ODPP may not call as witnesses;
- list of exhibits;
- list of items seized with the use of a warrant;
- any records of previous convictions;

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<sup>13</sup>Section 176, Criminal Procedure Amendment Act 2020, "... prosecutions shall provide disclosures to the accused person as soon as practicable after the accused person is charged and appears in court in the first instance."

- list of one or more co-accused who is granted immunity by the President of the Republic of Nauru;
- copies of all reports, diagrams, photographs, maps that are intended to be introduced as evidence as part of prosecution's case;
- additional witness statements;
- any video or audio recording of caution statement;
- copies of any statements or caution interviews of co-accused;
- copies of warrants used in the gathering of evidence.

The ODPP must provide any disclosure which is intended to be used for prosecution and is obtained after the criminal proceeding is fixed for trial, to the accused person or his or her counsel for the following reasons:-

- for fairness, no later than 14 days before the commencement of a trial; or
- in any case of a period less than 14 days, the prosecution must consent to the trial being adjourned if requested by the accused or his or her counsel to allow him or her to prepare for the defence.

The ODPP may decline to disclose any information to an accused person where the disclosure is likely to:-

- prejudice the maintenance of law, investigation, prevention and detection of other offences;
- prejudice national security or defence of the Republic;
- endanger any personal safety;
- prejudice the international agreements or arrangements of the Republic with other countries;
- be subjected to public interest immunity both on class or content of the documents or discoveries sought;
- tantamount to the contravention of the provisions of the *Official Information Act 1976*;

- relate to legal professional privilege including communication between the prosecutors, witnesses and the investigators;
- internal communication in the ODPP including file notes and communication with Nauru Police Force or witnesses;
- information which the accused person should readily be able to acquire from a third party; or
- any information which the accused person has personal knowledge of including the credibility of any witnesses which the prosecution is not going to call.

The ODPP must not at all times disclose the identity, address, name or any other means of identification of a Police informer or a whistle-blower. The ODPP is under no obligation to provide disclosure of documents or other information, similar to the practice in the civil proceedings, which is in the possession of a third party and is required by the accused person as part of his or her defence or to cross examine prosecution witnesses.

### ***Inducement Statement***

An inducement statement is taken from a person on the basis that the information contained in the statement will be used for the purposes of prosecution of persons other than that of the person making the statement. Where an inducement statement is intended to be obtained, the Police must obtain written approval from the President prior to taking an inducement statement.

The following inducement declaration is to be recorded and signed prior to obtaining any statement:-

*"I, [insert name], of [insert address] make this statement after assurance by [insert name], who informed me that the President has given his or her approval that no information given in it will be used in any criminal proceedings against me in any court in the Republic of Nauru, except in respect of the falsity of my statement or for the purpose of establishing the falsity of evidence given by me as a witness".*

The **President** may provide necessary immunity from self-incrimination resulting from an inducement statement on the condition that such person testifies in court in accordance with his or her statement. The ODPP must ensure that any obtaining of inducement statement is not obtained by payment of any consideration, sum of money or other material benefits other than immunity from prosecution.

## *Immunity from Prosecutions*

The ODPP subscribes to the general rule that the criminal justice system must not function on the requirement of granting immunities and concessions to any person who contravenes the written laws of the Republic. The preference of the ODPP is that witnesses who may need immunity in the first instance, plead guilty to any offences they are charged with but will consent to a discount in the penalty for the purpose of assisting the prosecution of another accused person.

There may be circumstances where the President may grant an absolute immunity from any prosecution provided the person assists in the prosecution in the manner he or she intended or required to.

Factors to consider when recommending and in considering the granting of immunity, the following matters must be considered:-

- the reliability and credibility with or without corroborating evidence of the witness;
- the degree of criminal responsibility (criminality) of the witness;
- probative value of the evidence leading to successful prosecution;
- availability of evidence from equally credible or reliable alternative sources;
- the strength of the prosecution case with or without the evidence;
- the willingness of the witness to give evidence without immunity; or
- the interests of justice.

The ODPP **through the President** will favourably consider granting immunity to witness in cases of transnational Organised Crimes and Money Laundering Offences consistent with the *Doha Declaration: Promoting a culture of Lawfulness*<sup>14</sup>, with the objective of prosecuting the main perpetrators of such crimes and assisting other nations for collation of evidence or prosecution.

For the purposes of granting immunity, the ODPP must comply with the following duties and responsibilities:-

- ensure that the immunity-seeker has obtained legal advice from a legal practitioner before entering into any immunity agreement;

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<sup>14</sup> United Nations Convention against Transnational Organized Crime

- limit his or her contact with the immunity-seeker and never meet this person in private or alone;
- take detailed notes of all meetings with the immunity-seeker and his or her legal practitioner.
- limit exposure to prosecution evidence to which the immunity-seeker will testify or provide information, assistance or cooperation;
- reduce to writing any immunity agreement that is negotiated and ensure that the written agreement is signed by the immunity-seeker and, if applicable, his or her legal practitioner; and
- avoid agreeing to complete immunity from criminal responsibility unless it is absolutely necessary in order to obtain the required testimony, information.

### ***Unrepresented Accused***

An accused person is entitled to represent himself<sup>15</sup> in any criminal cause or matter. Accused person may be required to represent himself in a criminal matter where his choice<sup>16</sup> of counsel is unavailable to do the trial, where he or she declines to engage the services of the Office of the Public Legal Defender or he or she chooses not to have counsel at all.

The ODPP recognises that the court has an overriding duty to ensure that the proceedings are fairly conducted and the prosecutors are to assist the court to do so by acting and responding appropriately during the course of the proceedings.

The ODPP must exercise due care and strike a balance between inconsistent imperatives of fairness when prosecuting a case where the accused is unrepresented by:-

- keeping the accused informed of the prosecution case and the course it takes;
- not to advise the accused on legal issues, evidence, legal defences or how to conduct the defence case; and
- maintain professional relationship with the accused at all times by maintaining sufficient degree of detachment reminding accused person that he or she is not the legal representative of the accused person.

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<sup>15</sup> Article 10 (3)(e) f the Constitution.

<sup>16</sup> *Republic v Batsiua; Republic v Dabwido [2015] NRSC 17; Miscellaneous 77 of 2015, Misc 74 of 2015* (9 December 2015) where the court upheld *Robinson v Queen [1985] AC 956* and also cited from *R V Williams [2007] VCS 2* where King J stated “*Whilst the court can and will do all they can to accommodate counsel of choice for accused persons, it cannot be that they are entitled to select a counsel who will not be available for a lengthy period and thereby compel the Court to adjourn matters that are capable of being heard*”.

Subject to the court's directions, if the prosecutor is to communicate with the accused, the following must be done:-

- ensure that a reliable person is present when meeting with the accused and contemporaneous notes are taken;
- take notes of any communication between the prosecutor and the accused;
- telephone or other voice over the internet communications should be avoided by prosecutors and where required should be made by law enforcement officers; and
- properly record any materials exchanged between the prosecutor and the accused person.

Plea negotiations with an unrepresented accused should:-

- not be initiated by the prosecution;
- be conducted with care; and
- be in the presence of a reliable person and appropriately recorded.

### ***Representations made by or on behalf of an Accused person***

In some instances, Defence counsels make submissions or representations in regards to the following:-

- reduction or withdrawal of the charge in court;
- reconciliation;
- the request for excusing appearance of an accused in court;
- bail; or
- issues regarding witnesses and the trial as a whole.

All request by or on behalf of the accused person must be in writing for the ODPP to consider. The ODPP must expeditiously approach the request on its merit and fairness. All communications from the ODPP must be communicated in writing.

## *Pre-Trial Discussions and Plea Bargaining*

The ODPP must consider pre-trial discussion for plea bargain as a matter of general principle of law that an early guilty plea is a mitigating factor which is taken into consideration for sentencing.

In addition, the other non-exclusive benefits of considering a request for an early plea of guilty by the ODPP are:-

- saving considerable financial costs and resources of court, prosecution and police by not running a trial;
- avoiding the victims giving evidence and being cross-examined to re-live the incidents of the crime especially in criminal cases;
- avoidance of any adverse consequences or impact of giving evidence;
- assisting in prompt and certain resolution of criminal cases;
- offering a structured opportunity to the accused to accept responsibility for his or her criminal culpability; and
- to engage in to an early case management even if the guilty plea is not materialised.

Any plea bargaining must be initiated by or on behalf of the accused person and not the ODPP. Any proposal for changes to any charges by or on behalf of an accused person must not be accepted:-

- unless the proposed charge or charges are appropriate having regard to the nature of criminal conduct of the accused and likely outcome of the case;
- unless there is cogent and reliable evidence to support those charges;
- where the charges or plea will distort the facts disclosed by available evidence and will not result in a proportionate sentence;
- where the accused person maintains his or her innocence including not admitting the summary of facts; or
- unless in case of multiple offences relating to a single incident, the facts relating to the principle or dominant offence is made known to the court.



The ODPP must consider the following as a guideline before deciding to accept the request for a plea of guilty on any one or more counts:-

- the accused person's antecedent report from the court registry as the custodian of records;
- the strength of prosecution case;
- the possible penalty considering the veracity of the principal offence;
- the desirability of prompt and particular resolution of a case;
- the impact on the witnesses if all counts are not disposed-off;
- the prospect of accused assisting in the investigation or prosecution of other cases;
- the recommendations of the Nauru Police Force; and
- the impressions or concerns of the victims.

In plea bargaining, the ODPP is not to:-

- agree to plea of guilty for an offence not disclosed by evidence;
- agree to plea of guilty on the premise that the prosecutor will support a specific sentence; or
- file unnecessary additional charges including more serious ones to coerce in to a plea of guilty.

Once the ODPP has agreed to the terms of the plea, it must not depart from it unless the same was caused by fraud, misrepresentation or a mistaken belief.

## TRIALS

The duty of the ODPP is to prosecute without fear, favour or vindictiveness. In doing so the prosecutor should perform its obligations in a detached and objective manner. The prosecution must disclose information which supports the accused person's case and in case of an unrepresented accused, bring to the attention of the court so that it can be put through as evidence in court where necessary for the defence.

It is an important role of a prosecutor to ensure that obtaining conviction is consequence and not the sole purpose of prosecution. In fulfilling this objective standard, the prosecutor must prosecute vigorously, skilfully and firmly presenting to court the whole of the relevant admissible evidence.

Although the ODPP is required to provide all information to the accused person, the prosecutors must where warranted to rebut the case advanced by or on behalf of the accused.

The ODPP must not advance or argue proposition of facts or law, knowing that the same is inaccurate. Equally, as is a duty on all legal practitioners, the ODPP must provide copies of or citations of the cases which do not support the prosecution case or may assist the accused in his or her case.

The ODPP is under a duty to ensure that a witness who is not intended to be called by the Prosecution, be available in court to testify if the Defence so requests<sup>17</sup> or be made available for cross examination.<sup>18</sup>

The ODPP must take all necessary precaution to ensure that an accused person is provided with all accurate information and the use of such information is justified when the accused person is cross examined as to his or her credibility.

The conduct of prosecutions must be fair, prompt and economical and as such, the ODPP in presenting its case to the Court must take into account the following:-

- the Court is provided with all necessary information, trial or appeal book, preliminary inquiries and submissions of a professional standard which the Court can rely upon;
- the number of witnesses be limited to what is necessary;
- the summing up must be free from any intentional or negligent errors of fact or law.

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<sup>17</sup> DPP v Special Criminal Court (1999) 1 IR 60 where the Court stated *'it is agreed on all sides that where the prosecution has a statement of a person who may be in a position to give material evidence, whom they do not want to call as a witness, they are under a duty to make that person available as a witness for the Defence and in general, to make available any statements that he may have given'*.

<sup>18</sup>Paul O'Regan v DPP & the District Judge MacGruairc (2002) 2 ILRM 68 at pg 73

The interest of justice requires that prosecution must be done expeditiously and where an adjournment is necessary, it must be for a very short period of time.

In the objective and fair presentation of the case, the ODPP must remind itself that it has no clients. A crime is an offence against the people of the Republic of which the victim is one of them. It is the people who come to seek justice through the criminal justice system.

The ODPP must ensure that the needs of the victims including that of witnesses are treated with care and respect. In case where victims or witnesses require, they must be taken to Court to explain to them the various settings and procedures which will be followed in Court to avoid any fear of the Court.

Insofar as practicable and necessary, the ODPP must consult with victims and witnesses before the trial begins ensuring that such meetings are not to brief witnesses on what to testify.

In an objective and fair prosecution, the ODPP is guided by the criminal standard of proof which is one of “*beyond reasonable doubt.*”

At the close of the prosecution case, the court considers whether or not the accused person should be called to his or her defence. The test for this consideration is provided under *Section 201(a) and (b) of the Criminal Procedure Act 1972.*

The test for a no case to answer was settled and a guideline was stated in *The Republic v. John Jeremiah & Renack Mau*<sup>19</sup> as follows:

*‘(1) If there is no evidence to prove an element of the offence alleged to have been committed, the defendant has no case to answer.*

*(2) If the evidence before the court has been so manifestly discredited through cross-examination that no reasonable tribunal could convict upon it, the defendant has no case to answer.*

*(3) If the evidence before the court could be viewed as inherently weak, vague or inconsistent depending on an assessment of the witness’s reliability, the matter should proceed to the next stage of the trial and the submission of no case to answer be dismissed.’*

The test was further affirmed in the case of *Republic v T.R.*<sup>20</sup> Where there is a conviction or acquittal entered by the Court after a trial, the ODPP must refrain from expressing any form

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<sup>19</sup> [2016] NRSC 42; Criminal Appeal Case 119 of 2015 (17 March 2016)

<sup>20</sup> *Republic v TR* [2020] NRSC 36; *Criminal Appeal 1 of 2020* (30 October 2020)

of emotion or argue with the Court on the verdict. This is a part of the prosecutor's role of being objective and fair.

## SENTENCING

The ODPP must draw the attention of the Court to the statutory penalties prescribed by Parliament. In doing so, the prosecution must persuade the Court to distinguish cases in other jurisdictions where the maximum penalties for such offences are lower. The prosecution must ensure that sentencing reflects the sovereignty of the laws as well as the special social and cultural context of the Republic.

The ODPP is not required to vigorously pursue a particular sentence in any case. However, the prosecutor must, at the request of the Court, draw attention to any relevant precedents or matters to which it must consider in imposing appropriate sentence.

It is not appropriate for the prosecution to submit to Court of any bound or range of sentencing<sup>21</sup>. It is the duty of the prosecutor to draw the attention of the Court on any other issues such as confiscation, forfeiture, destruction, disposal, revocations, disqualification, compensation or restitution.

Where an accused person pleads guilty, it is the duty of the ODPP to ensure that the facts presented to the accused person and the Court supports each and every element of the charge. For the purposes of sentencing, the Court must be informed by the ODPP of any cooperation by the accused person with Police and other relevant authorities.

In cases where a more severe sentence may be necessary, it is the duty of the ODPP to present the aggravating factors before the Court.

In mitigation, the accused person may present submissions which may not be wholly accurate. In that case, it is the duty of the Prosecution to bring it to the attention of the accused or any person appearing on behalf of the accused. In the event the defence disagrees with the Prosecution's contention, it is the duty of the Prosecution to bring it to the attention of the Court.

There is no obligation on the part of the ODPP to respond to every single issue of mitigation submitted by the accused person. However, in certain circumstances where the mitigation may not be wholly accurate, the Prosecution may make an application to the Court for the same to be proven by the accused person.

The prosecutor must ensure that any criminal history is current as at the date of sentence and must inform the Court of the accused's criminal history and time spent in custody and other facts which may affect the assessment of sentence, whether mitigating or aggravating in character.

As a guide, in sentencing, the ODPP may assist the Court by:-

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<sup>21</sup>*Barbaro v The Queen; Zirilli v The Queen [2014] HCA 2 (12 February 2014)*

- where appropriate, depending on the facts and circumstances of each case, submit on the starting point or head sentence, totality principle, cumulative or consecutive sentences and other matters that may assist the court in its deliberations.
- informing court of the impact of the crime upon the victim and the community;
- provide assistance on the facts or law as required; and
- refer to relevant official statistics, comparable cases and the sentencing options available.

The ODPP may consider alternative penalties or punishment depending on the offences and other factors stated above. Alternative penalties or punishment such as fines, probation, community service, counselling, and compensation may be drawn from other legislation.

## APPEALS

As a general practice, the Office of the Director of Public Prosecutions must appeal any decision on conviction or sentence, where the Court has made an error of law. This requirement is consistent with the legislative requirements of the *Supreme Court Act 2018* and the *Nauru Court of Appeal Act 2018*, including the *Nauru Court of Appeal Rules 2018*.

The ODPP may appeal on a question of law on the acquittal of a person where:-

- the judgment, decision or order of the trial court erroneously excluded or failed to give sufficient weight on compelling evidence;
- there is a manifest error of law; or
- the matter has sufficient public interest.

The ODPP may appeal a judgment, decision or order:-

- on the leniency of sentence; or
- an error of law.

In considering whether to appeal a judgment, decision or order on leniency of sentence, the ODPP must take into account:-

- (a) the sentence will be increased on appeal where it is manifestly inadequate;
- (b) the increase will take the sentence only to the lower end of the correct available range of sentences for the offence; and
- (c) on an important matter of principle, to modify or establish a particular sentencing guideline for future cases and meeting the objective of deterrence in the community.

A prosecution appeal should be instituted promptly, even where no time limit is imposed by the relevant legislation. Undue delay by the prosecution in the institution of an appeal may render oppressive the substitution of a conviction or an increased sentence.

### ***Re-Trials***

Where a conviction has been quashed on appeal and a re-trial ordered, the prosecutor on appeal should promptly consider whether a re-trial is appropriate or viable. Relevant factors include:-

- why the Court of Appeal allowed a re-trial;
- whether the situation is likely to arise again;
- the attitude of the complainant/victim (but not determinative);
- the seriousness of the offence; and
- the conduct of the accused person.



## VICTIMS

A victim is a person who has suffered direct harm of an unlawful act or conduct. The victim may also include an immediate family member or dependant of the victim.

The prosecutor must:-

- treat a victim according to age, gender, ethnicity, race, language background, disability or other special needs;
- protect the victim's privacy and welfare at all practical times; and
- ensure that a conference be held prior to the victim giving evidence.

Victims should also be informed of:-

- the charges upon which the person has been charged by Police or the charges upon which the person has been committed for trial or sentence;
- the circumstances in which the charges against the defendant may be varied or withdrawn.
- the charges and the details of the place and date of the hearing of the charges;
- the reasons for any decision not to proceed with the charge or to substantially amend the charge or to accept a plea to a substantially lesser charge;
- the details of any bail conditions and any application for variation of any condition that may affect the victim's safety or welfare;
- the outcome of any proceedings, including appeal; and
- the nature of any sentence imposed on the offender.

### ***Victim Impact Statement***

Whenever an accused has been convicted, the prosecutor must prepare or arrange for a Victim Impact Statement immediately. The preparation or arrangement is to be made with the assistance of a police officer or agency assigned to or responsible for completing the statement.

The Victims Impact Statement is then filed in court as soon as the accused is found guilty. The statement is filed together with the sentencing submissions. Where practicable as soon as the prosecutor receives the statement, a copy should be disclosed to the Defence or the accused if he or she is unrepresented.

The Victims Impact statement must not contain information that does not relate to the offence, including unproven allegations.

The following can be added to the Victim Impact Statement<sup>22</sup>:-

- medical report to show further impact of the offending;
- receipts that may show damage to property; or
- other matters that may be important or relevant.

### ***Child Victims of Sexual Offences***

Cases of sexual offences involving child victims are to be prioritized and dealt with efficiently. The prosecutor should take into consideration of the following:-

- age and certain vulnerabilities of the child;
- the nature and seriousness of the offence;
- the relationship between the offender of the victim;
- how the report was made to the Police;
- the involvement of any agencies providing support for the victim; and
- where applicable, the academic schedule of the victim.

The prosecutor should request for an early trial date - avoid any unnecessary adjournments. The Prosecutor must have suitable dates in which the victim is free to give evidence avoiding school examination dates or birthdays when considering fixing a trial date.

### ***Preparation for trial***

The Prosecutor must:-

- introduce him or herself to the victim as soon as the decision is made by the Director to file charges;
- be well acquainted with the victim seeking the guidance of the victims parent or guardian. This is to ensure that the Prosecutor understands the victim's vulnerability and other personal issues;
- follow-up on the child at least 14 days before the trial date, and take the child for court room tour;

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<sup>22</sup> Appendix 4 Victim Impact Statement

- explain to the victim the court process and answer any questions the child may ask. This is to ensure that the prosecutor is able to analyse the credibility and reliability of the victim;
- where there is a change of prosecutor, the prosecutor who was first allocated the case, is to introduce the new prosecutor and explain the reasons for the change;
- the prosecutor must not encourage the child, either directly or indirectly, to give evidence that is untruthful; and
- for the interest of the child, the prosecutor should consider other options in tendering the victim's statement. The child will be present in Court for further questioning by the Prosecutor, Defence Counsel and the Judge.

### *For trial*

The prosecutor should make applications to the court on the following:-

- a closed court;
- a support person to be present and to be seated close to the child witness;
- for the Judge and other members of the court to remove wigs and court robes;
- courtroom to be less formal, where the Judge is to be seated at level with the child and other parties to remain seated even when questioning.<sup>23</sup>

The unrepresented accused should not be permitted to cross-examine the child directly.

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<sup>23</sup> Section 55 (1) of the *Child Protection and Welfare Act 2016* highlights the special requirements applying to court proceedings.

## DOMESTIC VIOLENCE AND FAMILY PROTECTION

At the initial stage, when a matter is reported to the Police, police officers are required to render assistance to the victim or complainant as soon as possible. If necessary, victims may be taken to a safe house to ensure their safety and well-being. In addition Police are to issue safety orders as soon as possible if none exists with conditions to prevent further violence.<sup>24</sup>

Police officers are to investigate at the earliest and where necessary detain the offender. Once investigation is complete, the case file, without delay, is to be forwarded to the ODPP. As soon as a case file is brought to the ODPP, determination of charges shall be done in accordance with this policy and charge(s) are to be filed in court, within 7 days.

Prosecutors must remind themselves that once charges or Information are filed, the matter shall proceed to its completion or finality:

- Not to withdraw a charge or information filed in court or enter a motion of *Nolle Prosequi*;<sup>25</sup>
- Assist the victim concerning the rights illustrated in the Domestic Violence and Family Protection Act 2017; and
- Ensure that the victim is located to a safe place in the community.<sup>26</sup>

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<sup>24</sup>See “Part 3 – Safety Orders” of the *Domestic Violence and Family Protection Act 2017*.

<sup>25</sup> Section 31(c) of the Domestic Violence and Family Protection Act 2017

<sup>26</sup> Section 32 (b) (ii) of the Domestic Violence and Family Protection Act 2017

## WITNESSES

The general principle is that the Prosecution should call competent and compellable witnesses that are relevant to the elements of the offence(s) against the accused.

The prosecutor should:-

- not call witnesses that are repetitious;
- not call witnesses that are believed to be unreliable based on reasonable grounds however mere contradiction will not amount to reasonable ground alone<sup>27</sup>; and
- advise the defence at the earliest practical time of any witness that will not be called and where necessary make that witness available to the defence.

### *Improper Questions*

Once a witness takes the stand, prosecutors should:-

- protect them from hostile, biased or unreasonably repetitive cross examination by raising appropriate objections;
- ensure that the questions or propositions in cross-examination are clear and understandable by the witness;
- pay attention to the overall questioning of vulnerable witnesses such as children or mentally disabled witnesses; and
- understand and properly raise objections to certain lines of cross-examination such as the previous sexual history of a complainant as being irrelevant and inadmissible.

### *Vulnerable Child Witnesses*

Any child witness must be properly prepared and supported prior to and during testimony in court. Attention must be paid to the requirements and support measures available under a written law or other applicable laws such as the use of screens, name suppression, and closing the court during the child's testimony.

The ODPP also supports the approach by which the child may be able to give evidence from a secure place through audio or audio-visual, or any other electronic or digital means of giving evidence.

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<sup>27</sup> See: *Richardson v R* (1974) 131 CLR 116; *R v Apostolides* (1984) 154 CLR 563; *Whitehorn v R* (1983) 152 CLR 657 at 664, 682-683

## ***Vulnerable Adult Witnesses***

Witnesses with special needs, (for example intellectual, physical, sensory or psychiatric disability) must be treated with care and consideration. Special measures such as signers or support persons or the use of screens, closed court and other measures must be done in order to ensure they are comfortable in court.

The ODPP also supports the approach by which the vulnerable adult witness may be able to give evidence from a secure place through audio or audio-visual, or any other electronic or digital means of giving evidence.

## ***Conferences or Witness Proofing***

There is an obligation upon prosecutors to confer with witnesses at the earliest available opportunity before all court hearings. The conference/witness proofing serves the dual purpose of obtaining information from and about witnesses on evidentiary issues and providing relevant information about the proceedings to witnesses.

In sexual offences, complainants should be informed of the requirement to recount in precise detail of the sexual conduct for establishing the elements of the offence.

Conferences/witness proofing should also be conducted for the purpose of informing victims of charge negotiations and to discuss any statement of agreed facts. Victims may wish to have the presence of a support person during a conference/witness proofing. Early conferences/witness proofing enables more effective screening of cases and more accurate disclosure of relevant material.

Prosecutors must ensure that detailed notes are taken during conferences/witness proofing and that conferences/witness proofing is only conducted with an independent observer. The prosecutor must be mindful of potential disclosure requirements arising out of conferences/witness proofing.

## CHILD OFFENDERS

### *Child Offender*

A child offender is a person who is over the age of 10 years but under 18 years of age at the time the alleged offence is committed. The *Child Protection and Welfare Act 2016* makes it clear that child offenders are to receive special treatment from the criminal justice system. This is because it is generally accepted in the international community that early encounters with the criminal justice system can damage the development of a young person, and consequently a prosecution should be regarded as a severe measure to take against a young person.

However, a prosecution for serious offences will not be avoided simply because of the alleged offender's age. For the purposes of this Policy, a serious offence is any of the following:-

- any offence for which the maximum penalty is 3 years imprisonment or more<sup>28</sup>;
- any offence involving use of a weapon against another person; and
- any traffic offence.

Where the alleged offence in question is serious, the decision to prosecute is to be made in accordance with **this policy** but with special regard to be had to the following:-

- the seriousness of the alleged offence;
- the age, apparent maturity and mental capacity of the child offender (including the need, in the case of children under the age of 14, to prove that they knew that what they were doing was wrong and was deserving of punishment);
- the available alternatives to prosecution, and their efficacy;
- the sentencing options available to Courts dealing with young offenders if the prosecution was successful;
- the young offender's family circumstances, particularly whether or not the parents or guardians appear able and prepared to exercise effective discipline and control over the young offender;

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<sup>28</sup> Serious offence is defined under Section 3, Bail Act 2018

- the young offender's antecedents, including the circumstances of any previous dealings with the Police and whether or not a less formal resolution would be inappropriate; and
- whether a prosecution would be harmful or inappropriate, considering the young offender's personality, family and other circumstances.

### ***Child Protection and Welfare Act 2016***

The *Child Protection and Welfare Act 2016* provides special measures for the prosecution of child offenders including:-

- a closed Court;
- child offenders in custody to be separated from adult offenders at Court and while traveling to Court;
- information identifying a child offender is not to be published by the media; and
- a requirement that the Court obtain information about the child offender's background prior to sentencing, including the option of a social welfare report.

It is the duty of all prosecutors to assist the Court in complying with the requirements of the *Child Protection and Welfare Act 2016*. Prosecutors should also draw the Court's attention to the age of any child offender in custody if it is apparent or possible that the Court is not aware of the fact.



## RECONCILIATION

### *Reconciliation*

An accused person cannot avoid prosecution simply because he has paid compensation or participated in reconciliation with the victim. Where defence submissions in mitigation urge substantial leniency for a serious offence on the basis of reconciliation, the prosecutor must consider whether or not there is a need to enquire into the accuracy of the fact of reconciliation asserted. If the prosecutor determines there is a need to inquire, shall inform the Court and obtain a short adjournment to make the necessary inquiries. The prosecutor must then ensure that proper inquiries are made and that the Court is properly informed before passing sentence. This may require cross-examination of witnesses or the calling of evidence from a suitably qualified person.

This is to be distinguished from cases where the complainant and the defendant opt to reconcile after the charge is filed in the District Court.<sup>29</sup>

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<sup>29</sup> Section 123 of the Criminal Procedure Act 1972 promotes reconciliation and settlement in cases involving common assault or offence of a personal or private nature where the offence attracts a penalty less than one-year imprisonment upon conviction.

## **TRAFFIC INFRINGEMENT NOTICES (TIN)**

Like any other laws for the Republic of Nauru, the ODPP plays an important role in ensuring the successful enforcement of the Motor Traffic Act 2014. At this front, the ODPP will work very closely with the Police Traffic Unit to keep track of all traffic matters and to ensure their completion and conclusion within three (3) months of breaches or service of summons to defendants. Without disregarding the importance of other provisions of the Motor Traffic Act 2014, the ODPP must ensure that TIN matters are dealt with expeditiously. Traffic Infringement Notices (TINs) are issued under section 117 of the Motor Traffic Act 2014.

The ODPP will ensure that traffic matters are listed on a fortnightly basis in court and furthermore that committal orders are issued to ensure that fines are collected.

As police officers or the Police Traffic Unit will continue to issue TINS on traffic offenders, the ODPP must ensure that non-compliance of Notices issued by the Police or the Unit, must be dealt with promptly by court. This involves a constant follow up of TINS at the District Court Registry.

## ECONOMIC CRIME AND ASSOCIATED CASES

The ODPP recognises that economic crime is a regional as well as an international issue. Nauru is a member of the U.N Convention Against Corruption. It is the policy of the Office to ensure that the obligations under the Convention are adhered to ensure there is enforcement of the laws relating to such crimes. There is a no drop policy for prosecution of economic crimes.

Therefore, any case that involves an allegation of economic crime must be dealt with promptly and upon conviction, the prosecutor must call for higher penalties.

The Commissioner of Police investigates allegations of economic crime and forwards report to the ODPP. Upon receipt of the report, the Director of Public Prosecutions is to analyse and make a decision as to whether or not to prosecute within 30 days. If further investigation is required, the Director of Public Prosecution is to return the report to the Commissioner of Police.<sup>30</sup>

Upon analysis, there is *prima facie* case, prosecution must be done within 3 months.<sup>31</sup> Refer to this policy regarding determination of charges for economic crime related cases. When determining charges, the prosecutor must take into account particulars relating to unaccounted<sup>32</sup> income or property.

If the Director of Public Prosecutions decides not to prosecute:

- The Ombudsman and the Commissioner of Police is to be notified within 21 days of the decision;
- The President is to be notified if the Ombudsman is the subject of the complaint;
- A notification is to be relayed to the parties involved;
- The reasons for the decision should be published as a notice in the Gazette within 14 days.

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<sup>30</sup> Section 68 (1) (b) of the Leadership Code Act 2016

<sup>31</sup>Section 69 (1) of the Leadership Code Act 2016

<sup>32</sup> Section 51 of the Leadership Code Act 2016

## **MONEY LAUNDERING AND PROCEEDS OF CRIME**

The ODPP recognises that the level of sophistication of crime has increased markedly. There have been numerous instances throughout the world, where criminals are using the financial systems and other means to achieve their criminal objectives. The ODPP will not tolerate such offending. Therefore, any case that is reported and investigated by police, will have to be closely monitored by the ODPP.

The ODPP must consider to apply for restraint order of any tainted property and apply for confiscation of the tainted property after conviction or a pecuniary order against the accused person. The emphasis is on the money trail that “no one should benefit from ill-gotten gains.” Money laundering and the predicate offence will have to be charged, but must be particularised separately in different counts. The determination of charges is the same for every other case, as per Chapter 5. The application for restraining or confiscating tainted property or any pecuniary order should properly identify the property that is alleged to be tainted property;<sup>33</sup>

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<sup>33</sup> Section 11(6)(a) of the Proceeds of Crime Act 2004

## EXTRADITION

The ODPP will always update itself of its International and Regional partnerships and networking. Any matter that requires the subject of proceedings under these laws be dealt with promptly by the ODPP.

The ODPP shall provide all facts, draft the letter of request and send to the Secretary for Justice for finalisation, i.e. determine whether it should be sent to the Minister for Justice.

The current law on extradition is the Extradition Act 1973. It sets out the process for extradition. It should be noted that the Extradition Act 1973, among others, regulates the treatment of persons or a fugitive who is residing in Nauru and is required by another country as well as persons accused of offences committed in Nauru who are returned from another country.<sup>34</sup> The legislation protects against mistreatment of such persons in Nauru when returned from abroad.

Sections 16 and 17 provide for the treatment of persons returned from foreign countries. S 16 restricts proceedings for other offences, i.e. the person is to be dealt with only for the offence for which he was returned. S 17 provides for restoration of persons acquitted or not tried, i.e. if the person returned is not tried within six months of his arrival or on his trial for that offence, he is acquitted, then the Minister shall restore him to the country from which he was returned.

The Republic of Nauru can only seek the return of a person from a foreign country to be prosecuted in Nauru, if the foreign country is a designated country pursuant to s 4(1) of the Act.<sup>35</sup>

The Minister is the contact point on behalf of the Republic of Nauru. Though the ministerial portfolio is not specifically mentioned or defined, it is assumed that it would be the Minister responsible for Immigration.

The Cabinet designates any foreign country for purposes of extradition. That has to be by way of an order published in the Gazette,<sup>36</sup> and to direct that the Act shall have effect in relation to the return of persons to or from a designated country.<sup>37</sup> Any such order made by Cabinet is dependent upon the foreign country having made or agreeing to make substantially similar provisions for the arrest in the foreign country and the return to Nauru of the person who is accused of relevant offences in Nauru.<sup>38</sup>

Descriptions of relevant offences are set out in Schedule 1 of the Act.<sup>39</sup>

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<sup>34</sup>Preamble of the Extradition Act 1973

<sup>35</sup>Extradition Act 1973CHA

<sup>36</sup>S4(1), Extradition Act 1973

<sup>37</sup>S4(2), Extradition Act 1973

<sup>38</sup>S4(2), Extradition Act 1973

<sup>39</sup> Extradition Act 1973

## MUTUAL LEGAL ASSISTANCE

The ODPP holds the view that ‘justice is never cheap.’ On this token, the ODPP will pursue prosecutions even if a witness is not in Nauru, either that:

- a witness is in another country or jurisdiction; or
- a document or article that is required by the ODPP is in a foreign jurisdiction.

The process is regulated by the Mutual Legal Assistance Act 2004.

In that instance, the Director of Public Prosecutions may make a request to the Minister of Justice for assistance to an appropriate authority of a foreign country to arrange for proceeding for the above witness to give evidence or produce document or article in accordance with the law of that foreign country.

The Minister may also request the foreign country for the witness to give evidence or produce a document or article and be cross examined through video or internet link from Nauru by parties to the proceedings and their legal representative. <sup>[3]</sup>Additionally, requests are to be made to the Minister to request a foreign country regarding proceedings for a criminal matter where a thing involved in a serious offence against the laws of Nauru may reasonably be located in that foreign country. <sup>[4]</sup>Moreover, a request can be made to the Minister to authorise the attendance of a competent foreign prisoner who has consented to being removed to Nauru to give evidence. <sup>[5]</sup>

## THE “JUDGES RULES”

While the Judges Rules are not strictly part of the law of England, they nevertheless are an integral part of the process by which that law is applied by the English courts<sup>40</sup>. The Supreme Court in *Benjamin*<sup>41</sup> held, “As the English law of evidence is applied to Nauru by the [Custom and Adopted Laws Act 1971](#), the English Judges Rules should be observed in Nauru.”

In *R v Viosin*<sup>42</sup> [\[1918\] 1 KB 531](#) at 539-540 Lawrence J said,

*'These rules have not the force of law; they are administrative directions the observance of which the police authorities should enforce upon their subordinates as tending to the fair administration of justice. It is important that they should do so, for statements obtained from prisoners, contrary to the spirit of these rules, may be rejected as evidence by the judge presiding at the trial.'*

In so far as the circumstances of Nauru permit, The Judges' Rules should be observed, as is stated in *Benjamin v. The Republic* ;

*“By virtue of section 4 of the Custom and Adopted Laws Act 1971, the law in force in Nauru relating to evidence is the statute law and the common law in force in English on 31st January 1968, except as amended by Nauruan statutes, e.g. the Civil Evidence Act 1972. While the Judges' Rules are not strictly part of the law of England, they nevertheless are an integral part of the process by which that law is applied by the English courts. As such, in the absence of express provision to the contrary in the laws of Nauru, they should be observed here so far as the circumstances of Nauru permit.”* [Emphasis added]

These are Rules of Practice that guide police officers when dealing with suspects or accused persons that are under their authority. These Rules ensure that the right of silence is adhered to. Where the accused person raises a complaint that his rights have been infringed, the admissibility of an admission may be a subject of a Voire Dire.

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<sup>40</sup>*Benjamin v The Republic* [1975] NRSC 1; [1975] Nauru Criminal Cases 44 (1 November 1975)

<sup>41</sup> *Benjamin v Republic*, *ibid*

<sup>42</sup> *R v Viosin*<sup>42</sup> [\[1918\] 1 KB 531](#)

## **PRIVATE PROSECUTIONS**

The ODPP may take over a matter pursuant to Section 49 of the Criminal Procedure Act 1972. Although the right of an individual to prosecute exists, the object of having a Director of Public Prosecutions is to ensure integrity, neutrality and consistency in the making of prosecutorial decisions and the conduct of prosecutions.



## GLOSSARY OF TERMS

### Interpretation

**‘Arraignment’** means where an accused person first appears in court being called upon to plead, be entitled to have the indictment on which he is to be tried read over to him, if he so requires;

**‘Charge’** includes information where appropriate;

**“Money laundering”** as defined in section 2 of the Anti-Money Laundering Act 2008

“(among others, the concealment of the origins of illegally obtained money, typically by means of transfers involving foreign banks or legitimate businesses).”

**“ODPP”** refers to the Office of the Director of Public Prosecutions

**President** means the President for the Republic of Nauru;

**Proceeds of crime** as defined in section 2 of the Anti-Money Laundering Act 2008

“(among others, is the term given to money or assets gained by **criminals** during the course of their **criminal** activity. The ODPP, have powers to seek to confiscate these assets so that **crime** doesn't pay).”

**“Suspect”** is a person who may or may not have been arrested but not yet charged.

**“Trial Book”** is the Trial folder or Litigation File of a prosecutor

**“the Director”** unless otherwise stated, this refers to the Director of Public Prosecutions

**“Voire Dire”** means a trial within a trial in which the court determines the admissibility of a document or other form of evidence that the prosecutions wish to have admitted as part of their case

**‘Vulnerable witness’** as described under Clause 9.3 and 9.4 is a witness who is either a child or woman

**“Witness proofing”** is to have a conference with a witness, to ascertain from the witness if the witness has made a statement to police and to confirm the statement or the contents of it or other documents, such as sketches, diagrams, photographs, etc.

# APPENDIX 1



## REPUBLIC OF NAURU

### CODE OF ETHICS FOR PROSECUTORS

#### 1. Basic Prosecutorial Standards

Prosecutors shall at all times:

- (a) exercise their duties in the spirit and intent of the *Constitution*, international obligations and the written laws;
- (b) exercise their duties honourably, independently and ethically to increase the public trust and confidence in the role and functions of the Prosecution's office;
- (c) respect and enforce the rule of law by respecting and guaranteeing human rights and integrity;
- (d) act with diligence in relation to the performance of their duties respecting the rights and obligations of other stakeholders;
- (e) maintain the highest standards of professional conduct in the preparation and presentation of a case;
- (f) respect the rights and freedoms of the victims, witnesses, accused persons, convicts and police officers;
- (g) demonstrate high moral and professional values and upholding the dignity and reputation of the Prosecution Office;
- (h) restrain from expressing publicly any personal opinions in respect of any judicial officers, witnesses and those persons who are tried except what is lawfully required as part of carrying out prosecutorial duties;
- (i) act in such manner even in respect of his or her personal activities to avoid interference or judgment of his or her independence;
- (j) be able to establish a balance between general interest of the society and the rights of any other individual in executing prosecutorial duties;

- (k) devote sufficient time and resources to the timely and effective prosecution and professional development through up keeping of relevant legal and jurisprudence in the criminal justice system; and
- (l) avoid any form of conflict of interest in carrying out the duties of the office.

## **2. Independent and impartial**

Prosecutors in the independent and impartial exercise of the functions of the office shall:

- (a) not only be impartial, but seen to be or perceived in the public to be impartial;
- (b) respect the presumption of innocence in a criminal proceeding;
- (c) hold him or herself above any cultural prejudice which may influence the appreciation or understanding of the evidence as well as the interpretation and the application of the law;
- (d) respect the rights of all persons irrespective of political, ethnic, social, cultural or religious affiliation, gender, sexual orientation, age, status, physical or mental disability; and
- (e) avoid any improper or unlawful attempts by any person to influence the decision making process.

## **3. Competence**

Prosecutors in the exercise of their competence with highest professional standards shall:

- (a) conduct with patience, courtesy, efficiency and avoiding conflict of interest;
- (b) proceed decisively based on evidence beyond all reasonable doubts and the supplementing law;
- (c) exercise their functions of the office objectively, with fairness balancing with the considerations of the public interest in the criminal justice system;
- (d) respect the principles of equality by providing an opportunity to those charged with all the evidence in accordance with the law; and
- (e) ensure that the prosecutions of matters be done expediently as possible in accordance with the interest of justice.

#### **4. Confidentiality**

Prosecutors shall:

- (a) respect and take all necessary care with the receipt of confidential information in accordance with the requirements of the law;
- (b) not reveal any information classified as confidential including the identity of protected victims, informers and witnesses;
- (c) not use any confidential information for his or her personal interest or gain;
- (d) not provide to others nor receive from their colleagues information pertaining to investigation except where it is part of the work.

#### **5. Communications on social or mass media**

Prosecutors shall:

- (a) not knowingly make statement on social or mass media which are false or defamatory including confidential information pertaining person involved in a proceedings;
- (b) not knowingly publish or submit any material in relation to a proceedings to the court or any lawful tribunal which is:
  - (i) false and defamatory;
  - (ii) prejudicial or has tendency to prejudice any proceedings;
  - (iii) brings or intends to bring proceedings into disrepute;
- (c) exercise discretion in the administration of information relating to victims, witnesses or accused persons by not giving access to anyone except as required by law.
- (d) refer any request for statements on social or mass media to the Secretary of Justice through the Director of Public Prosecutions.

#### **6. Integrity**

Prosecutors, in the exercise of their functions with integrity and correctness shall at all times:

- (a) use the means provided to them as part of their job to their institutional destination and be conscious of their use;
- (b) not use for personal reason, seized or confiscated items that are not in the ownership of prosecution;

- (c) respect the laws and comply with the directions of the law enforcement bodies; and
- (d) dress appropriately and formally so that they are presentable during working hours.

## **7. Relationship with persons engaged in criminal proceedings**

Prosecutors shall:

- (a) respect the independence and impartiality of judicial officers regardless of their personal convictions;
- (b) be objective and correct during the judicial procedures and assist the Court with the administration of the criminal justice system;
- (c) in respect of the police:
  - (i) encourage proper and functional cooperation;
  - (ii) mutually exchange experiences and legal knowledge;
  - (iii) ensure transparent communication without impairing the investigations;
  - (iv) issue clear advice or directions to assist the police with carrying out the duties for the purposes of efficiency;
  - (v) establish an appropriate relationship based on mutual trust, confidentiality and reciprocity.
- (d) in respect of accused persons and witnesses, the prosecutors shall:
  - (i) perform duties with fairness, impartiality, objectively and efficiently;
  - (ii) respect human dignity and personality;
  - (iii) always being mindful of the duty to lay before the court relevant facts even if it favours the accused person.

## **8. Relationship with superiors, subordinates and colleagues**

(a) Prosecutors in relation to the administration shall:

- (i) be honest, frank and express opinions independently;
- (ii) provide accurate information, reports, case briefs in respect of any proceedings;

(b) Prosecutors in relation to their colleagues shall:

- (i) show respect;
- (ii) not speak or act in a manner as to violate the personality and dignity of others;
- (iii) share information and experiences without influencing the decision making of colleagues in actual cases;

(c) Prosecutors in relation to their subordinates shall:

- (i) show respect, consideration and fairness;
- (ii) cooperate with and provide information to and access;
- (iii) assist in advancing personal and professional development;
- (iv) not influence or pressure the subordinates to undertake any work which is contrary to the *Code of Ethics*.

## **9. Prohibition on receiving gifts or benefits**

Prosecutors shall not:

- (a) use their office for personal gain or privileges for themselves or other individuals;
- (b) make procedural or professional decisions influenced by political preferences or financial interest of themselves, family members, friends and third parties;
- (c) directly or indirectly receive any gifts, favours, promises or professional treatment from any person including the high ranking officers receiving the same from subordinate prosecutors;
- (d) permit their names to be used by others for improper purpose or gain; and
- (e) exercise any influence towards any persons involved in the evaluation, assessment and decision making in respect of the prosecutors' work or promotion.

## **10. Co-operation (adopted from the IAP Standards)**

In order to ensure the fairness and effectiveness of prosecutions, prosecutors shall: cooperate with the police, the courts, the legal profession, defence counsel, public defenders and other government agencies, whether nationally or internationally; and render assistance to the prosecution services and colleagues of other jurisdictions, in accordance with the law and in a spirit of mutual cooperation.

## APPENDIX 2

### INVESTIGATION, CAUTION STATEMENT AND RECORD OF INTERVIEW (JUDGES' RULES)

It is the responsibility of the Nauru Police Force to investigate crime. The investigation officer collects information, obtaining statements from potential witnesses; requesting and receiving medical reports; taking pictures, drafting sketches and conducting records of interview or obtaining caution statements.

At the conclusion of an investigation or at any stage where the evidence collected warrants that the suspect be arrested, an arrest may be made. It is important that members of the Nauru Police Force as well as the ODPP are familiar with the Judges' Rules.

The Investigation Officer must always ensure that he/she observes the **Judges' Rules at all times**. This will greatly assist the court whenever questions about the Judge's Rules are raised during a *voire dire*.

#### **RECORD OF INTERVIEW/CAUTION STATEMENT:**

There are two forms of obtaining a statement from a suspect or an accused person. These two terms are used interchangeably but it is generally to be understood that a Record of Interview is a form of Question and Answer process and a Caution Statement is a typed or written record of the version of the accused. In both format, a proper Caution is administered. The form of Caution and how it is administered is set out in the Judges' Rules.

The record of interview format will include the following:

- (i) Name of the suspect interviewed;
- (ii) The age of the suspect;
- (iii) Date of birth of the suspect;
- (iv) Name of the supporting person;
- (v) Name of the venue the interview is conducted;
- (vi) Preferred language;
- (vii) Level of education;
- (viii) The time the interview commenced;
- (ix) The time the interview concluded;
- (x) Any suspension during the Interview (is to be recorded);

(xi) Name of the witnessing officer;

(xii) Name of the interviewing officer;

Important to take note of the following:

1. The Judges Rules must be adhered to all times.
2. Any suspect that is below the age of 18 must have a parent or a guardian present throughout the process when taken into custody.

As a guideline, the following is to be observed:

(I) When a police officer is trying to discover whether or by whom, an offence has been committed he is entitled to question any person, whether suspected or not, from whom he thinks that useful information may be obtained. This is so whether or not the person in question has been taken into custody so long as he has been charged with the offence or informed that he may be prosecuted for it.

(II) As soon as a police officer has evidence which would afford reasonable grounds for suspecting that a person has committed an offence, he shall caution that person or cause him to be cautioned before putting to him any questions, or further question, relating to that offence.

The caution shall be in the following terms:-

“You are not obliged to say anything unless you wish to do so but what you say may be put into writing and given in evidence.”

When after being cautioned a person is being questioned, or elects to make a statement, a record shall be kept of the time and place at which any such questioning or statement began and ended and of the persons present.

(III)(a) Where a person is charged with or informed that he may be prosecuted for an offence he shall be cautioned in the following terms: -

*“Do you wish to say anything? You are not obliged to say anything unless you wish to do so but whatever you say will be taken down in writing and may be given in evidence.”*

(b) It is only in exceptional cases that questions relating to the offence should be put to the accused person after he has been charged or informed that he may be prosecuted. Such questions may be put where they are necessary for the purpose of preventing or minimizing harm or loss to some other person for clearing up ambiguity in a previous answer or statement.

Before any such questions are put to the accused should be cautioned in these terms:-



*“I wish to put some questions to you about the offence which you have been charged (or about the offence for which you be persecuted). You are not obliged to answer any of these questions, if you do, the questions and answers will be taken down in writing and may be given in evidence.”*

Any questions put and answer given relating to the offence must be contemporaneously recorded in full and the record signed by the person or if he refuses by the interrogating officer.

(c) When such a person is being questioned, or elects to make a statement, a record shall be kept of the time and place at which questioning or statement began and ended and of the persons present.

IV. This is what is known as a CAUTION STATEMENT. All written statements made after caution shall be taken in the following manner: -

(a) If a person says that he wants to make a statement he shall be told that is intended to make a written record of what he says. He shall always be asked whether he wishes to write down himself what he wants to say; if he says that he cannot write or that he would like someone to write it for him, a police officer may offer to write the statement for him. If he accepts the offer the police shall, before starting, ask the person making the statement to sign or make his mark to the following:

*“I ....., wish to make a statement I want someone to write down what I say. I have been told that I need not say anything unless I wish to do so and that whatever I say may be given in evidence.*

(b) Any person writing his own statement shall be allowed to do without any prompting as distinct from indicating to him what matters are material.

(c) The person making the statement, if he is going to write it himself shall be asked to write out and sign before writing that what he wants to say, the following: -

*“I make this statement of my own free will. I have been told that I need not say anything unless I wish to do so and that whatever I say may be given in evidence. “*

(d) Wherever a police officer writes the statement he shall take down the exact words spoken by the person making the statement, without putting any questions other than such as may be needed to make the statement coherent, intelligible and relevant to the material matters; he shall not prompt him.

(e) When the writing of a statement by a police officer is finished the person making it shall be asked to read it and to make any corrections, alterations or additions he wishes. When he has finished reading it he shall be asked to write and sign or make his mark on the following certificate at the end of the statement: -

“I have read the above statement and I have been told that I can correct, alter or add anything I wish. This statement is true. I have made it of my own free will.”

(f) If the person who has made a statement refuses to read it or to write the above-mentioned certificate at the end of it or to sign it, the senior police officer person shall record on the statement itself and in the presence of the person making it, what has happened. If the person making the statement cannot read, or refuses to read it, the officer who has taken it down shall read it over him and ask him whether he would like to correct, alter or add anything and to put his signature or make his mark at the end. The police officer shall then certify on the statement itself what he has done.

(V) If at any time after person has been charged with, or has been informed that he may be prosecuted for an offence a police officer wishes to bring to the notice of that person any written statement made by another person who in respect of the same offence has also been charged or informed that he may be prosecuted, he shall hand to the person a true copy of such written statement, but nothing shall be said or done to invite any reply or comment. If that person says that he would like to make a statement in reply, or starts to say something he shall at once be cautioned or further cautioned as prescribed by Rule III(a)

(VI) Persons other than police officers who are charged with the duty of investigating offences or charging offenders shall, so far as may be practicable, comply with these Rules.

**In Republic v Timothy<sup>43</sup>:**

*“The questioning in the record of interview as I stated was only written in English and the English translation into Nauruan language was not recorded.*

*All the questions were translated from English into Nauruan language by the recording officer, Const Namaduk, and that would mean that he was quite proficient in English language, however, when he gave evidence in court in respect of voir dire he sought the assistance of an interpreter. The questioning in court is in the English language and if he was indeed so proficient in the English language then why did he seek the assistance of an interpreter? In Benjamin v Republic [8] Thompson CJ stated as follows:*

*“Rule IV(d) of the Judges Rules provides that ‘whenever a police officer writes the statement, he shall take down the exact words spoken by the person making the statement’. That particular words and phrases in Nauruan language may be interpreted with different meanings or shades of meaning by different translators is well known to the Courts here. It is therefore not an adequate compliance with Rule IV(d) for Nauruan police officer to record in English a statement made to him in Nauruan, having made the translation himself without recording the actual Nauruan words used.”*

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<sup>43</sup>[2019] NRSC; Criminal Case 23 of 2017 (18 September 2019)

*And His Honour Thompson CJ later stated in Benjamin as follows:*

*“The Court should have before it a record of precise words spoken, in the language in which they were spoken, unless it is not reasonably possible. The record or notes made by the interpreter should, therefore, be in the language spoken by the person who made the statement, unless the interpreter is not literate in that language. If there are likely to be a large number of cases in which interpreters are required to be used who are not literate in the languages in which statements translated by them are made, it may be necessary for a system of tape recording statements to be adopted, with adequate safeguards to prevent falsification and obviate the risk of allegations of falsification.”*

*Notwithstanding the breach of the Judges Rules I still have the discretion to admit the confession provided and I am satisfied that the confession was made voluntarily and not unfairly.”*

## APPENDIX 3

### PRE-TRIAL CHECKLIST

#### OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS PTC CHECKLIST

**NAME OF ACCUSED :**

**CORAM :**

**PROSECUTORS :**

**DEFENSE COUNSEL :**

<b>PARTICULARS</b>	<b>OUTCOME</b>
<b>Representation of Accused</b>	
Private Counsel/Pleader engaged	Yes/No
PLD engaged	Yes/No
Self-Represented	Yes/No
<b>Trial</b>	
Are Pleas of not guilty to be maintained?	DEFENCE? Yes/No
How long is the trial likely to last?	Prosecution? Defence?
What are the legal issues?	
<b>Is Voir Dire to be held? YES / <u>NO</u></b>	
Received voir dire grounds	Yes / No



<b>Witnesses</b>	
How many witnesses for the Prosecution? (Names included)	
How many witnesses for the Accused [if willing to indicate]	
<b>Any Difficulties with Witnesses</b>	
IO available?	
Any witnesses overseas? [consider video link, Skype]	
Any witnesses unable to come due to sickness?	
Any child witnesses? [consider making the preliminary applications for name suppression, closed court, support person present]	
Defence witnesses: Any production order required/summons?	
<b>Agreed Facts</b>	
Have facts or elements of charge been admitted?	
Do they obviate need for witnesses?	
Medical Agreed?	
Chain of evidence agreed?	
Analysis of Drugs agreed?	

Photos agreed?	
Plan or charts agreed?	
<b>Alibi</b>	
Is there an alibi?	
Notice served?	
Admitted or not?	
<b>Exhibits</b>	
How many documentary?	
Copies of Caution Interview	
Will documents or photos be exhibited on the screen?	
Any child witnesses or vulnerable witnesses involved?	
Any special arrangements for elderly, sick or disabled?	
<b>Preliminary Applications</b>	
Any preliminary legal issues to be raised?	<b>Prosecution?</b>  <b>Defence?</b>

Motions?	<ul style="list-style-type: none"> <li>- <b>Prosecution?</b></li> <li>- <b>Defence?</b></li> </ul>
Information?	<ul style="list-style-type: none"> <li>- <b>Prosecution?</b></li> <li>- <b>Defence?</b></li> </ul>
Duplicity?	<ul style="list-style-type: none"> <li>- <b>Prosecution?</b></li> <li>- <b>Defence?</b></li> </ul>
<b>Notice of Additional Evidence</b>	
Any additional statements to be served?	
Any further disclosure?	
<b>Security</b>	
Any need for added Court Security?	<b>Prosecution?</b>  <b>Defence?</b>
Is such to be requested?	<b>Prosecution?</b>  <b>Defence?</b>

Prosecutor: ..... Date:.....



**APPENDIX 4**  
**VICTIM IMPACT STATEMENT**

VICTIM IMPACT STATEMENT

**NAME OF VICTIM:**

**AGE:**

**NAME OF THE ACCUSED:**

**THE CHARGE OR CRIME THAT THIS STATEMENT RELATES TO:**

**SENTENCING COURT:**

**SENTENCING DATE:**

**ARE YOU PREPARING THIS STATEMENT YOURSELF?**

**IF NOT: DETAILS OF PERSON WHO HAS FILLED IN THE VICTIM IMPACT STATEMENT FORM**

**NAME: S**

**NATURE OF RELATIONSHIP TO VICTIM:**

**EMOTIONAL AND PSYCHOLOGICAL HARM:**

*Describe how the offence has affected you emotionally and psychologically. You may consider the following for example:*

*Your feelings, thoughts and reactions that relate to the crime; changes to your lifestyle and activities; changes to your reactions towards people or situations; effects on your relationships with others such as your family and friends; your ability to work, attend school or study; details of counselling or other psychological or psychiatric assessments and treatment received as a result of the crimes.*

*You may attach any psychological or other relevant reports if there has been loss of property with sentimental value this may be mentioned under this section.*

**PHYSICAL INJURY:**

*Describe how the offence has affected you physically.*

*For example consider: Type and extent of the injuries that were inflicted by the offender in the commission of the crime(s) Any medical procedures, surgery, treatment you had to undergo as a result of the offence(s) Details of hospitalization and medication Long term or short term physical effects or physical disability resulting from the offence(s) e.g. ongoing physical pain, discomfort, illness, scarring, disfigurement or physical/mobility limitation; You may attach any medical or other relevant reports. You may also attach photos or videos relevant to show the physical impact of the crime(s) on you.*

**ECONOMIC OR FINANCIAL IMPACT:**

*Describe how the offence has affected you financially.*

*For example: Property Loss - List property lost as a result of this crime and the value of the property. This is property that has not been and is not expected to be recovered.*

*Other Financial Losses : medical expenses, loss of earnings due to time off work; Cost of repairs or replacement of property; Only include financial loses not covered by insurance; You may attach receipts, photographs and any other relevant documentation.*

***Note: This is not an application for compensation or restitution.***

**LETTER OR DRAWING**

You may use this space to write a letter to the offender or to say anything directly to the offender about the impact of the offence on you. You may also draw a picture to help you express the effect the crime(s) have had on you.

**Would you like this Victim Impact Statement to be read out loud in Court?**

**If yes, who would you like to read the Statement out loud?**

**Declaration by Victim:**

*The information contained in this Victim Impact Statement was provided by me and is true to the best of my knowledge and belief. I have given this information knowing that it may be used by a Court of law in sentencing the offender.*

**Name & Signature:**

**Date:**

**OR**

**Declaration by Victim's Representative or Qualified Person (e.g. Counsellor):**

*I have advised the Victim that this Victim Impact Statement will be presented to a Court of law and that it may be used in sentencing.*

*This Victim Impact Statement has been read back to the Victim and I confirm that the Victim understands the content of the statement and confirms its accuracy.*

*The information/matters concerning \_\_\_\_\_ was provided by me. Any information and/or assessment on the impact of the crimes that has been provided by me is accurate and true to the best of knowledge and belief. I have given this information knowing that it may be used by a Court of law in sentencing the offender.*

**Name & Signature:**

**Date:**