



PRESS RELEASE; Office of the Attorney General; 18th June 2020

RE: INDEPENDENCE OF THE OFFICE OF THE ATTORNEY GENERAL IN CRIMINAL PROCEEDINGS – LAAULIOLEMALIETOA LEAUATEA SCHMIDT & OTHERS

This press statement is made in response to comments made by Hon. Laauliolemalietoa Leauatea Schmidt ('Laauli') on the *Manuo Program on TV3* ("Manuo program") broadcasted on Thursday, 11 June 2020. His statements and references concern a criminal case in which he is the defendant.

Laauli's comments impact on two important aspects of the powers, duties, and responsibilities of the Attorney General.

Therefore such comments warrant a response to ensure there is no room for misinterpretation and misinformation. The said powers and duties that Laauli's comment impacted are the Attorney General's:

- (a) Powers to institute, conduct and discontinue any criminal proceedings without any interference from any other persons (except the Court); and
- (b) Independence.

On the Manuo Program, Laauli commented that the Government had pushed through the criminal case, and that the case is between him and the Government.

With respect to Laauli, he has been misinformed and his comments do not reflect what occurs in a criminal investigation and prosecution:

- (a) Whilst the civil proceedings (in which the Government was **not** a party) had been dealt with, the criminal proceedings operate separately. The determination of the civil proceedings does not affect the criminal proceedings;
- (b) Whilst a complainant (in this case, the Honorable Peseta Vaifou) had desired to withdraw his complaint, the power to discontinue such proceedings vests solely with the Attorney General, in this case, the prosecution. **Therefore, only the Attorney General can withdraw or discontinue a criminal case;**

- (c) Laauli stated that the Prime Minister said ***“it’s no longer your case, o le case a le malo”***¹ This statement **is consistent with what usually transpires in a criminal case**. When a person commits an offence, that offence becomes an offence against the State.

When charges are laid, the matter is referred to the Attorney General’s office to institute and conduct the criminal case. The decision to prosecute is guided by a Prosecutorial Guideline which sets out the universally accepted principle of assessing whether a matter should be prosecuted or not. The guideline requires that prosecutors must be independent and free from political, media, public, sectional or individual pressure of an inappropriate kind in prosecution decision making, and freedom from direction or control in decision making by any other person or authority.

In determining whether a matter should proceed for prosecution, the three (3) questions prosecution considers are:

- (i) whether there is a prima facie case;
- (ii) what is the reasonable prospects of the case; and
- (iii) whether there was public interest in proceeding with the case.

The decision to prosecute Laauli and to proceed with his prosecution despite the desire by Peseta to withdraw his complaint was done in accordance with the guidelines, free of any pressure, and it satisfies the test set out above.

To conclude, the power to institute, conduct or discontinue any criminal proceedings is vested only in the Attorney General and his or her legal staff pursuant to Article 41 of the Constitution and sections 5(2)(iv)(b) and 7(1)(2) of the Attorney General’s Office Act 2013.

In carrying out the power under the said provisions, the Attorney General is independent and is not subject to any direction from any other person except a direction of a Court.

¹ Refer to Manuo Program dated Thursday 11 June 2020 (10.45 of the Recording)