

Judicial Officers' Fraud and Corruption Workshop

Nauru

Table of Contents

Chapter 1: Similarities and difference of provisions across all jurisdictions

Chapter 2: Nauru – Legislative Provisions and Summary of Elements of the Offences

Chapter 3: Nauru - Elements of the Defences

Chapter 4: Evidentiary issues

Annex A: Offence provision/s by jurisdictions

Annex B: Evidence provision/s and rules by jurisdictions

Chapter 1: Similarities and differences of provisions across all jurisdictions

This chapter outlines the similarities and differences between fraud and corruption offences across PJIP partner court jurisdictions. The two most prevalent fraud and corruption offence categories defined by the region¹ are: fraud and bribery.

Fraud

In most jurisdictions, the Fraud regime is complex and there is significant overlap with various other provisions. The provisions annexed below are those with which a public officer could be charged, who embezzled public funds. Six jurisdictions (Fiji, Kiribati, Nauru, Republic of Marshall Islands, Solomon Islands, and Tonga) have provisions that specifically target fraud or embezzlement by public servants. In the other six jurisdictions, recourse must be had to general provisions (present in all jurisdictions) dealing with fraudulent misappropriation of property. These offences may be variously referred to as “theft”, “cheating”, “obtaining by false pretences”, “obtaining by deception”, or “fraudulent conversion”. Palau is the only jurisdiction to have a specific offence of theft of government property that can be committed by a private individual.

Kiribati and Solomon Islands have identical provisions dealing with the following:

- Frauds and breaches of trust by persons employed in the public service²
- Theft, including taking by trickery or despite knowledge of a mistake on the part of the person defrauded
- Larceny and embezzlement by public servants
- Obtaining by false pretences

Vanuatu has provisions dealing with theft and obtaining by false pretences which are substantially similar to those in the three aforementioned jurisdictions. However, it lacks any provisions dealing specifically with frauds by public servants. The other eight jurisdictions have substantially different regimes.

¹ As outlined in the PJIP Judicial Officer Needs Assessment Survey Report, June 2022

² Fiji has a similarly worded provision



There is a degree of practical commonality among the fraudulent misappropriation or theft offences in all jurisdictions. There are three main elements of which most jurisdictions include at least two. These are that the taking of a thing is done:

- Dishonestly, or by fraud or deceit;
- Without a good faith claim of right (some jurisdictions (Federated States of Micronesia, Fiji, and Nauru) merely include the weaker proposition that the property belongs to another); and
- With intent to permanently deprive the owner of the thing.

Kiribati, Nauru, Solomon Islands, Tonga and Vanuatu include all three elements; Palau, Republic of Marshall Islands, Samoa and Tokelau include the first and third; and Papua New Guinea and Federated States of Micronesia include the second and third.

Bribery

All jurisdictions except Nauru focus on bribery in official and political matters, with relevant bribery being bribery of public officials to act in a certain way in the course of their official duties. Nauru, by contrast, focuses on the dishonest provision/receipt of a bribe with the intention of gaining/providing a favour. All jurisdictions address both directions of bribery, that is, provision and receipt. Papua New Guinea and Fiji both have provisions that address bribery of judicial officials. The most detailed provision is that in the Marshall Islands. Fiji also has specific bribery legislation.³

Offence provision/s by jurisdictions

Unless otherwise specified, all references to statutory provisions are to the following Crimes Acts:

- **Federated States of Micronesia:** [Code of the Federated States of Micronesia](#) ;
- **Fiji:** [CRIMES ACT 2009 - Laws of Fiji: Prevention of Bribery Act 2007](#) (For offences committed prior to 1/2/2010 see [Laws of Fiji Chapter 17 \(Penal Code\)](#));
- **Kiribati:** [Penal Code 1977](#);
- **Nauru:** [Crimes Act 2016](#);
- **Palau:** [Penal Code of the Republic of Palau](#);
- **Papua New Guinea:** [Criminal Code Act 1974](#);
- **Republic of Marshall Islands:** [Marshall Islands Revised Code 2014 Title 31 Chapter 1](#);
- **Samoa:** [Crimes Act 2013](#);
- **Solomon Islands:** [Penal Code 1963](#);
- **Tokelau:** [Crimes, Procedure and Evidence Rules 2003](#)
- **Tonga:** [Laws of Tonga Chapter 18 \(Criminal Offences\)](#)
- **Vanuatu:** [Penal Code 1977](#)

	Fraud	Bribery
Federated States of Micronesia	s 601(9) s 602	s 516

³ Prevention of Bribery Act 2007



Fiji	ss 4, 200, 290, 291, 292, 293, 317, 318, 319(1)(b), 323, 324, 325, 327, 328, 329, 330	s 4, 133, 134, 135, 136, 137, 138 <i>Prevention of Bribery Act</i> ss 2, 3, 4, 5, 6, 8
Kiribati	ss 121, 251, 266	s 85
Nauru	ss150, 153, 166-168, 179	s 173
Palau	ss 2600, 2614, 2615	s 4100
Papua New Guinea	s406, s365 s 383A, s403, s404, s405	ss 87, 97B, 119, 120
Republic of Marshall Islands	ss 223.0, 223.3, 240.7	s 240.0 s 240.1
Samoa	s 172	s 138
Solomon Islands	ss 129, 258, 273, 308	s 91
Tokelau	ss 27, 31, 73(1)	s 72 (1), 72 (2)
Tonga	ss 53, 143, 144, 145	ss 50, 51
Vanuatu	ss 122, 123, 124, 125	s 73



*PJIP is funded by the Department of Foreign Affairs and Trade
and implemented by the Federal Court of Australia in collaboration
with Papua New Guinea Centre for Judicial Excellence*



Chapter 2: Nauru - Legislative Provisions and Elements of the Offences

Under the two offence categories, the below offences pursuant to the [Crimes Act 2016](#), have been identified as falling within the scope of “*corruption*”. Power is used corruptly if it has been “used to obtain some private advantage or for any purpose foreign to the Power”.⁴ For the purposes of this program, “*corruption*” refers to the abuse of entrusted power by public servants, with particular reference to the dishonest pursuit of gain. ALTERNATIVELY: we have used this term in its generic meaning opposed, to its legal connotation.

Fraud: s 150. Meaning of ‘dishonest’ and ‘dishonestly’

- (1) For this Part, a person is ‘*dishonest*’ if the person:
 - (a) is dishonest according to the standards of ordinary people; and
 - (b) knows he or she is being dishonest by the standards of ordinary people.
- (2) For this Part, a person acts ‘*dishonestly*’ if the person:
 - (a) engages in conduct that is dishonest; or
 - (b) engages in conduct with a dishonest intent.
- (3) The question whether a person is dishonest, or acts dishonestly, is one of fact.

Fraud: s 153. Permanently deprive another person of property

A person intends to permanently deprive another person of property if the person intends dealing with the property in a way that:

- (a) the property cannot be returned to the other person in the same condition; or
- (b) the other person is likely to be permanently deprived of the property.

Fraud: s 166. Meaning of ‘deception’

In this Division:

‘**deception**’ means any deception, by words or conduct, as to fact or law, including:

- (a) a deception as to the intentions of the person using the deception or any other person; or
- (b) conduct by a person that causes a computer system or machine to make a response that the person is not authorised to cause it to do.

⁴ *State v Gamato* [2021] PGNC 485, 136 (Berrigan J).

Fraud: s 167. Obtaining Property by Deception

A person (the '*defendant*') commits an offence if the defendant, by deception, dishonestly obtains property belonging to another person, or to the defendant and another person, with the intention of permanently depriving the other person of the property.

Penalty:

if the value of the property is more than \$1 000—7 years imprisonment; or

if the value of the property is more than \$500 but not more than \$1 000—5 years imprisonment; or

if the value of the property is not more than \$500—1 year imprisonment.

For this section, a person is to be treated as '*obtaining property*' if the person obtains ownership, possession or control of it, and '*obtain*' includes obtain for another person or enabling oneself or another person to obtain or retain.

For this section, a person's obtaining of property may be dishonest even if the person is willing to pay for it.

A person may be convicted of an offence against this section involving all or any part of a general deficiency in money or other property even though the deficiency is made up of a number of particular sums of money or items of other property that were obtained over a period of time.

Fraud: s 168. Obtaining financial advantage or causing financial disadvantage by deception

A person commits an offence if the person, by deception, dishonestly obtains a financial advantage from, or causes a financial disadvantage to, another person.

Penalty:

(i) if the value of the financial advantage or disadvantage is more than \$1 000—7 years imprisonment; or

(ii) if the value of the financial advantage or disadvantage is more than \$500 but not more than \$1 000—5 years imprisonment; or

(iii) if the value of the financial advantage or disadvantage is not more than \$500—1 year imprisonment.

Fraud: s 179. Embezzlement

A public official commits an offence if:

the official is lawfully permitted or required to deal with property in the name of, on behalf of, or on account of the Republic in the exercise of the official's functions as a public official; and

the official engages in conduct that deals with property:

in the name of, on behalf of, or on account of the Republic; and

before the property comes into the possession of the Republic; and

the official engages in the conduct dishonestly for the official's own benefit or the benefit of another person or entity.

Penalty: 7 years imprisonment.

In this section:

'*deals*', with property, includes the following:

acquires, receives, possesses, uses or disposes of property;
 carries out a transaction relating to property.

Bribery: s 173. Bribery

- (1) A person commits an offence if the person:
 (a) dishonestly provides, or offers or promises to provide, a benefit to an agent or another person; and
 (b) does so with the intention that the agent will provide a favour.

Penalty: 7 years imprisonment.

- (2) An agent commits an offence if the agent:
 (a) dishonestly asks for, or receives or agrees to receive, a benefit for the agent or another person; and
 (b) does so with the intention of providing a favour.

Penalty: 7 years imprisonment.

Partner Court / Topic	Fraud	Bribery
NAURU	Crimes Act 2016	
Legislative Provisions	<p>s 150 Meaning of ‘dishonest’ and ‘dishonestly’ s 153 Permanently deprive another person of property s 166 Meaning of Deception s 167 Obtaining by deception s 168 Obtaining financial advantage or causing financial disadvantage by deception s 179 Embezzlement</p>	s 173 Bribery
Elements of the Offence	<p>s 166 Meaning of Deception ‘deception’ means any deception, by words or conduct, as to fact or law, including: a) A deception as to the intentions of the person using the deception or any other person; or b) Conduct by a person that causes a computer system or machine to make a response that the person is not authorised to cause it to do</p>	<p>s 173 Bribery 1. X is an agent (defined in s 172) 2. A provides a benefit to X 3. A does so dishonestly 4. A does so with the intention that X will provide a favour</p> <p>ALTERNATIVELY 1. A is an agent (defined in s 172) 2. A asks X for a benefit</p>

	<p>s 167 Obtaining by deception</p> <ol style="list-style-type: none"> 1. A obtains property belonging to X or to the defendant and X 2. A does so dishonestly 3. A does so by deception (refer to s 166 Meaning of Deception) 4. A does so with intent to permanently deprive X of the property <p>s 168 Obtaining financial advantage or causing financial disadvantage by deception</p> <ol style="list-style-type: none"> 1. A obtains financial advantage from or causes financial disadvantage to X 2. A does so dishonestly 3. A does so by deception <p>s 179 Embezzlement</p> <p>A. Date</p> <p>B. Place</p> <p>C. Public Official</p> <p>D. In the exercise of the officer's duties as a public official</p> <p>E. Dishonestly</p> <p>F. Engages in conduct that:</p> <ol style="list-style-type: none"> (i) acquires, receives, possesses, uses or disposes; OR (ii) carries out a transaction relating to <p>G. Property</p> <ol style="list-style-type: none"> (i) in the name of/on behalf of/on account of the Republic; <p>AND</p> <ol style="list-style-type: none"> (ii) before the property comes into possession of the Republic; AND <p>H. For benefit of:</p> <ol style="list-style-type: none"> (i) himself/herself; OR (ii) Another person or entity 	<ol style="list-style-type: none"> 3. A does so dishonestly 4. A does so with the intention of providing a favour
--	--	---

<p>Elements of the Offence</p>	<p>s 27 Theft</p> <ol style="list-style-type: none"> 1. A takes, or converts to the use of any person, or misappropriates or disposes of, or deals in any other matter with anything capable of being stolen 2. A does so with intent to: <ol style="list-style-type: none"> a) Deprive the owner, or a person having a special property or interest in it permanently of the thing; or b) To part with it under a condition as to its return which the person parting with it may be unable to perform or c) To deal with it in such a manner that it cannot be restored in the condition in which it was at the time of the taking or conversion <p>s 31 Fraud</p> <ol style="list-style-type: none"> 1. A either: <ol style="list-style-type: none"> a) Defrauds the public or any person ascertained or unascertained b) Causes or induces a person to execute, make, except, endorse, or destroy the whole or any part of a valuable security. 2. A does so by deceit or falsehood or other fraudulent means <p>s 73 Abuse of Office (1)</p> <ol style="list-style-type: none"> 1. A fails to account for money duly levied 2. A is a public officer and 3. A acts under the pretence of authority 	<p>s 72 Official Corruption (1)-(2)</p> <ol style="list-style-type: none"> 1. A is a public officer 2. A obtains or agrees to accept a bribe 3. A does so in respect of any conduct by A in A's official capacity 4. A does so corruptly <p>ALTERNATIVELY</p> <ol style="list-style-type: none"> 1. X is a public officer 2. A gives or offers a bribe to X 3. A does so with intent to influence X in respect of any conduct by X in X's official capacity 4. A does so corruptly
---------------------------------------	---	---

Chapter 3: Nauru - Summary of Elements of the Defences

Under the two offence categories, the below common defences have been identified across each jurisdiction. The **offence** is highlighted by **orange font**; the **common defence** is identified by **pink font** and the **elements of the defence** in **blue font**.

Fraud	Bribery
NAURU	
Common defences s 29 (aiding, abetting, counselling and procuring) - if before an offence is committed with another offender, the person terminates their involvement and takes all reasonable steps to prevent the commission of the offence.	
s 166 (definition of deception) - No express defences s 167 (obtaining property by deception) - No express defences s 168 (obtaining financial advantage or causing financial disadvantage by deception) - No express defences s 179 (embezzlement) - No express defences	s 173 (bribery) - No express defences

Chapter 4: Evidentiary issues

From the PJIP needs assessment and ongoing discussions with Partner Courts, the following evidentiary issues were identified.

A summary of the similarities and differences between the jurisdictions are discussed below.

Exceptions to Hearsay – Bankers’ books & business records

In all jurisdictions, there are statutory or common law exceptions to the rule against hearsay evidence. Most jurisdictions (Federated States of Micronesia, Kiribati, Palau, Republic of Marshall Islands, Samoa, Solomon Islands, Tonga, Fiji and Papua New Guinea) have statutory provisions pertaining to the admissibility of business records or bankers’ books. In six jurisdictions (Federated States of Micronesia, Palau, Republic of Marshall Islands, Samoa, Solomon Islands and Tonga) these provisions are framed as exceptions to the rule against hearsay evidence. In Fiji and Papua New Guinea, the relevant legislation contains provisions regarding the admissibility of trade or business records more generally. However, it is likely that hearsay evidence would be admitted pursuant to these provisions.

The Federated States of Micronesia, Palau and the Republic of Marshall Islands have provisions which are almost identical. For the exception to apply to business records, two conditions must be established by the testimony of the custodian of the records, another qualified witnesses or, in the Republic of Marshall Islands only, a permitted certificate submitted to the court. First, the records were kept in the course of a regularly conducted business activity. Second, it was the regular practice of that business to make those records. Similar conditions are required in Fiji, Papua New Guinea, Samoa, Solomon Islands and Tonga.

In addition to these requirements, three jurisdictions (Fiji, Tonga, and Samoa) specify that witnesses must not be available before the business records can be admitted. In Fiji, the person who supplied the statement in the record must be either dead, unfit to give evidence as a witness, missing or cannot be reasonably expected to have any recollection of the matters dealt contained in the record. Samoa’s legislation contains similar provisions and two additional alternatives. Specifically, that the Judge may consider first, that the witness would not be useful to the proceedings as the person cannot be reasonably expected to recollect the matters dealt with in the record or secondly, it would cause undue expense or delay if the person were required to be a witness.

Papua New Guinea’s provisions specify that the court is not required to admit business records if, having regarding to all of the relevant circumstances, it would not be in the interests of justice to do so. Papua New Guinea also has provisions in relation to bankers’ books; however, the legislation does not specify any rules in relation to admissibility of hearsay evidence.

We have been unable to identify any relevant statutory provisions in Tokelau and Vanuatu. Consequently, in these jurisdictions hearsay contained in business records is not admissible because there is no such exception at common law.⁵

⁵ Further research into the case law will need to be undertaken to determine the position adopted in each jurisdiction.



Expert Evidence

In all jurisdictions, expert opinion evidence is admissible as an exception to the rule against the admissibility of opinion evidence. Generally, expert opinion testimony is admissible at common law if the witness is qualified as an expert by knowledge, skill, experience, training or education and the expert's opinion will assist the court to understand a fact or issue relevant to the matter. Some jurisdictions (Federated States of Micronesia, Palau, Republic of Marshall Islands, Samoa, Solomon Islands, Tokelau and Tonga) have provisions in their statutes or court rules pertaining to the qualification of experts or competency of witnesses more generally. In these jurisdictions, except Tokelau, the common law exception is codified in the relevant statute (Samoa, Solomon Islands, Tonga) or court rules (Federated States of Micronesia, Palau, Republic of Marshall Islands).

In the Federated States of Micronesia, Palau and Republic of Marshall Islands the specific rules are almost identical. In those jurisdictions, a court may require an expert to disclose underlying facts or data prior to testifying or during cross-examination. Facts or data which an expert relies upon to form an opinion do not need to be admitted as evidence if that evidence is of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject. Testimony which is admissible is not objectionable if it relies upon a contested fact which is to be determined by the ultimate decision maker. In the Republic of Marshall Islands and Palau, facts or data which are relied on by an expert that are inadmissible do not need to be disclosed to the jury unless the court determines that the probative value of evidence, in assisting the jury to evaluate the expert's opinion, substantially outweighs their prejudicial effect.

We have been unable to identify any relevant statutory provisions in Fiji, Kiribati, Nauru, Papua New Guinea, Tokelau and Vanuatu. However, it is our understanding that the common law exception exists in all of these jurisdictions.⁶

Evidence Admissible Against Co-accused Defendants

Two jurisdictions (Papua New Guinea and Vanuatu) contain statutory provisions regarding accessorial liability. We have been unable to identify provisions in nine jurisdictions (Fiji, Kiribati, Nauru, Palau, Republic of Marshall Islands, Samoa, Solomon Islands, Tokelau and Tonga).⁷

Regarding the admissibility of evidence against a co-accused, the common law position applies in most jurisdictions.⁸ At common law, the co-conspirator's rule permits acts or statements of a co-accused in furtherance of a conspiracy to be admissible against a co-accused.

We have been able to identify provisions in five jurisdictions (Papua New Guinea, Samoa, Solomon Islands and Tonga).

The Solomon Islands and Samoa have provisions which specify that the common law position in relation to the admissibility of statements by co-conspirators prevails. In the Solomon Islands, this is only in relation to confessions. The statute also provides that a co-accused is considered a competent and

⁶ Further research into the case law will need to be undertaken to determine the position adopted in each jurisdiction.

⁷ Further research into the case law will need to be undertaken to determine the position adopted in each jurisdiction.

⁸ Further research into the case law will need to be undertaken to determine the position adopted in each jurisdiction.



compellable witness. They may also offer propensity evidence only if that evidence is relevant to the defence raised or proposed to be raised by the accused.

Comparatively, in Papua New Guinea, a person charged with an offence shall not be called as a witness in any legal proceedings in connection with the offence. Notwithstanding this, where a person charged with an offence is a witness they may be asked any questions in cross-examination.

Electronic Evidence

We have been unable to identify any provisions regarding the evidentiary rules applicable to electronic evidence generally in all jurisdictions except for Papua New Guinea and Tonga. In Papua New Guinea, the *Electronic Transactions Acts 2021* specifies that the evidential requirements of admissibility and weight provided by the *Evidence Act* apply to electronic records or data messages. In Tonga, the *Evidence Act* contains provisions regarding the admissibility, standards and authentication of electronic evidence generally.

Some jurisdictions specify that forms of evidence include electronic records or documents stored electronically. The Federated States of Micronesia, Palau and Republic of Marshall Islands specify that writings and records includes electronic recordings. In Samoa, the meaning of ‘documents’ includes ‘information electronically recorded or stored, and information derived from that information’. In Kiribati, the *Evidence Act 2003* contains a provision regarding the ‘[a]dmissibility of statements produced by computers’.

Some jurisdictions have specific evidentiary rules or exceptions in relation to electronic evidence. For example, in the Solomon Islands section 122(1) of the *Evidence Act 2009* provides that the hearsay rule does not apply to a representation contained in a document recording a message that has been transmitted by electronic mail, fax, telegram, letter gram or telex.

Relevance of Evidence

Five jurisdictions (Federated States of Micronesia, Palau, Republic of Marshall Islands, Solomon Islands, Tonga) have provisions in either their statutes or court rules regarding the relevancy of evidence. In all of these jurisdictions relevant evidence is generally admissible.

In the Federated States of Micronesia, Palau and Republic of Marshall Islands, relevant evidence is defined as ‘evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence’. Comparatively, in Tonga, any evidence which is admissible under the relevant provisions is deemed relevant.

Some jurisdictions (Papua New Guinea and Samoa) specify in their statutes that the relevancy of evidence can be questioned during later stages of criminal proceedings, such as during cross-examination or following the end of submissions.



Unless otherwise specified, all references to statutory provisions and rules are to the following:

- **Federated States of Micronesia:**
 - [Code of the Federated State of Micronesia Title 6, Chapter 13 - Evidence](#)
 - [Rules of Evidence for the Trial Division of the Supreme Court of the Federated States of Micronesia](#)
- **Fiji:**
 - [Evidence Act 1944](#)
- **Kiribati:**
 - [Evidence Act 2003](#)
- **Nauru:**
 - [Criminal Procedure \(Amendment\) Act 2020](#)
- **Palau:**
 - [Rules of Evidence for the Courts of the Republic of Palau](#)
- **Papua New Guinea:**
 - [Evidence Act 1975](#)
 - [Electronic Transactions Act 2021](#)
 - [Criminal Practice Rules – Fraud & Corruption Related Offences 2013](#)
- **Republic of Marshall Islands:**
 - [Title 28 – Evidence Act of 1989](#)
- **Samoa:**
 - [Evidence Act of 2015](#)
- **Solomon Islands:**
 - [Evidence Act 2009](#)
- **Tokelau:**
 - [Crimes, Procedure and Evidence Rules 2003](#)
- **Tonga:**
 - [Evidence Act 2020](#)
- **Vanuatu:**
 - [Chapter 136 - Criminal Procedure Code](#)

	Exceptions to Hearsay	Expert Evidence	Evidence Against Co-accused	Electronic Evidence	Relevance of Evidence
Federated States of Micronesia	Rules 801, 802, 803	Rules 601, 602, 702, 703, 704, 705, 706	N/A	Rule 1001	Rules 401, 402, 403
Fiji	s 4	N/A	N/A	N/A	N/A
Kiribati	ss 32, 33, 34	N/A	N/A	s 28	N/A
Nauru	ss147A, 176	N/A	N/A	N/A	N/A
Palau	Rules 801, 802, 803	Rules 702, 703, 704, 705	N/A	Rule 1001	Rules 401, 402, 403

Papua New Guinea	s61, 91, 92, 93, 94 (Evidence Act)	N/A	s 9, 14 (Evidence Act)	s 12 (Electronic Transactions Act) ss 64, 65, 66, 67 (Evidence Act)	s 26 (Evidence Act)
Republic of Marshall Islands	s3 Rules 803, 902	s3 Rules 702, 703, 704, 705	N/A	s3 Rule 1001.	s3 Rules 104, 401, 402, 403
Samoa	ss 9, 10, 11	ss 2, 16	s 6	s 2	s 70, 83
Solomon Islands	ss 102, 103, 117, 118, 120	ss 24, 30, 129, 130	s 39, 40, 172	s 122	ss 20, 21, 22
Tokelau	ss 163, 175	ss 164, 175	s 175	N/A	N/A
Tonga	ss 88, 89	s24, 25	s 4	ss 2, 54A, 54C, 54D, 54E, 54F	s 14
Vanuatu	N/A	s86	N/A	N/A	N/A

Exceptions to Hearsay – Bankers’ books & business record

Save for the general provisions outlined below, there is no specific statute applicable to the *Exceptions to Hearsay – Bankers’ books and business records* for Nauru. Common law applies in this instance.

147A. General admissibility of hearsay statement

- (1) A hearsay statement is admissible in any proceeding, where the circumstance relating to the statement provides reasonable assurance of the reliability of the statement and the:
 - (a) maker of the statement is unavailable to attend court to testify as a witness; or
 - (b) court considers that undue expense and delay would be caused if the maker of the statement is required to attend as a witness to testify in court.
- (2) For the purposes of this section, ‘*hearsay statement*’ means a written statement that:
 - (a) was made by a person other than a witness; and
 - (b) is offered in evidence at the proceeding to prove its contents.
- (3) No hearsay statement may be offered in evidence by a party proposing to rely on the hearsay statement unless:
 - (a) the party proposing to rely on the hearsay statement has given a notice at least 14 days before the date fixed for trial to the other party of the intention to rely on the statement;
 - (b) the other party may object to the tendering of such evidence by giving a notice of objection to the party intending on relying on such statement; or
 - (c) where there is an objection, the court shall have the residual discretion to admit such statement.
- (4) In this section, ‘*circumstance*’, in relation to the statement by a person who is not a witness, includes:
 - (a) the nature of the statement;
 - (b) the contents of the statement;
 - (c) the time of the making of the statement;
 - (d) the reasonable credibility of the statement; and
 - (e) any circumstance that relate to the accuracy of the observation of the person.



- (5) For the purposes of this section, a person is unavailable as a witness to attend court to testify in a proceeding if he or she:
 - (a) is deceased;
 - (b) is outside the Republic and it is not reasonably practicable for him or her to attend court as a witness or tender evidence in person or through digital or electronic means including audio or visual link;
 - (c) is certified by a health practitioner that the person is unfit to give evidence due to age, physical or mental condition or impairment; or
 - (d) with reasonable diligence cannot be traced.
- (6) Subsection (1) shall not apply to a witness, whose unavailability is caused or occasioned by the party, which is seeking to adduce such statement.
- (7) The court shall have the residual discretion to give any weight to evidence capable of being adduced under this section.

176. Disclosure and notice to be given

- (1) The prosecution shall provide the disclosure documents, witness statements, expert reports, photographs and other disclosure documents to the accused person as soon as practicable after the accused person is charged and appears in court in the first instance.
- (2) The prosecutor shall, 14 days before the trial commences, notify and provide to the accused person or his or her legal representative:
 - (a) a list of names and number of witnesses in subsection (1), that the prosecution will require to testify in the trial; and
 - (b) a list of names and number of witnesses in subsection (1), that the prosecution will not require to testify in the trial.
- (3) The prosecution may be permitted to tender as exhibits in a trial an expert report, forensic accounts, photographs, maps or plans drawn by surveyors, electronically or digitally stored or transmitted data or record and such other professional reports without requiring the maker of such report, photographer or the keeper of the records to personally appear in court to testify, provided:
 - (a) a notice in the prescribed form is served to the accused person or his or her legal representative twenty one days before the date fixed for the trial; and
 - (b) the accused person or his or her legal representative did not issue a notice in the prescribed form to the prosecution requiring one or more of the persons to be available for cross examination 14 days before the commencement or continuation of the trial.
- (4) The evidence intended to be tendered in subsection (3) shall be for the purposes of establishing:
 - (a) the existence of such evidence; and
 - (b) the contents of such evidence,
 but the weight of such evidence shall be in the residual discretion of the court.
- (5) Notwithstanding subsection (3), the court has the discretion to allow admission of any evidence as it deems fit.

Expert Evidence

There is no specific statute applicable to *Expert Evidence* for Nauru. Common law applies in this instance.



Evidence Admissible Against Co-accused Defendants

There is no specific statute applicable to the *Evidence Admissible Against Co-accused Defendants* for Nauru. Common law applies in this instance.

Electronic Evidence

There is no specific statute applicable to *Electronic Evidence* for Nauru. Common law applies in this instance.

Relevancy of Evidence

There is no specific statute applicable to the *Relevancy of Evidence* for Nauru. Common law applies in this instance.

