



South Pacific
LAWYERS ASSOCIATION

new SPLASH

Issue 7

SELF-REGULATION VS. INDEPENDENT REGULATION of the Legal Profession

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Coming up

Changing Winds: Climate change and the law

Specialised climate change adaption workshops organised by DLA Piper and UNESCO with support from the Centre for Asia-Pacific Pro Bono

Workshop #1

Where: Tanoa Plaza, Suva, Fiji

When: 5 August, 2013

Workshop #2

Where: Millennia Hotel, Apia, Samoa

When: 9 August, 2013

Please contact daniel.creasey@dlapiper.com for more information.

A word from...

Talofa lava and welcome to this seventh Issue of NewSPLASH



Mr Raymond Schuster

Since the launch of the South Pacific Lawyers' Association in July 2011, the members have felt strongly about assisting lawyers in small island states of the region to set up their law societies or associations. This was in line with the belief that a strong, robust and vibrant association of

lawyers would enhance the quality of legal services, be able to assist the development of good and practical laws in their own states and be that voice of reason for a strong democratic state that promotes and maintains the rule of law.

The establishment of law societies is important in our view for the dissemination of information and assistance, financial and/or technical, such as in continuing legal education, empowerment of women lawyers, development of young lawyers, and so on.

Equally as important upon the establishment of law associations or societies is the question of how such law associations or societies are to be regulated. It is timely then, particularly as we move into a new age of complex cyberspace telecommunications technology, that we look at how we can provide a framework which enables law societies and its members to thrive in their profession, but at the same time ensure high

ethical and professional legal service standards for their community. The fast growing modern commercial environment continues to dictate how we operate and law societies must respond and find a balance that does not offend one's professional duty.

The Samoa Law Society is currently reviewing its *Law Practitioners' 1976 Act* with a new *Lawyers and Legal Practice Bill 2012*. The regulation issues considered in the article by Tauvasa Tanuvasa Chou-Lee are being considered in the new Bill now before the Samoan Parliament and will continue to be the issues of discussion for any future law society.

There is a balance in the protection of the independence and integrity of any law society and that of ensuring that lawyers are made accountable should they provide legal services that fall below the expected standards. How to strike the balance in the form of regulations is going to be the focus of the discussion in achieving any professional harmony with the working environment. It could be one of two methods as suggested by Tauvasa or a hybrid of the two. Either way, each law society must work the most appropriate regulatory style in consideration of their unique circumstances.

I trust that you will enjoy reading this issue and that the information within will assist you in developing ideas and opinions that help strengthen the legal infrastructure of the region.

Soifua ma ia manuia

In brief...

Mr Ross Ray QC speaks to the Pacific Beat about Legal Education

In January 2013, Solomon Islands Chief Justice, the Hon. Sir Albert Palmer, expressed his concern for young law graduates who are going into private practice without proper training and mentoring from more senior and experienced lawyers.

Sir Albert said that unfortunately the quality of legal submission and advocacy in the Solomon Islands courts reflected a lack of proper training and mentoring. He urged the Attorney-General to consider amendments to the current Legal Practitioners' Rules, and to address this issue in a practical and meaningful way.

In an interview with Radio Australia's Pacific Beat Program, the Chair of the South Pacific Lawyers' Association and Australian barrister, Mr Ross Ray QC, addressed these concerns.

Mr Ray became involved in the South Pacific around 1990 when the Victorian Bar first went to Papua New Guinea to run an advocacy training course. He has also been involved in assisting the Law Reform Commission in Fiji.

Mr Ray was quick to emphasise that in his experience, lawyers in the South Pacific are all very well-educated and capable people.

He said in many cases, while lawyers receive strong undergraduate education, there is no facility for further professional training.



"We have to remember that whether it's in Australia or New Zealand or any of the Pacific countries ... it is really important to understand that most graduates come out of university with a learning about how to think as a lawyer," he said.

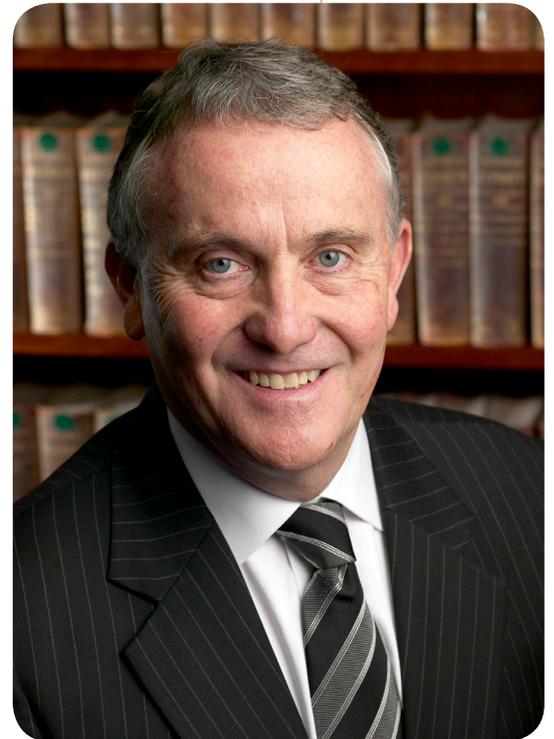
"That's quite different to the pressures and understanding that you need to conduct a legal practice."

Mr Ray said many lawyers practising in the Pacific also face much greater demands on their time and resources, adding to the challenge.

"If you look at the ratio of lawyers in private practice to population, we're dealing in Australia with a ratio of approximately 350 people to one lawyer," he said.

"When we go to Fiji for example, it's one to just under 4,000; for Kiribati one to 12,000; PNG one to 10,500 and the Solomons ... it's 13,500.

"So it's a difficult access to justice task for the community."



Mr Ross Ray QC



Mr Ray and the SPLA believe that the legal profession in the South Pacific requires structured Continuing Legal Education (CLE) training sessions, better resourcing for law societies and bars and for the proper disciplinary regulations in place.

“We think it's very important that the ongoing learning of practitioners is maintained, that they can seek assistance from each other, but also from proper, CLE training sessions.”

“We think there's another issue related to that and that is the resourcing of the law societies and bars. It is interesting that if you don't have a strong law society and you don't have professional discipline, those practitioners who are over-worked, who might, very understandably, take shortcuts, don't get the assistance they want initially. But further, they really aren't brought into check with help from the law society.”

“So you do need uniform resourcing for the law societies and bars and you need discipline so that practitioners who are falling below standard can be assisted. And if they refuse assistance, that they can then be dealt with in disciplinary proceedings. That regulation of itself brings up the standard significantly of lawyers wherever they are.”

Audio of the interview is available from <http://www.abc.net.au/news/2013-01-28/an-concerns-raised-over-pacific-lawyers/4487172>.

The year in review – SPLA Annual Report 2011-2012

Following its official launch in July 2011, the South Pacific Lawyers' Association (SPLA) developed five new strategic goals based on the outcomes of the SPLA's inaugural Annual General Meeting and the findings of the Needs Evaluation Survey 2011.

In the following year, the South Pacific Lawyers' Association (SPLA) worked to implement its new strategic goals:

- STRATEGIC GOAL 1 – Represent the interests of South Pacific lawyers on regional issues concerning the rule of law, access to justice and regional law and justice policy.
- STRATEGIC GOAL 2 – Support the development of member peak legal professional associations.
- STRATEGIC GOAL 3 – Improve the standard of, and access to, legal education including continuing legal education (CLE) for South Pacific lawyers.
- STRATEGIC GOAL 4 – Promote effective and robust regulation of the legal profession in the South Pacific region.
- STRATEGIC GOAL 5 – Represent the interests of the legal profession generally in the South Pacific region.

To realise the above objectives, the following SPLA Committees were established at the AGM in 2011 to identify needs and develop a way forward: Women in the Law, Continuing Legal Education, Complaints and Discipline-handling, and Young and Government.

Together, the SPLA Committees, Executive and Secretariat worked on three major projects in 2011-2012:

1. the South Pacific Needs Evaluation Survey 2011 (Strategic Goal 2 and 5);
2. the Women and the Law in the South Pacific Survey (Strategic Goal 1); and

3. the South Pacific Model Conduct Rules (Strategic Goal 4).

During the year, the SPLA also coordinated the Australian Bar Association's (ABA) Scholarship for its prestigious Readers' Advocacy Course in Perth, 4-8 July 2011. The Secretariat also launched this newsletter, released the final report of the Needs Evaluation Survey of 2011 containing nine key recommendations, and made a presentation to the 2011 PILON annual meeting in Auckland on SPLA's model conduct rules proposal.

Since its inception in 2007, the SPLA has set out to draw together the region's peak legal professional bodies that had until that time largely worked independently.

National lawyer associations in the South Pacific shared many problems in areas of continuing legal education, access to legal information resources and resourcing for the regulation of lawyers.

"The South Pacific region is geographically expansive; but it is also, in many ways, a very small place," said SPLA Chair Ross Ray QC. "Regional collaboration between lawyers, the judiciary and government is vital to promoting the rule of law and improving access to justice for many people in the South Pacific disadvantaged by geography, education or poverty. The future of the SPLA is positive as it is working on a number of projects to further its goals. The Executive hopes to continue to develop collegiality amongst lawyers in the South Pacific and work closely with members to promote the administration of justice and the development and improvement of law throughout the region."

The SPLA Annual Report for 2011-2012 is now available on the SPLA [website](#).

In Brief...

Advocacy skills training in PNG



Ms Carolyn Kirton SC

In late November 2012, three Victorian barristers departed for Papua New Guinea as one of the first projects to be coordinated by the Centre for Asia-Pacific Pro Bono (the CAPPB) in its first year of operation.

Caroline Kirton SC (pictured), Benjamin Lindner and Philip Corbett took the 70+ years of advocacy experience they have between them and applied it to conducting two advocacy skills courses in Port Moresby over a week.

Caroline is a commercial lawyer who taught advocacy nationally with both the Australian Advocacy Institute and the Australian Bar Association. She travelled to Bangladesh on several occasions as part of the Australian Bar Association's advocacy teaching program in that country.

With 30 years' experience, in criminal law and trials, Benjamin has been involved in teaching advocacy with the Australian Advocacy Institute, the Bangladesh Legal Education Training Institute and the Victorian Bar Reader's Course. He also teaches Criminal Procedure and Advocacy to law graduates.

Philip specialises in commercial and civil trials and appeals. He is an accredited advocacy coach and teaches in the Victorian Bar Readers Course. He has also been involved in advocacy skills programs and competitions

at Monash University and Melbourne University for more than 20 years.

The Victorian Bar team received strong support from Australian lawyers Peter Bednall, David Reed and Mark Kelly, working in PNG at the Office of the Solicitor General as part of the Strongim Gavman Program.

The Victorian Bar has an ongoing commitment to advocacy training in the region. Since 1987, the Victorian Bar has provided 123 Pacific lawyers with the opportunity to attend its Readers' Courses free of charge. For more than 20 years, it has also conducted advocacy skills training workshops across the region – including in PNG, the Solomon Islands, Vanuatu and Fiji.

The PNG legal system shares Australia's common law traditions, and has similar rules of procedure. The Supreme Court, National Court of Justice, District Courts (Magisterial Service) and local and village courts form the independent justice system.



Mr Philip Corbett



Up to 45 PNG lawyers, mostly from the PNG Office of the Solicitor General, completed the training. The experience of these lawyers ranged from junior lawyers to those who have been in practice for up to a dozen years.

The courses included a civil exercise typical of the issues which can create problems for lawyers working in the civil jurisdiction in PNG.

Victorian Bar Chair Fiona McLeod SC said that over the last 25 years the Victorian Bar has developed a strong relationship with the lawyers of PNG through advocacy training programs and the participation of local lawyers in its Readers' Course.

"We each benefit from these exchanges and the longstanding friendships we have formed. We are very pleased to extend these training opportunities through the Law Council Centre for Asia Pacific Pro Bono program and the PNG Solicitor General's office and acknowledge the contribution of all those who are working to bring this visit to fruition."

"The CAPPB provides a real opportunity for the Australian profession to co-ordinate an effective contribution to lawyers in our region. It will build on the experience of the independent bars, for example, in advocacy training, to target those countries where the need for assistance is most acute" said Ms McLeod.

A fuller version of this article, written by the Victorian Bar, was published in the October-December 2012 edition of the [Law Council Review](#).



Mr Benjamin Lindner

In Brief...

ABA scholarship winners announced

Congratulations to Mr Abuera Uruaaba of Kiribati and Vanuatu's Ms Evelyn Robert for their successful applications to the Australian Bar Association's (ABA) Advocacy Scholarship. Abuera and Evelyn have been offered a place at the ABA's prestigious Essential Trial Advocacy Course to be held in Perth, Australia from 24-28 June 2013. Together the two scholarships are valued at up to \$5000 inclusive of course fees, accommodation and meals.

Assistant People's Lawyer Abuera Uruaaba has been representing clients of the Office of the People's Lawyer (OPL) in the Magistrates' and High Court since his admission in 2012.

"The scholarship will be fruitful and rewarding for me and, more importantly, for the people of Kiribati where the majority cannot afford a private lawyer and rely on the OPL's assistance for their legal needs," wrote Abuera in his application.

Since graduating in law from the University of the South Pacific in 2009, Evelyn Robert has been practising as a barrister and solicitor at private law firm Ridgeway Blake Lawyers in Port Vila, Vanuatu.

"I believe the [ABA's] Course will be an excellent catalyst for developing the high quality of service the people in our region desperately need," wrote Evelyn.

The ABA Essential Trial Advocacy Course is targeted at junior barristers looking to improve or refine their advocacy skills. It is designed to encourage participants to further develop their own individual style through an examination of the way they practice and the provision of constructive feedback from senior practitioners and their peers.

The course involves a combination of lectures, demonstrations, performances by participants, group reviews and individual coaching sessions. Mostly, the participants, in groups of six, will perform in court and receive feedback. Prior to the commencement of the course, each participant is provided with a federal court brief that has three witnesses on either side. Participants will prepare a Federal Court brief, perform an opening address and examine and cross-examine witnesses before giving a closing address.



ABA Winner Abuera Uruaaba



ABA Winner Evelyn Robert

The South Pacific Model Conduct Rules Project

A proposal to develop model legal professional conduct rules for South Pacific countries was first discussed by members of SPLA at the inaugural South Pacific Roundtable in 2007. At its face-to-face meeting in Fiji in July 2008, it was resolved that the SPLA should develop non-binding rules setting out what it believes to be the minimum standards for the professional conduct of lawyers and to make these available to member countries. The SPLA viewed this as a useful step towards raising awareness of professional ethical obligations and the creation or simplification of codes for legal professional conduct in South Pacific countries.

It was decided that the SPLA should liaise with the Pacific Islands Law Officers' Network (PILON) in respect of this study. At its meeting in Vanuatu on 5–9 December 2008, PILON gave its 'in principle' support to a project to "develop model legal professional rules for South Pacific countries" and "invite the SPLA to submit its developed rules to the PILON Secretariat for distribution and consideration."

The objectives of the Model Rules Project are to develop:

- model conduct rules which can be adopted with appropriate debate and modification to regulate the legal profession in South Pacific countries;
- model complaints and discipline handling procedures for use by legal profession regulators and the courts;
- a model legal profession Act and regulations which can be adopted with appropriate debate and modification to regulate the legal profession in South Pacific countries; and



- engage with PILON and peak legal professional bodies to adopt the model rules developed under the Project.

In 2011, the Law Council of Australia's International Division successfully sought funding of \$25,000 (excl. GST) to support the project through the Australian Government's Attorney-General's Department. The first phase of the project will be the preparation of a detailed report on the development of model legal professional rules and complaints and discipline handling procedures for South Pacific Countries. The Report will draw on the SPLA's Needs Evaluation Survey 2011, other reports and studies of legal profession regulation in the South Pacific Region and existing legislation. The Report will then be accompanied by 'general principles' for legal professional conduct (similar to those produced by the International Bar Association) and a 'template' for complaints and disciplinary handling procedures.

A local junior barrister is being sought by the SPLA Secretariat to work with the Law Council Secretariat and the Chair of the SPLA to complete the draft Report for consideration by SPLA's constituent members. Following the consultation period, a second draft will be prepared and a further consultation period held. A final Report will be prepared for discussion at the SPLA AGM in November 2013.

In Brief...

Vale: Michael Takabwebwe, President, Kiribati Law Society

It is with great sadness that the South Pacific Lawyers' Association learned of the passing away of the former Attorney-General of Kiribati and President of the Kiribati Law Society, Michael Neaua Takabwebwe, on Sunday, 26 May 2013.

A funeral was held at the Catholic Cathedral in Teauraereke on Tuesday, 28 May 2013 where the following was read out on behalf of the SPLA.

"We at the SPLA came to know Michael as President of the Kiribati Law Society, one of the founding members of the South Pacific Lawyers' Association, although many of his colleagues in the region know him better from his time as Attorney-General.

Michael was greatly respected by his peers and colleagues throughout the Pacific region. Over the past few years, Michael took an active role in representing Kiribati lawyers to the SPLA and he attended the inaugural Annual General

Meeting of the SPLA in Sydney in July 2011. Michael's submissions regarding the proposed SPLA Constitution led to the amendment of Article 11 to ensure that at least two representatives from small Pacific Island Countries are always represented on the SPLA Executive. At the AGM, Michael also spoke passionately about the need for greater collegiality and cooperation between the legal professions in Pacific Island countries.

Michael was a member of the SPLA Legal Education Committee and was strongly committed to improving access to justice and improving legal education not just in Kiribati, but throughout the Pacific. His passion, kindness and his friendship will be greatly missed."



Michael at the inaugural AGM of the South Pacific Lawyers' Association in Sydney, 11 July 2011. (L-R: Laki Niu, President Tonga Law Society, Michael Takabwebwe, President Kiribati Law Society, Filiga Niko, Tuvalu).

PNG Speaker's roadmap for Parliamentary reform

The Hon. Theo Zurenuoc MP, Speaker of the Parliament of Papua New Guinea, has a vision to 'restore, reform and modernise' the Parliament and strengthen its legislative process.

Presenting the annual lecture to the Centre for Democratic Institutions at the Australian National University in Canberra on 5 June 2013, Mr Zurenuoc said that Melanesia's communal culture was 'comfortably embedded' in its governance, and that the wantok system was one of the main challenges for PNG's democracy.

PNG's Parliament has been riddled with corruption for many years, and the widespread misconception that the main role of Members was to deliver goods and services was a contributing factor, he said.

'Members of Parliament have to be seen primarily as legislators rather than delivery agents' he said, and good governance requires 'accountability and transparency', and better debating of legislation.

Strategies on Mr Zurenuoc's Parliamentary reform agenda include:

- appointing an independent Clerk from outside the public sector
- having an annual calendar for Parliamentary sittings
- having notice papers circulated in advance of sitting days
- enforcing Standing Orders on the floor of the House



- revitalising the Parliament's Committee system (possibly with research support drawn from the National Research Institute)
- introducing a new Corporate Plan and ensuring compliance with Parliamentary services and finances legislation
- having Parliamentary information accessible to citizens
- having a well-functioning Inter-Parliamentary Union office
- educating young people through a civics education program and visits to Parliament
- securing an adequate budget for running the Parliament.

Mr Zurenuoc is a second term MP who was elected as Speaker in August 2012.

The PNG Parliamentary has a 'twinning arrangement' with the state Parliament of Queensland in Australia.

*Mr Tauvasa
Tauvasa Chou-Lee
and The Hon.
Theo Zurenuoc
MP.*

In Depth...

Regulating the Legal Profession

By *Tauvasa Tanuvasa Chou-Lee*



Law should always be accessible, intelligible, clear and predictable. The law should apply to all equally and legal rights should be resolved by law and not by discretion.

Lawyers play important roles in society. They assist clients understand their rights and obligations under the law, help clients resolve legal disputes and tensions, assist the courts in resolving legal disputes, promote the administration of justice and uphold the rule of law.

The purpose or objective of legal profession regulation is to set, promote and ensure lawyers meet appropriate standards of knowledge, ethics, behaviour and good practice.

Regulation usually sets standards covering things such as: who can perform legal work; knowledge and skills required for admission to legal practice; practising certificate requirements; managing trust accounts; legal costs; complaints and discipline; lawyers' business structures and legal profession rules. These 'standards' can be found in legislation, the common law, in ethical/professional conduct rules, and in the standards set by the Court (usually the Supreme Court in most jurisdictions) through its inherent jurisdiction over admission to, and discipline of, the legal profession.

Regulation also aims to protect the rights and interests of consumers of legal services and provide avenues in which complaints about lawyers can be made and resolved. This in turn encourages a general respect for the profession and supports the courts with a knowable and trustworthy profession. Regulation of the legal profession assists in promoting the public and consumer interests, promoting healthy competition and innovation, and most importantly, transparency and accountability.

As a starting point, appropriate standards of conduct in the provision of legal services must always be promoted, monitored and enforced the best way they can. The users of legal services should be confident that they are provided with a timely, effective, fair and reasonable means of redress for complaints they or other stakeholders may have. These necessary measures that exhibit strong professional regulation serve even more fundamental purposes. They work to:

- protect and promote the public interest;
- support the rule of law and administration of justice;
- improve access to justice for all so there is ideally a fair proportion of legal professionals to citizens;
- protect and promote the interests of consumers;
- promote competition in the provision of legal services;
- encourage an independent, strong, diverse and effective legal profession;
- promote the professional principles; and
- increase public understanding of a citizen's legal rights and duties.

All these protect the legal profession's interest and integrity.

Legal profession regulation is about setting and maintaining the standards of the profession and seeking to protect and promote public confidence in the legal system, the administration of justice and the rule of law. The public perception of the profession is politically crucial in this sense.

Types of law profession regulation

There is no single approach to legal regulation and various models of regulation exist. However regulatory structures for the legal profession generally fall under one of three models. Firstly a fully independent regulation model where the legal profession is regulated by a statutory authority that is independent of the legal profession; secondly, a self-regulation model where the legal profession is regulated by a professional association, such as a Law Society; and thirdly, a co-regulatory model where some regulatory functions are performed by an independent regulator, while other regulatory functions are performed by a professional association.

These three main types of law profession regulation differ in their costs in regulating the legal profession, the complexity of their framework and operations, their levels of responsibilities and accountabilities, and the speed at which complaints from the public are resolved.

The cost of any regulation is phenomenal. Self-regulation usually works with the voluntary support of senior legal practitioners through their time and energy. A professional association as the sole regulator can have limited resources to carry out regulatory functions. For instance a law society may not have enough people and financial resources to carry out regulatory functions. An independent legal services commission, being a semi-autonomous body, differs in that it hires professionals, making it more costly.

The other difference is the complexity of regulation between the three approaches. An independent legal services commission, which would ideally be a semi-autonomous

body, can conveniently focus more on specific types of regulation of the legal profession. Meanwhile, self-regulation looks at the profession more generally.

To that end, an independent legal services commission would perceptively be more apolitical and impartial than a self-regulated one when it comes to responsibility and accountability. Conversely, regarding responsibility and accountability, more burdens would be placed on an independent legal services commission to perform and ensure it produces results its stakeholders expect.

Public perceptions of independence and bias/corruption are important key factors that determine the difference of and preference for one regulatory model over the other. This is premised on responsibility, accountability and the complaints resolution mechanisms that are put in place.

With self-regulation there are relative difficulties in prosecuting claims as opposed to an independent legal services commission. Firstly there is the issue of availability of funding for the prosecution of lawyers who breach professional standards. Generally, the trend is that governments do not usually provide enough funding, especially for self-regulation as opposed to an independent legal services commission. This does not go without saying that these types of regulation are required to provide substantial meritorious justification for their funding from the government and other sources.

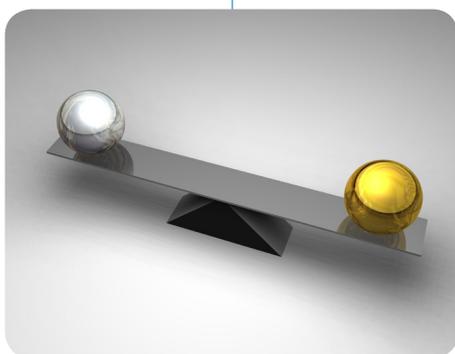


When there is a lack of this funding and support from the government or other sources, much of the money is generated from practising certificate fees and other administrative fees, which are often allocated to other key priority areas such as administrative expenses.

The second is the availability of practitioners who are prepared to prosecute colleagues. This is particularly true in small jurisdictions where the law profession is usually self-regulated. In such contexts, there might be much uneasiness and hesitation on the part of practitioners, that practitioners more often than not easily declare their conflicts of interest and avoid dealing with colleagues who are the subject of a complaint or complaints. This results in a lack of prosecutions of practitioners in a self-regulation system compared to an independent legal services commission system.

At the end of the day, any of the three main types of law profession regulation should facilitate accountability and competition. Reform is always necessary in this respect. The success of accountability and competition reform to the legal profession is contingent on the process by which it is introduced on its substantive merits. A diversity of opinions and experiences of reform proposals should be gathered through interviews with lawyers as well as other stakeholders by different discovery methods. Varied responses to reform should then be analysed using the steady comparative methods. Community responsiveness, persuasive dialogue, discovery of self-interest, pragmatic

acceptance of fate and responding to market forces are the usual consequences of regulation. Most or all stakeholders of regulation would constructively lean towards persuasion and dialogue especially when they see reform as inevitable.



Regulation in the Pacific

In the South Pacific region, the legal profession is effectively self-regulated in each country except Fiji, Vanuatu and Australia, which have independent legal services commissions (mostly in its States and Territories in the case of Australia).

The SPLA's Needs Evaluation Survey 2011 revealed that legislative and regulatory frameworks do not currently provide an adequate basis for sustainable funding of legal professional and regulatory bodies in the South Pacific.

For example, funding is not provided by Pacific governments or through statutory regimes to support any association with complaints and discipline handling, despite the fact that the majority of lawyer associations in the Pacific are responsible for handing complaints against member lawyers.

Other factors in the Pacific that affect regulation include the lack of statutory provisions to empower any law society in the region to conduct 'spot' audits of legal practitioners.

For these reasons, the first two recommendations of the 2011 Needs Evaluation Survey urged governments in the South Pacific to conduct a comprehensive review of legal professional regulation, and asked international organisations and funding providers to engage with governments to support comprehensive reform of legal profession regulation.

Tauvasa Tanuvasa Chou-Lee is the Deputy-Solicitor-General (State Defence) of PNG's Department of Justice and the Attorney-General. In 2012, he received the Prime Minister's Pacific Australia Award while studying his Masters in Law at the Australian National University. As part of the Award, recipients are provided a combination of work placements and leadership training to build on academic experience. Tauvasa has been placed in the International Policy Division of the Law Council of Australia Secretariat for three months to assist with various projects.



In Profile...

New PacLII Advisory Board

About PacLII

PacLII stands for the Pacific Islands Legal Information Institute. It is an initiative of the University of the South Pacific School of Law with assistance from AustLII.

PacLII collects and publishes legal materials from 20 Pacific Island countries on its website <www.paclii.org>.

The materials on PacLII mainly consist of primary documents such as legislation, court and tribunal decisions, court rules and bench books and include secondary information such as scholarly literature. It also has a Pacific Islands Treaty Database.

PacLII's sister site, the Pacific Legal Gateway, is accessible through the main site. It provides links to a comprehensive range of other online legal research sites relevant to the Pacific region. It also hosts materials from two other regional organisations, the Pacific Judicial Development Program, and the Solomon Islands Law Reform Commission

PacLII has important advocacy and training roles. It conducts training sessions with students, legal professionals, and others. It assists them in not only learning how to access the internet but how to use the SINO search engine to refine their legal searches and maximise their results. It also works closely with law agencies in the different jurisdictions to improve the flow of legal information for free online publication.

The new Advisory Board

A new Advisory Board chaired by the Secretary General of the Pacific Islands Forum Secretariat (PIFS), Mr Tuiloma Neroni Slade, had its first meeting at the Emalus Campus in Port Vila, Vanuatu on 4 February 2013.

In his introductory remarks, University of the South Pacific Vice Chancellor and President, Professor Rajesh Chandra, welcomed the Chair and the members of the Board and thanked them for readily accepting the invitation to serve on the PacLII Board.

Professor Chandra thanked the Secretary General for accepting the Chair's role and said that "the Chair brings great wisdom and regional and international experience. Under his leadership, we all can take comfort in being guided towards the implementation of the project which is crucial to the region as it is an essential part of law and justice. I firmly believe that under his leadership, PacLII will be steered successfully in the desired direction."

Professor Chandra acknowledged the presence of Mr John Davidson, Minister-Counsellor, AusAID, based in Suva and expressed the University's deep appreciation for the strong support of AusAID for this project and many other key initiatives of the University. The current project operates with a three year funding support, and AusAID support has been renewed. Professor Chandra also acknowledged the funding that was provided to the project by New Zealand.

"I sincerely thank the Government of Australia for its tremendous support to PacLII and believe that we will continue the relationship beyond the period of the current funding agreement," Professor Chandra said.

On assuming the Chair, Mr Tuiloma Neroni Slade thanked the Vice Chancellor and said: "I am honoured to be in the position of the Chair of the Board. This project is an important undertaking by the University and I acknowledge the Vice Chancellor's leadership of the University. I wish to also



PacLII Board Members at the first meeting. (left-right): Mr Ross Ray QC, Chairman, South Pacific Lawyers Association; Mr John Davidson, Minister/ Counselor, AusAID; Mr Neroni Tuiloma Slade, Secretary General of PIFS (Chair); Professor Rajesh Chandra, Vice Chancellor and President, USP; Ms Karen Collier, Coordinator, Pacific Law Library Twinning Programme; Ms Lenore Hamilton, Director PacLII (Secretary to Board); Mr Jajindra Karan, Director Development, Marketing, Communications & Alumni, USP; Professor Andrew Mowbray, Director AustLII; and Professor Eric Colvin, Head of School of Law; USP.

convey the Board's and my own appreciation to the Government of Australia for the financial assistance to a very worthy project," he said.

The Chair welcomed all the members and said that the Board had a very distinguished membership and that their aim should be to guide the project with sound advice and direction so that it fully meets its objectives.

He further said that "PacLII has become a vital service to many in the region and it is also accessed by the international community. Monitoring the performance and having an oversight on PacLII are the key roles of the Board. It is expected to ensure that PacLII is operating in the best interest and that it continues to provide adequate support to, as part of the overall support to the law and justice sector of the region".

AusAID Minister-Counsellor Mr Davidson said that "Australia was very pleased to be associated with this project and its overall assistance to USP as it sees the project as an important and worthwhile regional public good, which is the basis of Australia's regional assistance. Australia sees USP as a good example, which delivers high quality services to the region within the notion of public good".

Mr Davidson further added that Australia is pleased that this project is part of USP and that Australia has increased its assistance to USP for 2013 and will be working towards concluding a new partnership agreement for assistance this year.

At its first meeting the Board noted with appreciation the progress PacLII has made in the first six months of the current three-year period. These included progress in the following five key result areas:

- Expanded and improved legal material collection;
- Improved accessibility of materials;
- Strengthened communications and partnership with member jurisdictions and other LIs;
- Improved project management; and
- A more financially sustainable PacLII.

The Board further approved in principle the work plan for 2013, which will be further improved and deliberated on out of session. The Board discussed the future work plan and its focus. At its next meeting, which is scheduled for the last quarter of this year, the Board agreed to look at the work plan for 2014 and 2015 while assessing the progress of work in 2013 against the work plan.

The PacLII Board comprises Mr Neroni Tuiloma Slade, Secretary General of PIFS (Chair); Professor Rajesh Chandra, Vice Chancellor and President, USP; Mr. John Davidson, Minister /Counselor, AusAID; Prof Andrew Mowbray, Director AustLII; Dr Donna Buckingham, Director NZLII; Ms Karen Collier, Coordinator, Pacific Law Library Twinning Programme; Dr Lawrence Kalinoe, Chairman, Pacific Islands Law Officers Network and Mr Ross Ray QC, Chairman, South Pacific Lawyers Association.

In the spotlight...

Modernisation of international commercial law needed in the Pacific says UN official

Domestic laws covering international commercial transactions could be modernised and harmonised in the countries of the South Pacific, according to the Dr Luca Castellani, Head of the United Nations Commission on International Trade Law Regional Centre for Asia and the Pacific (UNCITRAL RCAP).

Speaking at a Comparative Law Conversation in Canberra in February 2013, Dr Castellani urged policy makers to consider the model laws provided by UNCITRAL for the South Pacific, so that the opportunities arising from economic growth in East Asia could be accessed fully in the region.

"Myanmar is opening up and other countries in East Asia are driving economic growth and regional economic integration" he said.

"The modernisation of international trade law is not currently a priority in the South Pacific, but Australia has the legal capacity to provide technical assistance based on solid expertise and experience" he said.

"Over the last six to seven years there has been progress in the Marshall Islands, Fiji and the Cook Islands, but in other Pacific Island countries it is difficult to enforce arbitral awards. Business friendly legal environments with stable, predictable arrangements and the strong rule of law are needed for international trade to flourish" Dr Castellani said.

Dr Castellani was formerly a legal officer in the secretariat of UNCITRAL, where he managed the secretariat for the Electronic Commerce Working Group and assisted with promoting the adoption and uniform interpretation of UNCITRAL texts relating to the sale of goods and electronic commerce. He is also a member of the United Nations Network of Experts for Paperless Trade in Asia and the Pacific (UN NExT) Legal Advisory Group.

Australia consulting on domestic reform

Australia is currently consulting with stakeholders to assess whether a reform of Australia's private international law rules and principles would deliver micro-economic benefits. The Australian Attorney-General's Department has released two discussion papers to facilitate debate. More information can be accessed at <http://consult.govspace.gov.au/pil>.

33rd International Trade Law Symposium

The Law Council of Australia's International Law Section hosted the 33rd International Trade Law Symposium in Canberra on 6–7 May. A Symposium highlight was the opening keynote address by the Secretary of the Attorney-General's Department, Mr Roger Wilkins AO.

The Symposium included panel-led discussions on the latest developments in:

- free trade negotiations, the Doha Round negotiations on advancing services trade reform and other trade law issues and WTO jurisprudence
- the UNCITRAL Model Law on Electronic Commerce and the UN Convention on International Sale of Goods
- international commercial arbitration
- combating the bribery of foreign public officials
- the work program of WIPO's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.

The annual Symposium was held at University House at the Australian National University. Please contact the ILS administrator Nicole Eveston ils@lawcouncil.asn.au if you have any inquiries about the event.

IBA Annual Conference, Boston, 6–11 October 2013

Boston, New England's historic city that is a social and commercial hub and one of the oldest operational sea ports in the western hemisphere, will play host to the International Bar Association's 2013 Annual Conference.

Keynote speakers include former US Secretary of State Madeleine Albright, the US Supreme Court's Associate Justice Stephen Breyer, and Economist and former Chairman of the Federal Reserve Paul Volcker.

Open to both members and non-members of the IBA, this year's conference sessions, workshops and panels will address issues ranging from arbitration to M&A law and from human rights to the ethics of the legal profession. More than 180 sessions will be delivered from the viewpoint of the leadership of the Legal Practice and Public and Professional Interest Divisions, with up to 25 CPD/CLE hours available for those attending the whole week of the conference.

The event also provides participants with networking opportunities with thousands of delegates attending from more than 100 countries.

CAPPB South Pacific Legal Training Workshops

With support from the CAPPB and the Australian Government, DLA Piper and the Victorian Bar will provide specialised skills workshops in two locations in 2013:

- Workshop 1 will be in Solomon Islands in 18–21 June 2013.
- Workshop 2 will be in Samoa (TBC) and Cook Islands in November 2013.

The workshops will include interactive sessions in the following areas:

- ethics and conflicts
- legal process
- legal drafting and analysis
- evidence
- trial preparation
- advocacy.

The workshops will be tailored for public defenders, government legal officers and private practitioners. Depending on uptake, separate session will be arranged through the workshop to cater for all participants.

The providers

DLA Piper is a global law firm with over 4,200 lawyers located in more than 30 countries throughout the Americas, Asia-Pacific, Europe and the Middle East. DLA Piper has a team of highly qualified lawyers committed to providing pro bono.

The Victorian Bar has been running training in the South Pacific region for the past 25 years. In 2012, the Victorian Bar delivered a number of successful and highly regarded advocacy skills training workshops in the region, including training supported by the CAPPB to Government and Legal Officers at the request of the Office of the Solicitor-General, Papua New Guinea.

Cost and funding

Training will be provided on a pro bono basis with the support of the CAPPB and the Australian Government. Participating lawyers will need to cover their own costs to attend, but there will be no registration fees to participate.



Centre for Asia-Pacific Pro Bono

About the CAPPB

The CAPPB seeks to match requests from the Asia-Pacific region for international pro bono legal assistance with Australian legal practitioners and law practices. Last year the CAPPB matched a request for advocacy skills training from the Office of the Solicitor-General, Papua New Guinea, with the Victorian Bar and provided funding to support the costs of the trainers. It also matched requests from Vanuatu and the Solomon Islands with law firms for advice on a human rights issues and advice on mineral resources. The CAPPB is continuing to seek new opportunities, including:

1. liaising with AusAID (including in-country coordinators) to identify other funding mechanisms for CAPPB applicants in addition to the CAPPB Disbursement Fund;
2. Engaging with Austraining to identify opportunities to work as a partner organisation to place volunteers on six months to three year secondments through the Australian Volunteers for International Development Program; and
3. Contacting Trade Commissions in eligible Asia-Pacific countries to advise them of the existence of CAPPB as a possible resource for emerging business and industries to obtain international legal advice relevant to exports and development. Particular interest in this type of work has been

expressed by several CAPPB registered providers including Sidley Austin, a global law firm.

Please contact the CAPPB Administrator at cappb@lawcouncil.asn.au if you have any ideas for projects.

Save the date: South Pacific Lawyers' Conference 2013

Hosted by the SPLA, the Vanuatu Law Society and the University of the South Pacific, the South Pacific Lawyers' Conference will be held in Port Vila, Vanuatu with dates to be confirmed in July.

The Conference Organising Committee is currently working on a program of speakers from the region. Additional SPLA activities around the Conference program will include the SPLA's 2nd Annual General Meeting and a face-to-face meeting of the SPLA Executive. Participants will also have plenty of opportunity to network in a number of social activities included in the program.

More details on the Conference will soon be available on the SPLA website. If you would like to get involved in Conference, please email info@southpacificlawyers.org.

2013 Needs Evaluation Survey...

One of the South Pacific Lawyers' Association (SPLA) Secretariat's first achievements was the development of the region's first ever needs evaluation survey of the legal profession in 2011.

With endorsement and funding from the International Bar Association's Bar Issues Commission and support from the Law Council of Australia Secretariat, the Survey aimed to gather information on the needs of legal professional associations in the South Pacific region as a step towards improving the quality of services provided to their members and the general community.

On 18 October 2011, the SPLA Executive released a Final Report on the Needs Evaluation Survey which outlined key findings and included recommendation developed by the SPLA Executive.

Key findings from 2011

Infrastructure

- The PNG Law Society and the Tonga Law Society are the only lawyer associations with a permanent or part-time office. All lawyer associations believe it would be beneficial to the association and the legal profession to have a permanent office – whether housed within a government body (such as a Public Solicitor's Office (PSO) or Director of Public Prosecutions' (DPPs') office), a court, or separate premises.
- Legislative and regulatory frameworks do not currently provide an adequate basis for sustainable funding of legal professional and regulatory bodies.
- Most legal professional associations believe that infrastructure could be improved by sharing resources (for example through a centrally administered secretariat). However, key barriers include issues with telecommunications, funding, the need to establish common templates and processes such as operational guidelines, and the need for many members to improve communications and resource-sharing domestically, particularly in remote areas.



Key findings from 2011

<p>Continuing legal education</p>	<ul style="list-style-type: none"> ● CLE is only mandatory in one jurisdiction – Vanuatu. ● CLE is offered by six professional associations on an ad hoc basis. ● All legal professional associations believe that there is a strong need for practitioners to participate in CLE (whether mandatory or voluntary) and that such CLE should be offered through the association – whether in partnership with external organisations or locally driven. ● Through the Survey and follow-up with recipients, further needs were identified, such as the limited access to online legal resources (such as any/timely court reports and consolidated legislation), including legal education resources.
<p>Complaints and discipline handling</p>	<ul style="list-style-type: none"> ● Most (7 of 12) lawyer associations are responsible for receiving and investigating complaints against practitioners. In Fiji and Vanuatu, complaints and discipline are dealt with by an independent regulator. ● Funding is not provided by government or through statutory regimes to support any association with complaints and discipline handling. ● 92% of legal professional associations seek to implement or improve existing systems for complaints and discipline handling. The Cook Islands is the only jurisdiction which believes its existing regime for complaints and discipline handling is adequate or effective. ● All legal professional associations support the development of uniform procedures for complaints and discipline handling, provided that such model rules are developed in consultation with all associations and the implementation of such rules is not mandatory. ● More than 60% of legal professional associations support the listing of outcomes of serious breaches (i.e. offences giving rise to striking off or suspension) of legal professional obligations by practitioners on a central database which is searchable by members of the public. Most legal professional associations do not support the listing of minor complaints.

Key findings from 2011

<p>Legal aid/legal assistance</p>	<ul style="list-style-type: none"> ● The Vanuatu Law Society and the Kiribati Law Society are the only lawyer associations that do not currently provide for legal aid services but which seek to do so. ● Most jurisdictions believe that external providers of legal aid would be beneficial. ● In all jurisdictions, lawyers do a large amount of fee-free/pro bono work, none of which is coordinated through legal aid centres or peak lawyer associations. ● The Cook Islands Law Society, Solomon Islands Bar Association, Tonga Law Society and Vanuatu Law Society believe that lawyers in their jurisdictions could be encouraged to do more pro bono work. ● From follow-up with survey recipients, all jurisdictions believe that pro bono is not a substitute for a properly funded legal aid system.
<p>Register of legal practitioners</p>	<ul style="list-style-type: none"> ● Peak lawyer associations in small jurisdictions (Kiribati, Nauru, Niue and Tuvalu) do not currently maintain a register of legal practitioners. ● All lawyer associations support the development of an online database of lawyers in the region.
<p>Trust accounting and audits</p>	<ul style="list-style-type: none"> ● Papua New Guinea is the only country in the region which requires legal practitioners to submit annual audit reports of trust accounts as a prerequisite for renewal of practising certificates. ● There are currently no statutory provisions to empower any law society in the region to conduct 'spot' audits of legal practitioners. ● Most legal professional associations in the region support the introduction of legislation requiring legal practitioners to hold trust accounts and empowering the law society to conduct 'spot' audits of trust accounts. ● Legal practitioners have reporting requirements under anti-money laundering legislation in approximately 50% of jurisdictions. However, in all jurisdictions, lawyers have never received formal notification of their obligations under financial services legislation nor training in how to meet their obligations under such regimes.
<p>Publications and information resources</p>	<ul style="list-style-type: none"> ● Only the PNG Law Society, Tonga Law Society and Vanuatu Law Society currently provide regular information resources to members and/or the general public. ● All legal professional associations would like to provide or improve information to members and the public but lack financial, IT and human resources to do so.

Based on the findings of the Survey, the Executive of the SPLA made the following nine recommendations, intended to provide a starting point for stakeholder engagement on strengthening peak legal professional associations as a vital component of the law and justice sector. The SPLA Executive have been making some progress in addressing the recommendations from the first survey, as reflected in the table below.

Recommendations

Recommendation 1 – review of legal profession legislation and regulation

Governments in South Pacific countries should make it a priority to conduct a comprehensive review of legal profession legislation and regulation with particular regard to:

- The scope and authority of peak legal professional associations and the need to provide for the establishment of financially sustainable peak legal professional associations;
- The appropriateness of introducing mandatory CLE and responsibility for accrediting CLE courses and programs;
- Responsibility for professional discipline and the establishment of effective and financially sustainable regulatory systems (e.g. compulsory contributions by legal practitioners); and
- Trust accounting and audit requirements including:
 - Mandatory provisions for the keeping of trust accounts;
 - Provisions for the annual or periodic auditing of trust accounts;
 - Powers for a legal profession regulator to conduct 'spot' audits of trust accounts on reasonable grounds; and

The charging and use of interest on trust accounts to fund legal profession regulation.

Recommendation 2 – reform of legal profession legislation and regulation

International organisations and funding providers should engage with governments to support comprehensive and consultative reform of legal profession legislation and regulation.

Recommendation 3 – review of funding and coordination of legal aid

Governments in South Pacific countries should conduct a comprehensive review of the funding of legal aid/assistance and the improvement of coordination of legal aid and assistance services in partnership with the legal profession to improve access to justice.

Recommendation 4 – reform of funding and coordination of legal aid

International organisations and funding providers should engage with governments to support comprehensive and consultative reform of legal aid/assistance funding and coordination.

Recommendations

Recommendation 5 – CLE access

Legal professional associations should engage with each other and regional providers of legal education through the SPLA to improve access to CLE events, training and resources for legal practitioners and in particular:

- Education and training in trust and office accounting;
- Legal professional ethics and responsibility; and
- Practice management.

Recommendation 6 – long-term strategies

Peak legal professional associations should engage with their members and the SPLA to develop long-term strategic plans (5-10 years) to guide the future development of the association.

Recommendation 7 – infrastructure and human resource needs

International organisations and funding providers should engage with peak legal professional associations to meet short-term (1-3 years) infrastructure (premises and facilities) and human resource needs to enable peak legal professional associations to develop and expand member services and develop governance and administrative structures to achieve long-term financial sustainability.

Recommendation 8 – online database development

Peak legal professional associations should engage with each other and the SPLA to develop an online database of legal practitioners in the South Pacific region.

Recommendation 9 – communication resources

Peak legal professional associations should engage with each other and the SPLA to produce print and web-based publications relevant and available to legal practitioners in the region.

The full report from 2011 is available on the SPLA website.

The 2011 Survey Report was distributed widely to governments and NGOs in the region, regrettably, with little to no response. The SPLA has nevertheless been active in seeking to improve communication resources for members and create education opportunities for lawyers through the Australian Bar Association South Pacific scholarships, the distribution of CLE DVD's and through advocacy training opportunities created through the Centre for Asia Pacific Pro Bono (CAPPB).

The publication and distribution of newSPLAsh has been a tremendous success and together with the continued development of the SPLA website and its linked resources the SPLA has improved communication between its Constituent Members and between legal practitioners in the region.

In November 2013, the SPLA will seek to host its inaugural Conference in Port Vila, Vanuatu in partnership with the Vanuatu Law Society and the University of the South Pacific. It is hoped that this Conference will enable practitioners from around the region to meet,

participate in continuing legal education and training and provide opportunities to develop regional approaches to common issues.

The pursuit of enhancing the legal profession in the South Pacific is far from complete. Now, new data is required to update the statistics and identify changing and emerging needs. In response to this, the SPLA will conduct its Second Needs Evaluation Survey in 2013 and will develop a strategic advocacy framework based on the report's outcomes and recommendations which it will seek to implement with the support of all of its members.

The SPLA's Needs Evaluation Survey 2013 will be disseminated in the coming months. If you have any question or recommendations for the Second Survey, please email info@southpacificlawyers.org.



The South Pacific Lawyers' Association was established in 2007 by the International Bar Association in partnership with the Law Council of Australia and the New Zealand Law Society. The South Pacific Lawyers' Association exists to assist developing law societies and bar associations in the South Pacific and to promote the interests of the legal profession in the South Pacific. Please visit www.southpacificbas.org for more information. *newSPLash* is produced on behalf of the South Pacific Lawyers' Association by the Law Council of Australia. This issue was compiled by Karuna Gurung, Giesel Manalo and Nicole Eveston. For all enquiries, or to submit articles to future issues of *newSPLash*, please contact Nicole Eveston, phone +61 2 6246 3751 or email nicole.eveston@lawcouncil.asn.au