



## **THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS**

### **“The International Visitor and the Fijian Criminal Justice System”**

*An Address by the Director of Public Prosecutions, Mr Christopher T. Pryde to the Fijian Tourism Crisis Communications Forum 2013 at the Holiday Inn, Suva & the Sheraton, Denarau on the 1<sup>st</sup> August 2013*

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The Attorney-General and Minister for Tourism;

The Permanent Secretary for Tourism;

Ladies and Gentlemen;

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### **INTRODUCTION**

1. First, let me thank the PS Tourism for inviting me to speak to you this morning on the topic of the international visitor and the Fijian criminal justice system. As tourism operators you will often be the first person that the international visitor turns to for advice on the criminal justice system in Fiji.
2. I want to start my address therefore by speaking in general terms about the role and function of the Office of the Director of Public Prosecutions

(ODPP) in the criminal justice system in Fiji. I know that many of you will be familiar with how the ODPP operates but for the benefit of others I want to firstly briefly outline the DPP functions, what the relationship is with the Police and with the public, the tourism industry, and with the victim or the accused. So, I will briefly summarise what we are about, where we fit in, then say something about the international visitor whether as an accused person or as a victim of a crime and how they fit in to the scheme of things.

3. I should also state at the outset that while the international visitor occasionally requires different consideration in terms of logistics, in general, there is no special treatment given to international visitors. All people in Fiji, whether citizen, resident or visitor are treated exactly the same when it comes to the application of the law. And in this regard, no special treatment or privilege is accorded to anyone simply because they are an international visitor. All people in Fiji, regardless of status, are equal before the law.
4. It also needs to be born in mind that the DPP's Office in exercising its functions does not represent the Government; it represents the State, or, in other words, the public interest. What this means is that, at times, the public interest in bringing a prosecution or, indeed, terminating a prosecution may not necessarily be in the interests of the government or the Tourism Industry but is, nonetheless, in the public interest. I will refer to "public interest" again later.

### **THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS**

5. The Office of the Director of Public Prosecutions was established at independence in 1970 and its role in the criminal justice system has been reaffirmed through successive constitutions. Today, its continued existence is restated in the State Services Decree 2009 at section 20 which sets out the powers of the Director of Public Prosecutions namely to:

- i. institute and conduct criminal proceedings;
  - ii. take over criminal proceedings that have been instituted by another person or authority; and
  - iii. discontinue, at any stage before judgment is delivered, criminal proceedings instituted or conducted by the Director of Public Prosecutions or another person or authority.
6. This applies to all criminal proceedings in the country with the exception of public corruption cases which are handled by the Fijian Independent Commission Against Corruption (FICAC). It also includes control of quasi criminal proceedings such as those brought by other prosecuting bodies established under various laws such as local body councils, the Land Transport Authority, or the Tobacco Control Unit under the Ministry of Health.
7. The decision making process of the DPP is completely independent of any direction from any person, even a Minister of Government, including the Attorney-General as chief legal advisor to Government. What this means is that, subject to the power being exercised in good faith and not for an improper purpose, the decision to institute, take over, or discontinue proceedings is for the Director of Public Prosecutions alone and the decision of the DPP is not reviewable. This is not unusual and, in fact, is how DDP Offices in other jurisdictions also operate.
8. For this reason it is important that comments from interested parties perhaps in the tourist industry such as ***“this matter will be prosecuted to the fullest extent possible”*** or ***“we call upon the DPP to immediately ensure these criminals are brought to task”*** are unhelpful and only have the effect of potentially jeopardising the prosecution since the State needs to be free to make an independent decision and in making that decision must have regard to all parties which includes not only the victim but also the accused person. In extreme cases where it is clear the accused will not get a fair trial, the prosecution may be discontinued. The State acts in the overall interests of justice and it is important to

remember that once a matter is before the courts, there should be no public comment.

### **THE DECISION TO PROSECUTE**

9. The decision to prosecute is made on objective criteria in the public interest and involves a two-step process. First, is the evidence sufficient to sustain the charge; in other words, is there a reasonable prospect of a conviction? Second, is it in the public interest to prosecute? As Lord Shawcross, the former Attorney-General of England said: "It has never been the rule in this country - I hope it never will be - that suspected criminal offences must automatically be the subject of prosecution." This applies equally in Fiji today. The public interest must always be considered and in serious cases such as rape or murder, it is almost always in the public interest to prosecute.
10. In order to arrive at a decision the DPP's Office has 46 state counsel and 70 police prosecutors spread throughout Fiji and in making that decision state counsel provide written advice and recommendations but the ultimate decision to prosecute, take over, or discontinue criminal proceedings remains with me as the DPP and it is a decision exercised on a completely independent basis.

### **THE INTERNATIONAL VISITOR**

11. This brings me to where the international visitor fits in. The visitor will either be the accused or the victim (complainant). The victim may be the resort or a guest. The accused may be a resort employee. In any case however let me state at the outset that whenever criminal activity has occurred it is imperative that the Police are contacted immediately.
12. Sometimes it may be tempting to have the matter resolved in-house, as it were, especially if there has been an apology or some other restitution

made or in order to simply not attract adverse publicity. This however is not a practice that should be encouraged regardless of the circumstances. We have had cases where the victim has not wanted to proceed and the matter has not been reported to the Police and later had a change of heart. Of course, it is then very difficult to get statements and the investigation is on the back foot. In any event, it is a public duty to report criminal activity. The decision to prosecute following investigation will be for the Police initially, then the DPP but at no time is it appropriate for anyone to circumvent that process.

13. The Police need to be involved at the outset, a complaint needs to be filed, the Police will take statements and contact details and consider the initial charges and the accused will be brought before a Magistrate. If there are issues of restitution or compensation or other matters that require consideration, this can be communicated to the Police who will refer the matter to the DPP's office for a decision but normally these matters are only of concern at sentencing.
14. In terms of the international visitor as the accused, again, regardless of the circumstances it is vital the Police are contacted. The accused has the same rights as any other accused person in Fiji including the right to silence and to free legal representation if they cannot afford a lawyer, though I doubt many international visitors staying at resorts would be earning less than F\$15,000/year which is the criteria for assistance. Still, the usual rights concerning silence, self-incrimination, right to consult a lawyer, right to bail, all apply.
15. In terms of the international visitor as the victim, it is important to remember that the victim has no rights. What do I mean by this seemingly controversial statement? When a criminal offence is committed, the act is one against the State and not the victim. This means that the State steps into the shoes of the victim and acts in the public interest. It means that the State, and not the victim, decides on the charges, if any, and decides how the prosecution of the case will proceed. The victim is expected therefore to provide a truthful statement to the

Police and be prepared to come to court and give oral evidence consistent with that statement. In the case of the international visitor, we can assist by paying for the return trip to Fiji if the visitor is required to give evidence in court.

16. But the State in acting in the public interest also needs to include the interest of the accused and this means that a prosecution will not continue at all costs and the State does not attempt to achieve a conviction at all costs. A balance needs to be achieved and in some cases, where there is suspicion that evidence has been improperly obtained, the prosecution may be discontinued, again, in the public interest. This would be without referral to the victim.
17. In recent years in jurisdictions such as Australia, NZ and the UK, various rights have been given to victims such as victim support or rights to be consulted. However, the basic position is the same in most countries; it is the State that runs the case and it is the State that ultimately decides on the charges and how the prosecution will be conducted.
18. This does not mean that the victim, whether it is the guest or the resort, is ignored. The victim will be contacted either by the Police to make a statement and will be updated on the case including the charges and the dates for hearings and then trial. The DPP's Office can be contacted directly but any representations to withdraw the charge if the Resort is the complainant or amend the charge or appeal a sentence should be put in writing and addressed to the DPP. These representations will be considered, you will receive a response, but the final decision is always with the DPP.
19. Consistent with the principle that the State acts for the victim there is also no need for the international visitor to require the services of a lawyer to represent their (the victim's) interest in court. Legal counsel representing victims are sometimes referred to as "watching brief" lawyers and lawyers charge for this "service" but it is an unnecessary expense since, as mentioned, the State represents the victim. And, what is

even better, the State does this free of charge! For that matter we also prosecute free of charge.

## **CONCLUSION**

20. After all this, it may appear that the DPP's Office is distant and aloof and to an extent it is but only in order to safeguard its independence and to objectively decide on relevant criminal charges that are backed by sufficient evidence to prosecute in the public interest. The DPP's Office does not prosecute in order to obtain a conviction at all costs and it does not prosecute to further any cause or governmental interest. It exists as a gatekeeper to, and quasi-judicial administrator, of the criminal justice system ensuring justice for all, which includes the victim and the accused.
21. In closing I wish to thank you for listening to me and I wish you well for the remainder of the forum.

Thank you.