

6th PACIFIC PROSECUTORS ASSOCIATION MEETING

Nuku'alofa, Kingdom of Tonga

29-30 July 2015

OUTCOMES STATEMENT

I HOSTS AND PARTICIPANTS

- 1 On 29 to 30 July 2015, the Attorney General's Office of the Kingdom of Tonga hosted the Sixth Annual Conference of the Pacific Prosecutors Association (PPA) in Nuku'alofa, Tonga.
- 2 The Sixth Annual Conference was attended by PPA members from the prosecuting offices of the Cook Islands, Federated States of Micronesia, Kiribati, Nauru, Palau, Papua New Guinea, the Republic of the Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.
- 3 The Conference was also attended by representatives from the Australian Attorney General's Department, the New Zealand Serious Fraud Office, the Kingdom of Tonga's Ministry of Health, a Forensic Pathologist Consultant, Dr Fintan Garavan, from Auckland, New Zealand, the Australian Federal Police, New Zealand Police and Tonga Police.

II TECHNICAL WORKSHOP ON EXPERT EVIDENCE

- 4 Before the Annual Conference proper, the PPA held a technical workshop on Wednesday 29 July 2015 to consider prosecuting in the Pacific with expert evidence. The objective of the technical workshop was to develop a basic understanding of three areas of expert evidence that PPA members often faced in criminal prosecutions, and to learn of any issues that experts from these areas had when giving evidence in the Courts.

5 There were presentations on: mental health from Dr Mapa Ha'ano Puloka, Psychiatrist Specialist from the Mental Health Ward of the Vaiola Hospital, Ministry of Health, Tonga; on pathology from Dr Fintan Garavan, Consultant Forensic Pathologist and Toxicologist; on forensic accounting from Ms Corrine Beehre, Senior Forensic Accountant from the New Zealand Serious Fraud Office. From these presentations the PPA accepted that as prosecutors, it was important to:

- (1) Have basic knowledge and understanding of the fundamental principles of areas of expert evidence;
- (2) Appreciate and respect the expert evidence, and the expert;
- (3) Accept that experts are not advocates, but they are friends of the Court, who provide independent expert evidence to assist the Court's in administering justice;
- (4) Consult experts before they give evidence to have a full understanding of their evidence, and also to test the prosecutor's theory of the case;
- (5) Develop a relationship with the expert, in order to help the expert prepare to give evidence, if the expert is giving evidence for the prosecution; and
- (6) Accept that the expert is the expert, not the prosecutor.

III OFFICIAL OPENING

6 The Conference was opened by the Minister for Justice of the Government of the Kingdom of Tonga, the Honourable Sione Vuna Fa'otusia. In opening the meeting, the Hon Minister urged prosecutors not only to perform their role in a fair and impartial way, but also to ensure that the public observe that justice is seen to be done, in the methods and processes of prosecution in their respective criminal justice systems.

IV KEYNOTE SPEECH

7 A Keynote Speech was then delivered to the Meeting by the Acting Lord Chief Justice of the Supreme Court of Tonga, the Honourable Mr Justice Charles Cato titled *A Crown Prosecution Service Today: The Need for Independence, Accountability and Transparency*.

Justice Cato emphasised that prosecution independence, accountability and transparency, not only depended on legislation, policies and manuals, but also appointing a well-qualified, experienced and reasonable prosecutor, who established a good relationship with the Attorney General and other important stakeholders. Justice Cato also offered the view that it was not appropriate for the prosecutor to be out in public defending his or her decisions, but that such a role may be more appropriate for the Attorney General.

V EXPERT PANEL DISCUSSIONS

8 The Meeting then considered three panel discussions as follows:

(1) Pacific Prosecutions and Good Governance;

The panel was moderated by Tonga, and presentations were made by Samoa, Nauru and Papua New Guinea. Tonga gave a presentation on the challenges to prosecution independence, and also mechanisms of accountability and transparency that it was implementing. Samoa presented its work on establishing a National Prosecution Office to be headed by a fully independent Director of Public Prosecutions, and the proposed legislation that is before the Samoan parliament. The PPA was also informed of the challenges on prosecution independence in Nauru, as a small jurisdiction, and to overcome this prosecutors are expatriates. Papua New Guinea then presented on the well-established prosecution framework that they have for prosecutors in the form of prosecution policies and manuals, especially with regards to transparency and dealing with the media.

(2) Prosecutor Welfare

This panel was moderated by Vanuatu, and presentations were provided by Palau, the Cook Islands and the Republic of the Marshall Islands. Palau gave an insight on recruiting expatriates to work in a developing jurisdiction, and that it was essential to lower expectations of expatriates applying from developed countries. Palau also provided its views on how to help prosecutors deal with their workload and work stress so that prosecutors are effective and efficient. The Cook Islands emphasised

that there needs to be effective support staff to help prosecutors and also making prosecutors own their files.

(3) Improving Police Relations

This panel was moderated by Samoa, and presentations were provided by Tonga, Solomon Islands and the Federated States of Micronesia. Tonga informed the PPA the relations with police improved when the police were at their lowest after the civil disturbances of 2006, and that this was based on the close and regulation consultations between the Director of Public Prosecutions and the Police Commissioner. The Solomon Islands informed the PPA of the special relationship that its prosecutors have with the police in providing advice to police investigators, and that relations have been improved by increasing resources for police, and also increasing rapport with Police. The Federated States of Micronesia informed the PPA that relations in FSM can be improved by better organisation, increasing competence and understanding, and also increasing respect for the job.

VI SPECIFIC LEGAL AREAS

9 The Meeting then received presentations on specific areas:

(1) Prosecuting Sexual and Gender Based Violence

This was a panel discussion that was moderated by Tonga, and presentations were made by Samoa, Kiribati and Papua New Guinea. Samoa informed the PPA the challenges it faced when the Family Safety Act was enacted, and how only later, infrastructure, training and knowledge of use of the Act was made. Samoa also presented on the recent case authority of *Key v Police* CA 07/13 (28 June 2013, Court of Appeal of Samoa, Fisher, Hammond, Hansen JJ) in establishing the sentencing bands for rape cases. Samoa also informed the PPA of the great work of the Samoa Victims Support Group, and how the community, especially retail businesses and churches are contributing to the success of the group.

(2) Pacific Forensic Model Provisions

Ms Caroline Scott of the Australian Attorney General's Department then presented on the work of her Department along with the Pacific Islands Chiefs of Police in reviewing forensic legislation around the region, in order to meet best practice benchmarks. She informed the PPA that Dr Lalotoa Mulitalo was engaged as a legislative drafter, and that a draft would be completed in July 2015.

(3) Prosecuting Cybercrime in Tonga

Ms Leotrina Macomber, Assistant Crown Counsel from Tonga's Attorney General's Office presented on the development of cyber activities in Tonga, and also the pathways to review Tonga's cybercrime legislation, and its efforts to accede to the Council of Europe Convention on Cybercrime (Budapest Convention on Cybercrime). She informed the PPA that Tonga intends to be the first Pacific Island country to accede to the Budapest Convention on Cybercrime, and encouraged other Pacific Island countries to do the same. She also informed the PPA meeting that Tonga was looking into sourcing training for prosecutors on the prosecution of cybercrime.

VII GOVERNANCE AND ADMINISTRATION

10 The Meeting then considered governance and administrative matters of the Association:

(1) Report to PILON 2014

With the assistance of the representatives from Samoa, the Chairman informed the PPA that after the PPA 2014 meeting, a report on that meeting was presented to PILON 2014 meeting that was held in Tarawa, Kiribati. The Chairman also informed the PPA that PILON 2014 was informed that the PPA proposed a draft letter to the Pacific Islands Chiefs of Police requesting that the PICP consider addressing amongst its members highlighted issues of concern relating to police investigations. It was then confirmed by Samoa that after PILON 2014, the letter was sent on 4 December 2014 to the PICP, and that no response had been received. Representatives

of the AFP and NZP confirmed that the PICP had received the letter, and that it would be the subject of a planning consultation by PICP on quality control of police investigations in the Pacific region.

The PPA meeting then agreed to:

- (a) Note the PPA 2014 report that was presented to PILON 2014;
- (b) Note that the PPA letter dated 4 December 2014 was sent to the PICP; and
- (c) Note that the PICP has received the PPA letter, and that it will consider the issues raised.

(2) Business Plan

The Chairman referred the PPA to the current 6 objectives of the PPA approved in the last PPA 2014, and raised the issue on whether there was a need to re-focus the objectives because no work has progressed on these objectives. A discussion was then held on the objectives.

The PPA meeting then agreed to:

- (a) Refer the objectives of the PPA to recommend how to progress the objectives of the PPA.

(3) Membership Fees

The Chairman referred the PPA to clause 4(ii) of the PPA Constitution, which required that an ordinary member shall pay an annual membership fee in each calendar year, as determined by the Executive Council, and sought directions from the PPA on how to progress this matter. He informed the PPA that the PILON Secretariat is currently the PPA Secretariat by agreement. Other expenses for the PPA will be for teleconference, travel, accommodation and daily subsistence allowance for experts and delegates for the annual conference. The representative

from Nauru then proposed that the matter be referred to the Executive Council to consider and propose a modest membership fee.

The PPA meeting then agreed to:

(a) Refer the issue of annual membership fees to the Executive Council to consider proposing the appropriate annual membership fees.

(4) Application to Pacific Islands Chiefs of Police to be an Observer

The Chairman referred the PPA to consider whether it would be appropriate for the PPA to apply to be an Observer to the Pacific Islands Chiefs of Police. The Chairman submitted to the PPA meeting that it is crucial that police and prosecutors of the region cooperate and collaborate at both national and regional levels. He highlighted that there has been no application by the PICP to be an Observer of the PPA meetings, and that the current Observers to the PPA under the PPA Constitution are the New Zealand Crown Law Office, Australian Attorney General's Department, the Commonwealth Secretariat, the PILON Secretariat, the New South Wales Director of Public Prosecutions, the Australian Association of Crown Prosecutors, UNODC, New Zealand Ministry of Foreign Affairs and Trade and AUSAID. The Solomon Islands supported the PPA to apply to be an Observer to the PICP. The representative from the Australian AGD proposed that the issue of an application be determined before the net meeting of the PICP in Niue, which would be held in August 2015.

The PPA meeting then agreed to:

(a) Refer to the Executive Council the application to be an Observer to the Pacific Islands Chiefs of Police

(5) Membership of the Executive Council

The Chairman then called for nominations to the Executive Council.

The PPA meeting then agreed to:

(a) Appoint the following members of the PPA Executive Council:

- (i) Chairman: Tonga
- (ii) Vice Chairman: Samoa,
- (iii) Polynesia: Tuvalu
- (iv) Melanesia: Vanuatu
- (v) Micronesia: Nauru

(6) Next Meeting and Host

The Chairman then called for offers from PPA members to host the next PPA meeting in 2016. Nauru then submitted an offer to host the new PPA meeting. There were no other offers.

The PPA meeting then agreed to:

(a) Appoint Nauru as the next host of the PPA meeting in 2016.

VIII OTHER BUSINESS

10 The Chairman then called for discussion on any other business.

11 The PPA meeting was reminded that the Advanced PILON Litigation Skills would be held in November 2015, and that each jurisdiction would be invited to submit an application for 4 participants.

12 There was no other business to discuss.

IX CLOSING

- 13 The Chairman then thanked the participants of the PPA 2015 meeting for their positive contributions to the work of the PPA, and also to the experts who gave very useful presentations for the PPA, and also for the staff of the Tonga Attorney General's Office for their organisation of the PPA meeting.

- 14 The Attorney General of Palau then expressed his sincere appreciation to Tonga for hosting PPA 2015, and also stated that the PPA meeting was very beneficial to him, as he learnt that the members were struggling with the same challenges that he was facing, and that he had learnt a lot from the meeting.

- 15 The Chairman then thanked the Attorney General of Palau for his kind words, and formally closed the meeting.

31 July 2015