PRACTICE NOTE 01/92 : CRIMINAL JURISDICTION
: SUBMISSION OF "NO CASE TO ANSWER"

1. This Practice Note is issued for the guidance of Magistrates when they require to dispose of a submission of "No Case To Answer" made by or on behalf of an accused person at a Criminal Trial.

2. In criminal proceedings a submission of no case to answer is made by the defence at the close of the case for the prosecution.

3. When such a submission is made the sole function of the Magistrate is to consider whether there is sufficient evidence which, if believed, would entitle the Court to convict. The issue then is one of sufficiency only. Matters such as credibility (of witnesses) or reliability (of evidence) are not material factors at this stage of proceedings. Paragraph 4.5 (page 21) of the Training Manual entitled "The Magistrate in the Commonwealth" is wholly erroneous in this context and should be ignored henceforth. Adapting the words of the Court of Appeal in R v Galbraith [1981] 2 All E.R. 1060 at page 1062 to the Tongan context -

> Where the evidence of the prosecution is such that its strength or weakness depends on the view to be taken of a witness's reliability (or other matters, such as credibility, which are generally speaking within the province of the "jury") and where on one possible view of the facts there is evidence on which a "jury" could properly come to the conclusion that the accused is guilty, then the Magistrate should allow the case to be tried and refuse the submission of no case to answer.

4. If, having considered the sufficiency of the prosecution evidence, the Magistrate upholds the defence submission and dismisses the case then great care should be taken when compiling the Record of Proceedings to ensure that only relevant matters are recorded there, namely a bald statement of the evidence led and the reasons why the Magistrate considered it insufficient. On no account, should comment be made on reliability or credibility.

16 January, 1992