

## ***Judicial Officers' Fraud and Corruption Workshop***

### **Samoa**

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#### **Chapter 1: Similarities and differences of provisions across all jurisdictions**

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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 region<sup>1</sup> are: fraud and bribery.

##### ***Fraud***

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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 service<sup>2</sup>
- 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.

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<sup>1</sup> As outlined in the PJIP Judicial Officer Needs Assessment Survey Report, June 2022

<sup>2</sup> 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.<sup>3</sup>

## 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
<b>Federated States of Micronesia</b>	s 601(9) s 602	s 516
<b>Fiji</b>	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  <b><u>Prevention of Bribery Act</u></b> ss 2, 3, 4, 5, 6, 8
<b>Kiribati</b>	ss 121, 251, 266	s 85

<sup>3</sup> Prevention of Bribery Act 2007



<b>Nauru</b>	ss150, 153, 166-168, 179	s 173
<b>Palau</b>	ss 2600, 2614, 2615	s 4100
<b>Papua New Guinea</b>	s406, s365 s 383A, s403, s404, s405	ss 87, 97B, 119, 120
<b>Republic of Marshall Islands</b>	ss 223.0, 223.3, 240.7	s 240.0 s 240.1
<b>Samoa</b>	<a href="#">s 172</a>	<a href="#">s 138</a>
<b>Solomon Islands</b>	ss 129, 258, 273, 308	s 91
<b>Tokelau</b>	ss 27, 31, 73(1)	s 72 (1), 72 (2)
<b>Tonga</b>	ss 53, 143, 144, 145	ss 50, 51
<b>Vanuatu</b>	ss 122, 123, 124, 125	s 73



## Chapter 2: Samoa - Legislative Provisions and Elements of the Offences

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Under the two offence categories, the below offences pursuant to the [Crimes Act 2013](#), 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”.<sup>4</sup> 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 172. Obtaining by deception or causing loss by deception**

A person commits the offence of obtaining by deception or causing loss by deception who, by any deception:

- obtains ownership or possession of, or control over, any property, or any privilege, service, pecuniary advantage, benefit, or valuable consideration, directly or indirectly; or
- in incurring any debt or liability, obtains credit; or
- induces or causes any other person to deliver over, execute, make, accept, endorse, destroy, or alter any document or thing capable of being used to derive a pecuniary advantage; or
- causes loss to any other person.

In this section, “deception” means:

- a false representation, whether oral, documentary, or by conduct, where the person making the representation intends to deceive any other person and—
- knows that it is false in a material particular; or
- is reckless as to whether it is false in a material particular; or
- an omission to disclose a material particular, with intent to deceive any person, in circumstances where there is a duty to disclose it; or
- a fraudulent device, trick, or stratagem used with intent to deceive any person.

### **Bribery: s 138. Corruption and Bribery of Official**

- (1) An official is liable to imprisonment for a term not exceeding 7 years who, whether within Samoa or another country, corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or herself or any other person in respect of any act done or omitted, or to be done or omitted, by the official in his or her official capacity.

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



- (2) A person is liable to imprisonment for a term not exceeding 7 years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any official in respect of any act or omission by the official in his or her official capacity.

Partner Court / Topic	Fraud	Bribery
<b>SAMOA</b>	<a href="#">Crimes Act 2013</a>	
<b>Legislative Provisions</b>	<b>s 172 Obtaining by deception or causing loss by deception</b>	<b>s 138 Corruption and bribery of official</b>
<b>Elements of the Offence</b>	<p><b>s 172 Obtaining by deception or causing loss by deception</b></p> <ol style="list-style-type: none"> <li><b>A</b> obtains ownership, possession or control over any property, pecuniary advantage, benefit, or valuable consideration</li> <li><b>A</b> does so by deception (defined in s 172(2))</li> </ol>	<p><b>s 138 Corruption and bribery of official</b></p> <ol style="list-style-type: none"> <li><b>A</b> is an official</li> <li><b>A</b> accepts, obtains, agrees or offers to accept, or attempts to obtain any bribe for any person</li> <li><b>A</b> does so in respect of any conduct by <b>A</b> in <b>A</b>'s official capacity</li> <li><b>A</b> does so corruptly</li> </ol> <p>ALTERNATIVELY</p> <ol style="list-style-type: none"> <li><b>X</b> is an official</li> <li><b>A</b> gives, offers, or agrees to give any bribe to any person</li> <li><b>A</b> does so with intent to influence <b>X</b> in respect of any conduct by <b>X</b> in <b>X</b>'s official capacity</li> <li><b>A</b> does so corruptly</li> </ol>



## Chapter 3: Samoa - 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
<b>SAMOA</b>	
<p><b>Common defences</b></p> <p><b>s 12 (infancy)</b></p> <ul style="list-style-type: none"> <li>- &lt; 10 years = cannot be convicted of an offence</li> <li>- &gt; 10 years but &lt; 12 years = cannot be convicted unless the person knew that the act or omission was morally wrong or contrary to law</li> </ul> <p><b>s 13 (insanity)</b></p> <ul style="list-style-type: none"> <li>- no criminal responsibility for any act done or omitted to be done when suffering from a mental defect or mental disorder rendering the person incapable:               <ul style="list-style-type: none"> <li>(a) of knowing what they are doing or omitting to do;</li> <li>(b) of attributing that act or omission the same moral character that members of the community generally attribute to that act or omission</li> </ul> </li> </ul> <p><b>s 14 (compulsion)</b></p> <ul style="list-style-type: none"> <li>- no criminal responsibility if offence committed under compulsion arising from threats of immediate death or serious bodily harm from a person who is present when the offence is committed</li> <li>- person must believe that the threat will be carried out</li> <li>- person must not be a party to any association or conspiracy from which the compulsion arises or was a foreseeable consequence</li> <li>- does not apply to certain offences including, inter alia, treason, sabotage, abduction, robbery, etc</li> </ul> <p><b>s 17 (self-defence)</b></p> <ul style="list-style-type: none"> <li>- justified to repel force if:               <ol style="list-style-type: none"> <li>(1) unlawfully assaulted;</li> <li>(2) not having provoked the assault by any blows, words or gestures;</li> <li>(3) reasonable apprehension of death or grievous bodily harm, did not intend to kill or do grievous bodily harm, and before force used, has declined further conflict and quitted or retreated from it as far as practicable</li> <li>(4) any force is not meant to cause death or grievous bodily harm, and no more necessary to prevent the assault or the repetition of it</li> </ol> </li> </ul>	



<p><b>ss 18 to 20 (defence of dwelling house, land or building or moveable property)</b>          - defences justifying the use of reasonable force as is necessary in the circumstances</p>	
<p><b>s 172 (obtaining by deception or causing loss by deception)</b>          - No express defences</p>	<p><b>s 138 (corruption and bribery of official)</b>          - No express defences</p>



## Chapter 4: Evidentiary issues

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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

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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.<sup>5</sup>

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





## Expert Evidence

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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.<sup>6</sup>

## Evidence Admissible Against Co-accused Defendants

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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).<sup>7</sup>

Regarding the admissibility of evidence against a co-accused, the common law position applies in most jurisdictions.<sup>8</sup> 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

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

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

<sup>8</sup> 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

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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

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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
<b>Federated States of Micronesia</b>	Rules 801, 802, 803	Rules 601, 602, 702, 703, 704, 705, 706	N/A	Rule 1001	Rules 401, 402, 403
<b>Fiji</b>	s 4	N/A	N/A	N/A	N/A
<b>Kiribati</b>	ss 32, 33, 34	N/A	N/A	s 28	N/A
<b>Nauru</b>	ss147A, 176	N/A	N/A	N/A	N/A
<b>Palau</b>	Rules 801, 802, 803	Rules 702, 703, 704, 705	N/A	Rule 1001	Rules 401, 402, 403

<b>Papua New Guinea</b>	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)
<b>Republic of Marshall Islands</b>	s3 Rules 803, 902	s3 Rules 702, 703, 704, 705	N/A	s3 Rule 1001.	s3 Rules 104, 401, 402, 403
<b>Samoa</b>	<a href="#">ss 9, 10, 11</a>	<a href="#">ss 2, 16</a>	<a href="#">s 6</a>	<a href="#">s 2</a>	<a href="#">s 70, 83</a>
<b>Solomon Islands</b>	ss 102, 103, 117, 118, 120	ss 24, 30, 129, 130	s 39, 40, 172	s 122	ss 20, 21, 22
<b>Tokelau</b>	ss 163, 175	ss 164, 175	s 175	N/A	N/A
<b>Tonga</b>	ss 88, 89	s24, 25	s 4	ss 2, 54A, 54C, 54D, 54E, 54F	s 14
<b>Vanuatu</b>	N/A	s86	N/A	N/A	N/A

## Exceptions to Hearsay – Bankers’ books & business records

### s 9. Definition

(1) In this Division:

“business”:

- (a) means any business, profession, trade, manufacture, occupation, or calling of any kind; and
- (b) includes the activities of a Ministry, local authority, public body, body corporate, organisation, or society.

“business record” means a document:

- (a) that is made -
  - (i) to comply with a duty; or
  - (ii) in the course of a business, and as a record or part of a record of that business; and
- (b) that is made from information supplied directly or indirectly by a person who had, or may reasonably be supposed by the court to have had, personal knowledge of the matters dealt with in the information he or she supplied.

“circumstances”, in relation to a statement by a person who is not a witness, includes:

- (a) the nature of the statement; and
- (b) the contents of the statement; and
- (c) the circumstances that relate to the making of the statement; and
- (d) any circumstances that relate to the veracity of the person; and
- (e) any circumstances that relate to the accuracy of the observation of the person.

(2) For the purpose of this Division, a person is unavailable as a witness in a proceeding if the person:

- (a) is dead; or
- (b) is outside Samoa and it is not reasonably practicable for the person to be a witness; or
- (c) is unfit to be a witness because of age or physical or mental condition; or
- (d) cannot with reasonable diligence be identified or found; or
- (e) is not compellable to give evidence.



(3) Subsection (2) does not apply to a person whose statement is sought to be offered in evidence by a party who has caused the person to be unavailable in order to prevent the person from attending or giving evidence.

(4) A hearsay statement is not admissible except:

- (a) as provided by this Division or by the provisions of any other enactment; or
- (b) in cases where -
  - (i) this Act provides that this Division does not apply; and
  - (ii) the hearsay statement is relevant and not otherwise inadmissible under this Act.

**s 10. General rule as to admissibility of hearsay**

(1) Subject to subsections (2) to (4) and section 12, a hearsay statement is admissible in any proceeding if:

- (a) the circumstances relating to the statement provide reasonable assurance that the statement is reliable; and
- (b) either –
  - (i) the maker of the statement is unavailable as a witness; or
  - (ii) the Judge considers that undue expense or delay would be caused if the maker of the statement were required to be a witness.

(2) A party intending to offer hearsay evidence under this Subdivision must, within sufficient time before the hearing, provide the court and any other party with notice of the party's intention to offer the hearsay statement in evidence.

(3) In criminal proceedings, the notice under subsection (2) must:

- (a) state the name of the maker of the statement, if known, (subject to any witness anonymity order under Division 8 of Part 4);
- (b) if the hearsay statement was made in writing, be accompanied by a copy of the statement in which the statement is contained;
- (c) if the hearsay statement was made orally, state the content of the hearsay statement;
- (d) if section 10(1)(a) is relied on, state the circumstances relating to the statement that provide reasonable assurance that the statement is reliable;
- (e) if section 11 is relied on, state why the document is a business record;
- (f) if section 10(1)(b)(i) or 11(a) is relied on, state why the person is unavailable as a witness;
- (g) if section 10(1)(b)(ii) or 11(c) is relied on, state why undue expense or delay would be caused if the person were required to be a witness.

(4) The Judge may dispense with the requirements of subsection (2) if:

- (a) having regard to the nature and contents of the hearsay statement, no party is substantially prejudiced by the failure to comply with the requirements; or
- (b) compliance was not reasonably practicable in the circumstances; or
- (c) the interests of justice so require.

**s 11. Admissibility of hearsay in business records**

Subject to sections 10(2) and 12, a hearsay statement contained in a business record is admissible if:

- (a) the person who supplied the information used for the composition of the record is unavailable as a witness; or



- (b) the Judge considers no useful purpose would be served by requiring that person to be a witness as that person cannot reasonably be expected (having regard to the time that has elapsed since the person supplied the information and to all the other circumstances of the case) to recollect the matters dealt with in the information the person supplied; or
- (c) the Judge considers that undue expense or delay would be caused if that person were required to be a witness.

## Expert Evidence

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### **s 2. Interpretation -**

(1) In this Act, unless the context otherwise requires:

“expert” means a person who has specialised knowledge or skill based on training, study, or experience;

“expert evidence” means the evidence of an expert based on the specialised knowledge or skill of that expert and includes evidence given in the form of an opinion;

### **s 16. Admissibility of expert opinion evidence –**

(1) An opinion by an expert that is part of expert evidence offered in a proceeding is admissible if the fact-finder is likely to obtain substantial help from the opinion in understanding other evidence in the proceeding or in ascertaining any fact that is of consequence to the determination of the proceeding.

(2) An opinion by an expert is not inadmissible only because it is about an ultimate issue to be determined in a proceeding; or incidentally refers to a matter of common knowledge.

(3) Subject to subsection (4), if an opinion by an expert is based on the existence of a matter or state of affairs that is outside the general body of knowledge that makes up the expertise of the expert, the opinion may be relied on by the fact-finder only if that matter or state of affairs is or will be proved or judicially noticed in the proceeding.

(4) If expert evidence about the sanity of a person is based in whole or in part on a statement that the person made to the expert about the person’s state of mind, then:

(a) the statement of the person is admissible to establish the facts on which the expert’s opinion is based; and

(b) neither the hearsay rule nor the previous consistent statement rule applies to evidence of the statement made by the person.

## Evidence Admissible Against Co-accused Defendants

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### **s 6. Co-conspirator’s rule, etc., not affected**

Nothing in this Act affects the rules of the common law relating to:

(a) the admissibility of statements of co-conspirators or persons involved in joint criminal enterprises; or

(b) the admissibility of a defendant’s statement against a co-defendant in circumstances where the defendant’s statement is accepted by the co-defendant.



## Electronic Evidence

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### **s2. Interpretation**

(1) In this Act, unless the context otherwise requires:

“document” means:

(a) any material, whether or not it is signed or otherwise authenticated, that bears symbols (including words and figures), images, or sounds or from which symbols, images, or sounds can be derived, and includes -

a label, marking, or other writing which identifies or describes a thing of which it forms part, or to which it is attached;

a book, map, plan, graph, or drawing; a photograph, film, or negative; and

(b) information electronically recorded or stored, and information derived from that information.

## Relevancy of Evidence

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### **s 70 Witness’s address may not be subject to question -**

(1) In any proceeding, the precise particulars of a witness’s address (such as, details of the place or village) may not, without the permission of the Judge, be:

(a) the subject of any question to a witness or included in any evidence given; or

(b) included in any statement or remark made by a witness, lawyer, officer of the court, or any other person.

(2) The Judge must not grant permission under subsection (1) unless satisfied that the question to be put, the evidence to be given, or the statement or remark to be made, is of sufficient direct relevance to the facts in issue that to exclude it would be contrary to the interests of justice.

(3) An application for permission under subsection (1) may be made before or after the commencement of any hearing, and is, where practicable, to be made and dealt with in chambers.

(4) In any proceeding, the Judge may order that the identity of any witness may be excluded in any written statement, where disclosure of identity may risk the safety of the witness or interference with the witness.

(5) Nothing in subsection (1) applies in a criminal proceeding if it is necessary to disclose the particulars in the charge in order to ensure that the defendant is fully and fairly informed of the charge.

### **s 83. Evidence following closure of party’s case –**

(1) In any proceeding, a party may not offer further evidence after closing that party’s case, except with the permission of the Judge.

(2) In a civil proceeding, the Judge may not grant permission under subsection (1) if any unfairness caused to any other party by the granting of permission cannot be remedied by an adjournment or an award of costs, or both.

(3) In a criminal proceeding, the Judge may grant permission to the prosecution under subsection (1) if:

(a) the further evidence relates to a purely formal matter; or

(b) the further evidence relates to a matter arising out of the conduct of the defence, the relevance of which could not reasonably have been foreseen; or



- (c) the further evidence was not available or admissible before the prosecution's case was closed; or
  - (d) for any other reason the interests of justice require the further evidence to be admitted.
- (4) In a criminal proceeding, the Judge may grant permission to a defendant under subsection (1) if the interests of justice require the further evidence to be admitted.
- (5) The Judge may grant permission under subsection (1):
- (a) if there are assessors, at any time until the assessors retire to consider their verdict;
  - (b) in any other proceeding, at any time until judgment is delivered.

